BAY AREA AIR QUALITY MANAGEMENT DISTRICT

BOARD OF DIRECTORS

LEGISLATIVE COMMITTEE MEETING

COMMITTEE MEMBERS

SUSAN GARNER – CHAIRPERSON
TOM BATES
SCOTT HAGGERTY
DAVID HUDSON
NATE MILEY

CAROL KLATT–VICE CHAIRPERSON
CHRIS DALY
JENNIFER HOSTERMAN
ASH KALRA

MONDAY
MARCH 29, 2010
10:00 A.M.

4TH FLOOR CONFERENCE ROOM
939 ELLIS STREET
SAN FRANCISCO, CA 94109

AGENDA

1. **CALL TO ORDER - ROLL CALL**

2. **PUBLIC COMMENT PERIOD**

   (Public Comment on Non-Agenda Items Pursuant to Government Code § 54954.3) Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 939 Ellis Street, San Francisco, CA, at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Committee's subject matter jurisdiction. Speakers will be limited to five (5) minutes each.

3. **APPROVAL OF MINUTES OF NOVEMBER 12, 2009 AND JANUARY 21, 2010**

4. **CONSIDERATION OF NEW BILLS** **T. Addison/5109**
   taddison@baaqmd.gov

   The Committee will discuss and consider new bills and corresponding positions.

5. **COMMITTEE MEMBERS' COMMENTS**

   Any member of the Committee, or its staff, on his or her own initiative or in response to questions posed by the public, may; ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)

6. **TIME AND PLACE OF NEXT MEETING –**At the call of the Chair

7. **ADJOURNMENT**

CONTACT EXECUTIVE OFFICE - 939 ELLIS STREET **(415) 749-5130**
SAN FRANCISCO, CA 94109 **FAX: (415) 928-8560**
BAAQMD homepage:
www.baaqmd.gov

- To submit written comments on an agenda item in advance of the meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- To request special accommodations for those persons with disabilities (notification to the Executive Office should be given at least three working days prior to the date of the meeting so that arrangements can be made accordingly).
- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all members of the body to which this Agenda relates shall be made available at the District's offices at 939 Ellis Street, San Francisco, CA 94941, at the time such writing is made available to all, or a majority of all members of that body. Such writing may also be posted on the District's website (www.baaqmd.gov) at that time.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

939 ELLIS STREET, SAN FRANCISCO, CALIFORNIA 94109
(415) 771-6000

EXECUTIVE OFFICE:
MONTHLY CALENDAR OF DISTRICT MEETINGS

MARCH 2010

TYPE OF MEETING	DAY	DATE	TIME	ROOM
Board of Directors Regular Meeting *(Meets 1st & 3rd Wednesday of each Month)*	**Wednesday**	**17**	**9:45 a.m.**	**Board Room**
Joint Policy Committee	**Friday**	**19**	**10:00 a.m.**	**MTC Auditorium 101 – 8th Street Oakland, CA 94607**
Board of Directors Budget & Finance Committee *(At the Call of the Chair)*	**Wednesday**	**24**	**1:00 p.m.**	**4th Floor Conf. Room**
Board of Directors Mobile Source Committee *(Meets 4th Thursday each Month)*	**Thursday**	**25**	**9:30 a.m.**	**4th Floor Conf. Room**
Board of Directors Public Outreach Committee *(At the Call of the Chair)*	**Monday**	**29**	**9:30 a.m.**	**4th Floor Conf. Room**
Board of Directors Legislative Committee *– (At the Call of the Chair)*	**Monday**	**29**	**10:00 a.m.**	**4th Floor Conf. Room**

APRIL 2010

TYPE OF MEETING	DAY	DATE	TIME	ROOM
Board of Directors Regular Meeting *(Meets 1st & 3rd Wednesday of each Month)*	**Wednesday**	**7**	**9:45 a.m.**	**Board Room**
Board of Directors Stationary Source Committee *(At the Call of the Chair)*	**Monday**	**12**	**9:30 a.m.**	**Board Room**
Advisory Council Regular Meeting	**Wednesday**	**14**	**9:00 a.m. – 11:00 a.m.**	**Board Room**
Board of Directors Regular Meeting *(Meets 1st & 3rd Wednesday of each Month)*	**Wednesday**	**21**	**9:45 a.m.**	**Board Room**
Board of Directors Mobile Source Committee *(Meets 4th Thursday each Month)* **- RECHEDULED TO THURSDAY, APRIL 29, 2010**	**Thursday**	**22**	**9:30 a.m.**	**4th Floor Conf. Room**
Board of Directors Budget & Finance Committee *(At the Call of the Chair)*	**Wednesday**	**28**	**1:00 p.m.**	**4th Floor Conf. Room**
Board of Directors Mobile Source Committee *(Meets 4th Thursday each Month)*	**Thursday**	**29**	**9:30 a.m.**	**4th Floor Conf. Room**

MAY 2010

TYPE OF MEETING	DAY	DATE	TIME	ROOM
Board of Directors Regular Meeting ***(Meets 1st & 3rd Wednesday of each Month)***	**Wednesday**	**5**	**9:45 a.m.**	**Board Room**
Advisory Council Regular Meeting	**Wednesday**	**12**	**9:00 a.m. – 11:00 a.m.**	**Board Room**
Board of Directors Regular Meeting *(Meets 1st & 3rd Wednesday of each Month)*	**Wednesday**	**19**	**9:45 a.m.**	**Board Room**
Joint Policy Committee	**Friday**	**21**	**10:00 a.m.**	**MTC Auditorium 101 – 8th Street Oakland, CA 94607**
Board of Directors Mobile Source Committee *(Meets 4th Thursday each Month)*	**Thursday**	**27**	**9:30 a.m.**	**4th Floor Conf. Room**

HL – 3/16/10 (4:50 p.m.)
P/Library/Forms/Calendar/Calendar/Moncal

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Garner and Members of the Legislative Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 23, 2010

Re: Legislative Committee Draft Meeting Minutes

RECOMMENDED ACTION:

Approve attached draft minutes of the Legislative Committee meeting of November 12, 2009 and January 21, 2010.

DISCUSSION

Attached for your review and approval are the draft minutes of the November 12, 2009 and January 21, 2010 Legislative Committee meeting.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared By: Lisa Harper
Reviewed by: Jennifer Chicconi

AGENDA: 3

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109
(415) 749-5000

DRAFT MINUTES

Summary of Board of Directors
Legislative Committee Meeting
Thursday, November 12, 2009

Call to Order:	Chairperson Tom Bates called the meeting to order at 9:34 a.m. without a quorum
Roll Call:	Chairperson Tom Bates, Vice Chairperson Brad Wagenknecht, Jennifer Hosterman, Carol Klatt, Nate Miley (arrived late)
Absent:	Dan Dunnigan, Susan Garner, Scott Haggerty and Mark Ross
Public Comments:	There were no public comments.

Summary of 2009 Legislative Year

Senior Advanced Projects Advisor, Tom Addison, gave the staff presentation, stating that 2009 was not a significant air quality year, primarily because of the State's financial problems. All policy bills that had primary or secondary impacts on State costs did not move far, and many bills which would improve air quality were introduced but did not move far.

He stated there were many efforts to weaken air quality programs and many bills would have imposed new restrictions or regulations on air quality programs. No bill that the District opposed was signed into law, and most of the bills with significant air quality harm or damage failed to make it out of their first policy committee. However, air quality programs were weakened as part of the budget process. The ARB off-road diesel rule was delayed, and agricultural equipment compliance can now be paid for with Carl Moyer program funds. Historically, incentive programs have not been used to pay for compliance, but instead have incentivized projects that go beyond compliance.

Vice Chairperson Wagenknecht questioned and confirmed with Mr. Addison that the action does not force the Air District to provide grant funding to agricultural projects. Rather, applicants would still need to apply and compete for funds.

Mr. Addison noted that the three most significant bills included AB 1431 (Hill) which requires the Port of Oakland to have an emissions reduction program of comparable stringency to those in Southern California. The bill did not move out of its first policy committee. A hearing was held regarding the Port of Oakland which resulted in positive action, and Directors commented that while AB 1431 did not move forward, it was successful because it has influenced the Port.

Mr. Addison stated that the second significant bill dealt with Enhanced Vapor Recovery (EVR), a new CARB regulation on operators and owners of gas stations. This issue was controversial and the District was close to having a variety of measures passed that would have removed the requirement. This was an example of efforts by business to use the poor economy as an excuse to try to get regulatory rollback.

Director Hosterman confirmed with Mr. Bunger that Bay Area gas stations have an 80% to 90% compliance rate.

Mr. Addison reported that the third bill is SB 406 (DeSaulnier), which allows an increase of $1 to $2 in vehicle registration fees to implement SB 375. This passed the legislature but was vetoed by the Governor. There were a number of other bills that the Air District supported that were also vetoed, and Chairperson Bates suggested Mr. Addison briefly highlight them, which he did as follows:

- Senator DeSaulnier authored a bill that deals with a loophole that lets people operate very high polluting kit cars or hot rods. The Governor vetoed it.
- The District supported allowing a combination of grant funds to go towards a single project (AB 1527-Lieu), and the Governor vetoed it.
- SB 728 (Lowenthal) was signed into law, which affects parking policy. It deals with a small set (3%) of employers. Mr. Addison noted that the Air District is in compliance with the law and he briefly provided an explanation of it.

Potential Legislative Proposals for 2010

Mr. Addison suggested that the most important thing the District can do in 2010 is to try not to go backwards, play good defense, and not lose existing programs and authorities. This will be challenging given the State's ongoing financial problems. There will be dramatic pressure to roll back a variety of programs and regulations as part of the budget process.

Director Hosterman suggested not particularly advancing policy, but to plant seeds for future years, and Chairperson Bates believed this could be done in the form of education. He voiced the need to garner support from business and believed it is important to go on the record supporting the majority vote budget without a tax provision being in place, which is before the Secretary of the State as an Initiative. He also suggested strong support for the Constitutional Amendment proposed by Senator Hancock.

Mr. Addison referred to violators of air pollution laws and the sanctions or penalties they face, stating that the last change in air penalties law was in 2000, which was co-sponsored by the Air District. Mr. Addison said that in looking forward to 2010, the District could co-sponsor legislation working on improving air penalties and addressing shortcomings in their structure. There are several environmental organizations interested in doing this and one idea could be for the District to co-sponsor a bill to improve and reform the historic air penalties, for example by increasing the penalty ceilings with inflation over time.

Mr. Addison said another idea has to do with the smog check program, which is dramatically underperforming in terms of emission reductions. This is mostly due to the fact that cars tend to be clean for a day, and a month later, they may be a gross polluter. He cited the existence of fraud, repairs not being durable and other reasons for the dysfunctional program. To improve

smog check there was a Senate Bill the District had supported but did not sponsor, that failed to advance which included motorcycles in the program. He stated that motorcycles are 52 times more polluting per mile driven than cars. In addition, many motorcycles are illegally modified by the time they leave the dealership.

Mr. Addison stated that a broader proposal would be fundamental reform of the smog check process, and he suggested an 'on-board diagnostics' (OBD) system, briefly explained its use and its financial advantage to consumers. Directors requested and confirmed with Mr. Addison that no one was legislating on the issue and that information on OBD be presented at the next Legislative Committee meeting.

Mr. Broadbent suggested the Committee also talk about efforts to get federal monies directed to the Air District. He suggested working with the Port of Oakland, returning to Washington, D.C. to lobby for some of the DERA money, TIGER grants, Federal stimulus funding, DOE money, and other federal funds, and Directors agreed with this direction.

Mr. Addison confirmed that direction is for staff to pursue three (3) bills: smog check reform, air pollution law penalties and COLA, and inclusion of motorcycles in smog check, and to bring information back at the next meeting.

Chairperson Bates also asked that the Air District pursue support for a majority vote budget by Senator Hancock and explore a legislative package with the Port of Oakland and work in strengthening ties in Washington, D.C.

Approval of Minutes: Director Hosterman moved to approve the minutes of April 15, 2009; seconded by Director Miley; carried unanimously without objection.

Committee Members' Comments
Director Miley referred to Alameda County's work with agencies in taking positions on ballot measures and questioned whether the District could do the same. Mr. Bunger agreed to follow-up with the request.

Time and Place of Next Meeting: Thursday, January 14, 2009 immediately following the Climate Protection Committee Meeting.

Adjournment: Meeting adjourned at 10:41 a.m.

Lisa Harper
Clerk of the Boards

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109
(415) 749-5000

DRAFT MINUTES

Summary of Board of Directors
Legislative Committee Meeting
Thursday, January 21, 2010
9:30 a.m.

Call to Order: Chairperson Susan Garner called the meeting to order at 9:38 a.m.

Roll Call: Chairperson Susan Garner, Scott Haggerty and Brad Wagenknecht.

Absent: Tom Bates, Jennifer Hosterman, David Hudson, Ash Kalra, Vice-President Carol Klatt, Eric Mar and Nate Miley.

Public Comments: There were no public comments.

Approval of Minutes: Minutes were not approved, due to lack of quorum.

Potential Legislative Proposals for 2010 – *Senior Advanced Projects Advisor Tom Addison*

Mr. Addison reported that at its previous meeting, the Legislative Committee discussed looking ahead to 2010. Since the discussion in November, Mr. Addison informed the Committee that the State's financial picture has worsened. Mr. Addison continued that the current estimate deficit for 2010/2011 is $20 billion dollars. Mr. Addison continued, stating the Governor has released his budget proposal which calls for many cuts and money from the Federal government, and it is unclear how much of that may materialize.

Mr. Addison indicated that the poor fiscal climate will have a big effect on legislative actions next year. As discussed in November, Mr. Addison stated that there will probably be multiple efforts to cut, weaken or reduce air quality regulations this year, and to some extent, this has already begun. Mr. Addison noted the Committee has an oppose position on AB 118 (Logue), which would essentially halt both state and local efforts to cut greenhouse gas emissions. This bill was heard in the Assembly Natural Resources Committee several weeks ago. Supporters of the bill were from business organizations, who complained not about AB 32, but rather about the California Air Resources Board's (CARB) On-Road Diesel rule, as well as the Off-Road Diesel rule. The District testified in opposition, and the bill was defeated in Committee.

Mr. Addison stated that Mr. Kevin Jeffries, from Riverside, has introduced a bill that would reform CARB. It would essentially make CARB an elected body by the voters of the State, as opposed to appointed by the Governor.

Mr. Addison informed the Committee that staff explored two proposals for bills for the Committee's consideration. One is related to smog check reforms, the other dealt with

improving the statutes dealing with penalties for violations of air pollution laws, primarily by stationary sources. There are a lot of problems with the smog check program; studies indicate how badly it is underperforming. However, it is going to be a tough year for big changes to the status quo and this bill does not have much chance of passage. Staff did not recommend sponsoring a bill on smog check, but others will likely introduce bills on smog check. Assembly Member Warren Furutani from Long Beach is interested in trying move a smog check bill, but staff is not recommending that the District sponsor this as its primary legislative focus.

Director Wagenknecht asked if Mr. Furuitani's version of the bill is a positive bill. Mr. Addison responded that Mr. Furuitani's version is to try and improve the program and is seeking assistance in ways to achieve this goal and how to structure the bill. Chairperson Garner asked if the District could provide support and Mr. Addison responded that we can and will. Mr. Addison continued that the Committee also requested that staff explore the issue of penalties for stationary source violations. Mr. Addison stated that the penalties for stationary source violations have been flat since 2000 and some since 1982. In 2000, a bill was passed that raised some penalties. Mr. Addison also informed the Committee that Breathe California was interested in co-sponsoring a penalties bill with the District. Mr. Addison commented that it would make sense to tie the penalty ceiling to a cost of living adjustment.

Mr. Addison continued that the deterrent effect of penalty ceilings has eroded over the last decade due to inflation, and will continue to erode in the future. Simply tying those ceilings to inflation starting in 2011 would probably have some opposition but might be feasible. Working on this issue with an environmental organization and getting diverse support for it, potentially from business organizations, is something that District staff thinks would be a positive step forward for air quality. Staff is proposing the District sponsor this bill. Mr. Addison noted interest by potential authors.

<u>Committee Discussion/Comments:</u>
Director Wagenknecht supported pursuing a bill, tying the penalties to the Consumer Price Index (CPI). Director Haggerty also agreed and requested Mr. Broadbent provide input. Mr. Broadbent stated that it would be a good idea to increase penalties by CPI, but questioned how far would it actually go this year since the Legislature will continue their focus on the State's financial situation.

Chair Garner questioned if the District would be able to impose a retroactive increase from 2000. Mr. Addison responded that would be quite difficult, and does not recommend the Committee do so. Mr. Addison noted that members of the Capitol and various environmental organizations see that the District is an agency that is trying to cut air pollution by taking positive steps forward. There should be support for this bill not only from the environmental community, but from a variety of other interest groups. Mr. Addison continued, saying that this is a modest proposal that addresses a problem with the codes.

Director Haggerty stated that this bill would help the legislature. Director Haggerty further commented that the legislature needs to deal with its fiscal situation before carrying numerous bills. He also stated that the District should show restraint in what bills it produces. Chair Garner asked whether the District should refrain from advocating any legislation this year; Director Haggerty suggested that the District be judicious in what is sent to the legislature and find a balance. The Committee had a brief discussion on the smog check bill. Chair Garner

mentioned the Committee also discussed adding motorcycles to the smog program in the future and if this would be a good time to do so. Mr. Addison responded to Chair Garner that the Chair of the Senate Transportation Committee is interested in doing something on motorcycles, but his staff would not view it as a motorcycle emissions issue, but instead as a noise issue or a quality of life issue. Mr. Addison stated that staff is not recommending the Air District sponsor a smog check bill at this time. Chair Garner stated that in the future it would make sense for the District to take on motorcycles based on the information provided to the Committee and the pollution they contribute.

Committee Action: Chair Garner stated that the Committee supports penalties legislation with the members that are present, and recommend Board of Directors' approval.

Mr. Addison also noted that the Committee discussed an additional item at its last meeting about whether the Air District should take positions on initiatives that occur in 2010. Some of these issues include redistricting, dealing with the State Constitution and voting on budget thresholds, issues that are not directly related to air quality. The Committee asked if the District could take positions on initiatives unrelated to air quality and if the District has done so in the past. Mr. Addison responded that legally the District can take positions on initiatives as an organization and the District has done so in the past, on an initiative which was sponsored by the Planning and Conservation League that raised money specifically to clean up emissions of dirty diesel engines. Mr. Addison also stated that the recommendation from staff is that the District only takes position on initiatives that directly affect air quality. Mr. Addison stated that to weigh in on some of the initiatives, potentially dealing with the State Constitution, will diminish how closely people listen to the District's voice at the Capitol.

Mr. Addison concluded by stating that the District should only take position on initiatives that are directly about air quality and or that are specifically tied to air quality.

Committee Discussion/Comments:
Directors Wagenknecht, Garner, and Haggerty agreed that the District not get involved in initiatives.

Next Meeting: At the Call of the Chair

Adjournment: Meeting adjourned at 10:15 a.m.

Vanessa Johnson
Executive Secretary

AGENDA: 4

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Memorandum

To: Chairperson Garner and
Members of the Legislative Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: March 16, 2010

Re: Consideration of New Bills

RECOMMENDED ACTION

Discuss new, significant air quality bills and recommend Board positions on them.

BACKGROUND

The 120 members of the Legislature responded to last month's bill introduction deadline by introducing 1,321 regular session bills. Many of these measures have not yet been fleshed out, but are still in spot or intent form. Bills have until April 23rd or May 7th (depending on whether they have fiscal implications or not) to pass their policy committee or committees in their first house, so policy committees will hear hundreds of bills in April.

DISCUSSION

As anticipated and discussed at the last Legislative Committee meeting, there are a host of bills this year that would roll back or delay greenhouse gas programs and regulations, as well as plenty of measures that would constrain or reduce the Air Resources Board's (ARB's) current authority to adopt regulations to cut air pollution. One critical issue for the Committee to consider is which of these measures to take positions on. Staff notes that the primary 2010 legislative goal the Committee adopted at its last meeting is to attempt to minimize the legislative damage to air quality programs. Given that previous direction, staff have recommended positions for the Committee's consideration on a wide variety of measures, as listed in the table below. Copies of the actual bill language are attached to this memorandum.

BILL AND AUTHOR	SUBJECT	STAFF RECOMMEND-ATION
AB 1672 Jeffries	Changes ARB Board from appointed to elected positions	Oppose

BILL AND AUTHOR	SUBJECT	STAFF RECOMMEND-ATION
AB 1692 B. Berryhill	Puts penalty revenues collected by ARB (and other state environmental agencies) into the General Fund, instead of directly into ARB programs	Oppose
AB 1740 Jeffries	Eliminates the 500 vehicle cap on kit cars, and ends environmental and financial requirements for amnesty program for fraudulently registered kit cars	Oppose
AB 1863 Gaines	Extends current reduction in testing requirements for hospital's diesel backup generators	Support
AB 1949 Logue	Requires extensive new reports on environmental regulations 5 years after adoption or modification	Oppose
AB 2289 Eng	Allows major changes to smog check testing procedures	Support and seek amendments
AB 2311 Mendoza	Requires triennial review of ARB greenhouse gas fuel regulations, and delay to avoid impacts on fuel prices, small businesses, the economy etc.	Oppose
AB 2469 B. Berryhill	Establishes new dispute resolution process for businesses seeking relief from ARB's AB 32 regs.	Oppose
AB 2565 Ammiano	Reduces CEQA paperwork for lead agencies by allowing increased internet use in CEQA process	Support
AB 2691 Hall	Prohibits AQMDs, cities, counties, or others from imposing GHG fees	Oppose
SB 942 Dutton	Requires repeal of regulations if analysis by State Auditor indicates costs outweigh benefits	Oppose
SB 960 Dutton	Requires ARB regulations to be analyzed by Office of Administrative Law for feasibility and costs	Oppose
SB 1114 Florez	Allows districts to create ERCs from marine and locomotive emission reduction projects that are partly public funded	Oppose

BILL AND AUTHOR	SUBJECT	STAFF RECOMMEND-ATION
SB 1120 Dutton	Prohibits ARB from adopting AB 32 cap-and-trade program unless it is part of a required federal or regional program	Oppose
SB 1194 Hollingswo rth	Prohibits air districts from banning installation of wood burning devices in new & existing residences	Oppose
SB 1263 Wyland	Eliminates AB 32	Oppose
SB 1299 Lowenthal	Requires DMV to assess feasibility of VMT fee	Support
SB 1340 Kehoe	Requires CEC to establish a program to reduce costs for in-home electric vehicle charging	Support
SB 1402 Dutton	Requires ARB to detail how each penalty amount was calculated, and takes penalty revenues away from ARB	Oppose
SB 1433 Leno	Ties air penalty ceilings to inflation	Co-Sponsor
SB 1445 DeSaulnier	Increases vehicle registration fees by $1 to fund SB 375 implementation	Support
SBX8 57 Cox	Delays ARB on-road diesel regulation by 2 years	Oppose

ANALYSES

AB 1672 is authored by Assemblymember Kevin Jeffries (R-Riverside). It is one of many bills this year that are attacking ARB in a variety of ways. Currently, ARB's Board consists of 11 individuals appointed by the Governor and confirmed by the Senate. They are required to have "demonstrated interest and proven ability in the field of air pollution control". Five of the current Board members come from local air districts. This bill would instead change the Board positions from appointed to elected positions, and eliminates the requirement for air pollution expertise. Under the bill, California would be geographically divided into 11 separate electoral districts, and these districts would each elect a Board member. Staff recommends an "**Oppose**" position, because we believe this bill would overly politicize what has been and should continue to be a public health agency acting in the public interest to cut air pollution.

AB 1692 is authored by Assemblymember Bill Berryhill (R-Stockton). It would redirect all penalty revenues collected by state environmental agencies, including the ARB, into the General Fund. Currently, when companies violate air quality laws enforced by the ARB, penalty revenues are deposited into the Air Pollution Control Fund (APCF). Staff believes that this is appropriate, since the APCF is used to cut emissions, and violations cause an increase in emissions. This bill would thus result in fewer emission reductions, and staff recommends an "**Oppose**" position.

AB 1740 is another bill authored by Assemblymember Kevin Jeffries (R-Riverside). It would allow an unlimited number of vehicles with tampered emissions controls to operate in California. Since 2001, 500 specially constructed vehicles, or 'kit cars', are allowed to be registered regardless of whether they have any emissions control equipment on the vehicle. The owners of these first 500 vehicles are in effect allowed to choose the model year of their vehicle, and virtually all choose a model year predating any emissions controls on cars. Many of these vehicles have emissions controls that have been tampered with, but this loophole is used to legalize their operation. Under current law, an unlimited additional number of kit cars above 500 are also allowed to be registered, but these vehicles are required to operate with modern emissions controls. This bill would eliminate the 500 vehicle limit.

But AB 1740 also allows kit car owners who have fraudulently tampered with their emissions controls and cheated the state out of sales tax and registration fees to not repay what they owe, and legally operate their polluting vehicles. In 2008 and 2009, the District supported bills that created an amnesty program for kit car owners. This bill does away with that program, increasing air pollution and depriving the state of funds it would otherwise receive. Staff recommends an "**Oppose**" position.

AB 1863 is authored by Assemblymember Ted Gaines (R-Roseville), and would cut air pollution from diesel backup generators at hospitals. In the past, state law required hospitals to run these generators at least weekly, which subjects staff, patients, and those nearby the hospitals to diesel exhaust. Several years ago, the law was changed to require only monthly testing of these generators, which cut diesel emissions and exposure. However, at the end of this year, weekly testing will again be required. This bill, which is sponsored by the hospitals' association, would continue to allow monthly testing rather than weekly. Staff recommends a "**Support**" position.

AB 1949 is authored by Assemblymember Dan Logue (R-Chico), who has been a vocal opponent of multiple ARB regulations. This bill would add a new requirement to regulations adopted by ARB, CalEPA, and CalOSHA. Five years after their adoption, each agency would be required to complete a detailed report and evaluation on the regulation. This bill would add substantially to ARB's current workload but would provide no resources or way to cover these new costs. Furthermore, the intent of the bill is to eliminate ARB regulations, which is made clear by the nature of requirements in the report. For example, the report is required to provide a detailed summary of all criticisms of the regulation, but nothing corresponding for those praising or supporting the regulation. Staff notes that ARB already has the authority to amend regulations after they have been implemented, if a regulation needs either fine-tuning or to be eliminated. Furthermore, ARB frequently uses this authority. Staff believes this bill is not needed, and will divert ARB resources from emission reduction efforts into paperwork. We thus recommend an "**Oppose**" position.

AB 2289 is authored by Assemblymember Mike Eng (D-Monterey Park), and is sponsored by the ARB and the Bureau of Automotive Repair. It is ostensibly a response to a recently-released external analysis of the smog check program. This analysis used roadside tests of vehicles. It found that many vehicles which had initially failed smog check but then passed had levels of emissions far higher than allowed shortly after passing their test. Most observers believe that this indicates the program is rife with fraud, and is not achieving the emission reductions it should. AB 2289 attempts to address this by both increasing penalties for program fraud, and by allowing (but not requiring) new testing procedures. Staff recommends a "**Support and seek amendments**" position. We suggest that the bill would be improved by adding language to require a change in test procedures, to fix a deadline for these program improvements, and to ensure that any changes in testing improve air quality.

AB 2311 is authored by Tony Mendoza (D-Artesia). The bill would require formal, ongoing triennial review of any regulations adopted to cut greenhouse gas emissions from fuels, such as California's Low-Carbon Fuel Standard (LCFS). This would include review by other state agencies, the Legislative Analyst, and others, with the reviews subject to an extensive public comment process. Most significantly, if the review finds that the LCFS or similar regulation has any impact on California fuel supply or prices, the economy, or small businesses, the regulation must be delayed to avoid any such impacts. Because any regulation on the carbon content of fuels will have some impacts, this bill in effect means that California cannot adopt any regulations to reduce greenhouse gas emissions from fuels. Furthermore, the review unfairly ignores the many economic and public health benefits such a regulation will have. Staff believes this bill is yet another attempt to kill or delay the implementation of AB 32, and recommend an "**Oppose**" position.

AB 2469 is authored by Bill Berryhill (R-Stockton), and is sponsored by the California Council for Economic and Environmental Balance (CCEEB). It would establish a new dispute resolution process for those subject to AB 32 requirements established by the ARB. In this process, an administrative law judge from the Office of Administrative Hearings will act as a hearing officer, and have sole discretion over whether the business seeking a delay in compliance will be granted such a delay. There are many California businesses that will be subject to AB 32's requirements to cut greenhouse gas emissions. Staff believes that establishing this brand new process has the potential to greatly delay required and needed GHG reductions, and is recommending an "**Oppose**" position.

AB 2565 is authored by Tom Ammiano (D-San Francisco), and is one of many bills this year addressing the California Environmental Quality Act (CEQA). It is sponsored by the San Francisco Public Utilities Commission, and would apply to all lead agencies in the CEQA process, including the District. Essentially, it allows a lead agency to make its CEQA documents available online, instead of providing a hard copy to each interested and responsible party. However, if members of the public or other agencies request a hard copy, the lead agency would still need to provide it. Staff believes this measure is environmentally beneficial, yet is still protective of the CEQA process. We recommend a "**Support**" position.

AB 2691 is authored by Isadore Hall (D-Los Angeles). While it is ostensibly sponsored by the California and Manufacturers Association, to date Chevron's legislative advocacy team has been most active in promoting the measure. It applies to all facilities that are subject to ARB's greenhouse gas cap-and-trade program, and pay a fee to ARB. Essentially, it prohibits cities, counties, local air districts, and others from assessing any GHG fees on these entities. It says

that any such fees would be duplicative and burdensome on industry, and thus should not be allowed. Given that the District has imposed a GHG fee that would be made illegal by this measure, staff is recommending an "**Oppose**" position.

SB 942 is authored by Senator Bob Dutton (R-Inland Empire), who has been a vocal critic of regulation in general, and ARB regulations in particular, including those to reduce diesel emissions. This bill would require the State Auditor to look at all regulations currently in place in California, including presumably local air district regulations. After listing regulations in order based on costs associated with each, the Auditor prepares a cost-benefit analysis for each. Many environmental regulations tend to have higher initial costs, with benefits accruing more heavily in the future, and based on the bill's prescriptive process of how the cost-benefit analysis is to be done, presumably some of these would be deemed to have higher costs than benefits (measured in the near term). If the costs outweigh benefits for a regulation, the Auditor recommends to the Legislature that they cancel the regulation. Also, all regulations are to be cancelled after ten years, unless the Auditor finds them to be cost-effective. This bill has large potential negative consequences for public health by eliminating air quality regulations, including District regulations. It also would require significant staff time for air quality agencies to explain their regulations to State Auditor staff. Therefore, staff recommends an "**Oppose**" position.

SB 960 is also by Senator Bob Dutton (R-Inland Empire), and is another anti-regulation bill. It only applies to ARB regulations. Specifically, this bill requires the Legislative Analyst to do cost-benefit analysis of all major ARB regulations, and to be reimbursed by the ARB for this work. Staff notes that ARB is already required to do the analysis that this bill would require, and all ARB regulations are already required to be submitted to the Office of Administrative Law for review and approval before taking effect. Staff believes that this bill would be duplicative and costly, and is specifically designed to halt ARB's issuance of public health regulations. Staff recommends an "**Oppose**" position.

SB 1114 is authored by Senator Dean Florez (D-Shafter), and is essentially the same as last year's SB 225 by the same author. It would authorize air districts to create emission reduction credits (ERCs) for marine and locomotive projects that are jointly funded with public and private funds. Marine vessels and locomotives of course have substantial emissions of diesel particulate in the Bay Area, and reducing emissions from both categories is advantageous. The District's incentive programs, such as the Moyer program, have funded a number of projects to cut emissions from these sources. However, staff believes it is inappropriate to use public, incentive funds on a project that is generating ERCs that can be bought and sold for profit on the private market. The District opposed SB 225 last year, and staff recommends an "**Oppose**" position on SB 1114.

SB 1120 is authored by Senator Bob Dutton (R-Inland Empire), and is an attempt to prevent California moving ahead with implementation of AB 32. Specifically, it would prevent ARB from adopting a cap-and-trade program to cut GHG emissions, unless it is part of a legally enforceable federal program, or a program involving all western states and Canadian provinces. Because of the District's support for AB 32, staff recommends an "**Oppose**" position on this bill.

SB 1194 is authored by Senator Dennis Hollingsworth (R-Murrieta), who has been a vocal opponent of air districts' efforts to cut woodsmoke emissions. Last year, he authored SB 554, which would have prevented districts from restricting the use or installation of wood-burning

devices. The District opposed that bill, and it was defeated in the Senate Environmental Quality Committee. This year, Senator Hollingsworth has narrowed his focus. SB 1194 would not prevent districts from calling 'no-burn' days. Instead, it would prevent districts from prohibiting the installation of wood-burning equipment (such as fireplaces or stoves) in new or existing homes. District staff believes that local air district boards, comprised of local officials, should have the ability to implement whatever woodsmoke regulations are best suited to dealing with their local air pollution problems. Staff recommends an "**Oppose**" position on SB 1194.

SB 1263 is authored by Senator Mark Wyland (R-Escondido). While many of the Senator's colleagues this year have introduced legislation to weaken or delay AB 32 in a variety of indirect or subtle ways, this bill is refreshingly direct. It would make all provisions of AB 32 (the Global Warming Solutions Act of 2006) and any associated regulations inoperative. Because of the District's support for AB 32, staff recommends an "**Oppose**" position.

SB 1299 is authored by Senator Alan Lowenthal (D-Long Beach), and is about vehicle-miles-traveled (VMT). A variety of federal commissions and state bodies have recommended transitioning from fuel taxes to mileage-based user fees (VMT fees) for continued transportation funding. The District, in a variety of both current and older air quality plans, has supported VMT concepts also. This bill would not implement a VMT fee, but instead would have the DMV examine some of the issues around such a fee, such as ensuring privacy, data adequacy, and others. Last year, the District supported AB 1135, Assemblymember Skinner's bill on VMT. Staff recommends a "**Support**" position on SB 1299.

SB 1340 is authored by Senator Christine Kehoe (D-San Diego), and is designed to encourage a smooth and successful introduction to California of both pure battery electric vehicles, and plug-in hybrids. The measure would have the California Energy Commission (CEC) establish a program to help reduce home charging costs for early purchasers of these vehicles. Because of the District's long-standing support for reducing transportation emissions by increasing use of electric-drive vehicles, staff recommends a "**Support**" position.

SB 1402 is authored by Senator Bob Dutton (R-Inland Empire), and is another example of his dissatisfaction with the ARB. This bill would force major changes in ARB's current penalty programs and policies for those who violate the air quality codes and regulations it oversees. It is being put forward by an association of businesses subject to ARB oversight called Californians for Enforcement Reform and Transparency (CERT). CERT's primary consultant is John Dunlap, who was Chair of ARB under Governor Pete Wilson. CERT states the bill is simply designed to increase transparency and clarity in ARB's enforcement programs. However, staff believes the bill would weaken enforcement of air quality laws in multiple ways.

First, it would steer all penalties out of the Air Pollution Control Fund, and into the state's General Fund. This will directly increase emissions, since the Air Pollution Control Fund is used to cut air pollution. Second, it shifts control to violators, rather than prosecutors or the Attorney General, over where and how a prosecution is conducted. Third, it would allow co-conspirators to escape liability. It does this by precluding prosecution of more than one person in, for example, cases involving conspiracy to avoid compliance with engine standards such as illegal vehicle import schemes. Fourth, it would reduce penalties for illegal sale of uncertified engines and vehicles, by limiting total penalties to $10,000 rather than the current $5,000 per vehicle. This could actually encourage new illegal sale and import schemes. Finally, it would prevent judges, the Attorney General, and prosecutors from being able to tailor the penalty to fit the

crime, since it would establish a penalty structure akin to mandatory sentencing. Staff recommends an "**Oppose**" position on this bill.

SB 1445 is authored by Senator Mark DeSaulnier (D-Antioch), and is very similar to last year's SB 406 by the same author. The District supported SB 406, which ultimately was vetoed by the Governor. SB 1445 is designed to provide funding for regional and local planning efforts to implement SB 375, which attempts to influence growth and development patterns to reduce GHGs. This year's bill would impose a $1 per vehicle registration fee, which would be used primarily by regional transportation planning agencies to develop and implement SB 375's sustainable communities strategy or the regional blueprint. Staff recommends a "**Support**" position on SB 1445.

SBX8 57 is authored by Senator Dave Cox (R-Fair Oaks). It would delay all aspects of ARB's on-road diesel regulation by two years. This regulation has not taken effect yet, and ARB's staff and Board have indicated that they will be already relaxing at least some of the regulations implementation dates, particularly for smaller fleets and in the early years. This bill, on the other hand, would relax all of the regulation's requirements, including those not scheduled to take effect for another 15 years. Because of the significant loss of diesel emission reductions the bill would cause, staff recommends an "**Oppose**" position

In addition to the bills listed above, staff has reviewed potential bill language that would significantly affect the District's proposed approach to establishing thresholds of significance for greenhouse gas emissions in our CEQA guidelines. This language was apparently drafted by the California Building Industry Association. It would essentially impose the approach adopted in the San Joaquin Valley on this issue statewide. Thus, the District's more protective and more versatile approach to establishing significance thresholds would be made null and void. Staff recommends the Committee oppose such a bill.

Per the Committee's direction, the District is co-sponsoring a bill with Breathe California to tie penalty ceilings to the consumer price index. This bill, SB 1433, is authored by Senator Mark Leno of San Francisco, and will be heard first in the Senate Environmental Quality Committee. Also, attached to this memorandum is a table listing all bills of potential air quality significance. Staff will try to answer any questions from the Committee on these bills, in addition to those in the table below. Finally, some bills are still being amended, and thus staff may bring the Committee some bills for consideration in addition to those listed previously.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Thomas Addison

BAAQMD BILL DISCUSSION LIST

March 2010

BILL NO.	AUTHOR	SUBJECT	POSITION (Positions in italics are staff recommendations)
AB 787	Hill	Increases eligibility and scrappage payment for smog check consumer assistance program	
AB 1500	Lieu	Extends HOV access to CNG and pure battery electric vehicles	
AB 1672	Jeffries	Changes ARB Board from appointed to elected positions	*Oppose*
AB 1686	Jeffries	Prevents SCAQMD from regulating back-up generators	
AB 1692	B. Berryhill	Ends retention of penalties by ARB (and other state agencies) for violations of regulations they oversee	*Oppose*
AB 1740	Jeffries	Allows unlimited number of specialty constructed vehicles	*Oppose*
AB 1772	Mendoza	Increases vehicle weights to compensate for newly required emission reduction technologies	
AB 1781	Villines	Authorizes neighborhood electric vehicles in Fresno	
AB 1794	Gilmore	AB 32 spot bill	
AB 1805	C. Calderon	CEQA Litigation Protection Pilot Program	
AB 1833	Logue	Requires new economic impact analysis of new regulations proposed by ARB, CalOSHA, and CalEPA	*Oppose*
AB 1846	V.M. Perez	Reduces CEQA requirements for industry compliance with AB 32 regulations	
AB 1863	Gaines	Extends reduction in testing requirements for diesel hospital generators	*Support*
AB 1949	Logue	Requires detailed 5-year review and report on state environmental regulations	*Oppose*
AB 1981	Hill	Changes tire fee collection on dealer-sold vehicles	
AB 2037	V.M. Perez	Attempts to ensure any power imported in CA from Mexico meets comparable emissions requirements	
AB 2132	Carter	Renewable Energy Portfolio Standard spot bill	

AB 2231	V.M. Perez	Establishes Renewable Energy Action Team	
AB 2289	Eng	Allows major changes in smog check testing procedures	*Support and seek amendments*
AB 2299	Blakeslee	ARB spot bill	
AB 2311	Mendoza	Delays compliance with AB 32-based fuels rules	*Oppose*
AB 2313	Buchanan	AB 32 spot bill for California Building Industry Association	
AB 2328	Niello	Adds a small business owner to ARB Board	
AB 2378	Tran	Allows dual renewable energy devices into RPS	
AB 2431	Fletcher	Spot bill on RPS	
AB 2469	B. Berryhill	Establishes a hearing officer and dispute resolution process for businesses seeking relief from AB 32 reg.s	*Oppose*
AB 2498	Skinner	Intent bill to increase power production from waste heat	
AB 2513	Adams	CCEEB-sponsored spot bill on AB 32	
AB 2514	Skinner	Establishes Storage Portfolio Standard to increase use of off-peak renewable power in the peak	
AB 2534	Fuentes	Allows ARB to establish a fund to mitigate any increase in air pollution in communities from market-based AB 32 compliance	
AB 2561	Villines	Creates a new Department of Energy	
AB 2562	Fuentes	Eliminates vinyl chloride testing for landfill gas except at hazardous waste landfills	
AB 2565	Ammiano	Reduces CEQA paperwork for lead agencies by allowing increased internet use in CEQA process	*Support*
AB 2588	Garrick	Spot bill on air district governing board membership	
AB 2643	Logue	AB 32 spot bill	
AB 2681	Garrick	AB 32 spot bill	
AB 2691	Hall	Prohibits AQMDs and others from imposing GHG fees	*Oppose*
AB 2713	Knight	CEQA spot bill	
AB 2728	Furutani	CEQA spot bill	
ABX8 37	C. Calderon	CEQA Litigation Protection Pilot Program	

SB 435	Pavley	States intent to cut emission control tampering on motorcycles	Support
SB 518	Lowenthal	Provides incentives to local governments that change parking policies	Support
SB 535	Yee	Extends HOV access for CNG & EV's, ends it for conventional hybrids, and grants HOV access to new plug-in hybrids	
SB 916	Harman	Air pollution spot bill	
SB 927	Huff	HOV lane spot bill	
SB 942	Dutton	Requires repeal of regulations if analysis by State Auditor indicates costs outweigh benefits	*Oppose*
SB 959	Ducheny	Streamlines permitting process for new development	
SB 960	Dutton	Requires all ARB regulations to be analyzed by Legislative Analyst's Office for feasibility and costs	*Oppose*
SB 1006	Pavley	Requires Natural Resources Agency to mitigate climate change impacts on natural ecosystem functions	
SB 1010	Correa	CEQA Litigation Protection Pilot Program	
SB 1033	Wright	Prohibits selling or trading of allowances under an AB 32 cap-and-trade program to any entities without compliance obligations	
SB 1114	Florez	Allows districts to create ERCs from marine and locomotive emission reduction projects that are partly publicly funded	*Oppose*
SB 1120	Dutton	Prohibits ARB from adopting AB 32 cap-and-trade program unless it is part of a required federal or regional program	*Oppose*
SB 1153	Hancock	Intent bill to increase renewable energy agricultural projects	
SB 1194	Hollingsworth	Prohibits air districts from banning installation of wood burning devices in new or existing residences	*Oppose*
SB 1195	Wyland	CEQA spot bill	
SB 1224	Wright	Spot bill on behalf of the metal casting industry to reduce impact of nuisance odor complaints	
SB 1238	Calderon	Adds affected businesses to those ARB must consult with in developing its triennial diesel regulation enforcement plan	
SB 1241	Wolk	Directs an unspecified percentage of AB 32 compliance fees and/or federal funds to cut GHG emissions from agriculture	

SB 1261	Ashburn	Intent bill to enact a fast-track CEQA process for projects increasing green or renewable jobs	
SB 1263	Wyland	Eliminates AB 32	*Oppose*
SB 1299	Lowenthal	Requires DMV to develop a pilot program to assess a VMT fee	*Support*
SB 1305	Pavley	States that AB 32 fees and revenues shall be appropriated by the Legislature to further AB 32 goals	
SB 1340	Kehoe	Requires CEC to establish a program to reduce costs for in-home electric vehicle charging	*Support*
SB 1351	Wright	Requires proposed regulations to include compliance schedules and forms as part of the initial proposal	
SB 1367	Wyland	Delays '20% by 2010' RPS requirement to 2020	
SB 1389	Padilla	Smog check spot bill	
SB 1393	Simitian	Changes vehicle registration from annual to biennial	
SB 1402	Dutton	Requires ARB to detail how each penalty amount was calculated, and takes penalty revenue away from ARB	*Oppose*
SB 1433	Leno	Ties air penalty ceilings to inflation	Support (co-sponsor)
SB 1437	Kehoe	Requires the PUC to study how costs to improve grid to accommodate electric and plug-in vehicles will be distributed	
SB 1445	DeSaulnier	Increases vehicle registration fees by $1 to fund SB 375 implementation	*Support*
SB 1455	Kehoe	Requires PUC to develop an EV educational handbook	
SBX8 37	Cedillo	Eliminates Moyer cost-effectiveness for one year, and provides $10 million for on-road truck compliance	
SBX8 42	Correa	CEQA Litigation Protection Pilot Program	
SBX8 48	Dutton	Requires repeal of regulations if analysis by State Auditor indicates costs outweigh benefits	
SBX8 49	Dutton	Prohibits ARB from adopting AB 32 cap-and-trade program unless it is part of a required federal or regional program	
SBX8 50	Dutton	Requires all ARB regulations to be analyzed by Legislative Analyst's Office for feasibility and costs	
SBX8 57	Cox	Delays ARB on-road diesel regulation implementation by 2 yrs.	*Oppose*

ASSEMBLY BILL No. 1672

Introduced by Assembly Member Jeffries

January 20, 2010

An act to amend Section 39511 of, to add Section 39510.5 to, and to amend, repeal, and add Section 39510 of, the Health and Safety Code, relating to the State Air Resources Board.

LEGISLATIVE COUNSEL'S DIGEST

AB 1672, as introduced, Jeffries. State Air Resources Board: election of board members.

Existing law establishes in the California Environmental Protection Agency the State Air Resources Board, which is responsible for control of emissions from motor vehicles and is designated the air pollution control agency for all purposes set forth in federal law. Existing law requires the state board to consist of 11 members appointed by the Governor, with the consent of the Senate, and specifies the qualifications of those members.

This bill, commencing with the 2012 statewide general election, would require the members of the state board to be elected by district voters. The bill would require the state board, by January 1, 2012, to draw district boundaries in accordance with prescribed criteria, for the purpose of the election of state board members. The bill would prescribe requirements for the election of the members of the state board and would make other conforming changes.

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

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

SECTION 1. The Legislature finds and declares that reestablishing the State Air Resources Board as an elected body in the state government will provide greater accountability for the board's actions.

SEC. 2. Section 39510 of the Health and Safety Code is amended to read:

39510. (a) The State Air Resources Board is continued in existence in the California Environmental Protection Agency. The state board shall consist of 11 members.

(b) The members shall be appointed by the Governor, with the consent of the Senate, 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 air pollution problems. Six members shall have the following qualifications:

(1) One member shall have training and experience in automotive engineering or closely related fields.

(2) One member shall have training and experience in chemistry, meteorology, or related scientific fields, including agriculture or law.

(3) One member shall be a physician and surgeon or an authority on health effects of air pollution.

(4) Two members shall be public members.

(5) One member shall have the qualifications specified in paragraph (1), (2), or (3) or shall have experience in the field of air pollution control.

(c) Five members shall be board members from districts who shall reflect the qualitative requirements of subdivision (b) to the extent practicable. Of these five members, one shall be a board member from the south coast district, one shall be a board member from the bay district, one shall be a board member from the San Joaquin Valley Unified Air Pollution Control District or, if the unified district is abolished, from the San Joaquin Valley Air Quality Management District if created pursuant to Section 5 of Chapter 915 of the Statutes of 1994, one shall be a board member from the San Diego County Air Pollution Control District, and one shall be a board member of any other district.

(d) Any vacancy shall be filled by the Governor within 30 days of the date on which it occurs. If the Governor fails to make an appointment for any vacancy within the 30-day period, the Senate Committee on Rules may make the appointment to fill the vacancy in accordance with this section.

(e) While serving on the state board, all members shall exercise their independent judgment as officers of the state on behalf of the interests of the entire state in furthering the purposes of this division. No member of the state board shall be precluded from voting or otherwise acting upon any matter solely because that member has voted or acted upon the matter in his or her capacity as a member of a district board, except that no member of the state board who is also a member of a district board shall participate in any action regarding his or her district taken by the state board pursuant to Sections 41503 to 41505, inclusive.

(f) Notwithstanding subdivision (e) of Section 1 of Chapter 1201 of the Statutes of 1991, this section shall become operative on January 1, 1994.

(g) This section shall become inoperative on December 4, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 39510 is added to the Health and Safety Code, to read:

39510. (a) Beginning on December 4, 2012, the State Air Resources Board shall consist of 11 members from the 11 districts established pursuant to subdivision (k), each of whom shall be elected by the voters of his or her respective district. Each member shall be a resident of the district from which the member is elected.

(b) Elections to elect the members of the state board shall be held commencing with the statewide general election on November 6, 2012, and each statewide general election thereafter in accordance with the terms specified in subdivision (c).

(c) Candidates shall declare their candidacy and shall be nominated, election returns shall be canvassed, the election shall be held and conducted, and the certificates of election shall be issued, in the same manner as the declaration of candidacy, nomination, election, canvassing of returns, declaration of results, and issuance of certificates of election are made, declared, held,

and conducted and issued as provided under the applicable provisions of the Elections Code. Except as otherwise provided in this chapter, the provisions of the Elections Code apply to the election of the members of the state board.

(d) A person shall not vote at any district election unless the person resides in the district in which the person casts the vote.

(e) The candidate that receives the highest number of votes cast for the position of member of the state board for a district shall be elected as a member of the state board for that district.

(f) Members elected on November 6, 2012, shall take office on December 4, 2012. Thereafter, each member shall enter upon the duties of his or her office on the first Monday after the first day of January next succeeding the statewide general election in which the member was elected. Each member shall continue to serve his or her term until his or her successor is eligible to enter upon the duties of the office.

(g) Each member shall serve a term of four years, except that members of the board elected on November 6, 2012, shall select five members by lot whose initial term shall be for two years. Any member may subsequently be elected to serve any subsequent four-year term.

(h) The office of member of the state board shall be a nonpartisan office and each member shall exercise his or her independent judgment as an officer of the state on behalf of the interests of the entire state in furthering the purposes of this division.

(i) A member shall not designate an alternate for any purpose or otherwise be represented by another person in his or her capacity as a member of the state board.

(j) When a vacancy occurs during the term of office, the Governor shall immediately call an election to fill the vacancy. The costs of a special election to fill a vacancy shall be paid by the state board, upon appropriation by the Legislature, from the revenues of penalties collected by the state board.

(k) (1) On or before January 1, 2012, the state board shall divide the state into 11 districts with substantially equal populations. The state board shall utilize the population data from the federal 2010 census in determining the boundaries of the districts. In establishing the boundaries of the districts, the state board shall consider

geography, cohesiveness, contiguity, and similarity of air quality concerns.

(2) The costs of establishing district boundaries pursuant to this subdivision shall be paid by the state board, upon appropriation by the Legislature, from the revenues of penalties collected by the state board.

SEC. 4. Section 39510.5 is added to the Health and Safety Code, to read:

39510.5. (a) The State Air Resources Board is an independent department in the state government. The removal of the state board from the California Environmental Protection Agency shall not affect in any manner the deputies or employees of the state board, and their employments and positions are continued in existence.

(b) This section shall become operative on December 4, 2012.

SEC. 5. Section 39511 of the Health and Safety Code is amended to read:

39511. (a) The Governor shall ~~appoint~~ *select* the chairperson *of the state board*, who shall serve *as the chairperson* at the pleasure of the Governor, from among the *elected* members of the state board~~, and~~. *The chairperson* shall serve as the principal advisor to the Governor on, and shall assist the Governor in establishing, major policy and program matters on environmental protection. The chairperson shall also serve as the principal communications link for the effective transmission of policy problems and decisions to the Governor relating to the activities of the State Water Resources Control Board and the ~~State Solid Waste Management Board~~ *Department of Resources Recycling and Recovery*, in addition to serving as the Governor's chief air quality policy spokesperson.

(b) The chairperson shall serve full time.

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ASSEMBLY BILL No. 1692

Introduced by Assembly Members Bill Berryhill and Logue

January 27, 2010

An act to amend Section 13332.18 of, and to add Section 13332.185 to, the Government Code, relating to the General Fund.

LEGISLATIVE COUNSEL'S DIGEST

AB 1692, as introduced, Bill Berryhill. General Fund: fines.

Under existing law, with specified exceptions, revenues derived from the assessment of fines and penalties by any state agency may not be expended unless the Legislature specifically provides authority for the expenditure of these funds in the annual Budget Act or other legislation. Existing law directs that various fines and penalties be deposited in various special funds related to the agency that collected the revenue. Existing law creates the General Fund to consist of money received into the State Treasury that is not required by law to be credited to any other fund.

This bill would require, notwithstanding any other law, that any fine or penalty imposed by the Department of Toxic Substances Control, the Division of Occupational Safety and Health in the Department of Industrial Relations, the State Air Resources Board, or the State Water Resources Control Board for a violation of a regulation adopted by that state agency be deposited into the General Fund. The bill would also make a statement of findings.

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

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

SECTION 1. (a) The agencies, boards, departments, and offices of the state generally strive to promulgate regulations that benefit the people of the state.

(b) The people of the state expect that their government will enact laws and promulgate regulations to protect the health and welfare of the people of this state and that these laws and regulations will tend to maximize benefits to society while minimizing costs.

(c) Administrative and regulatory actions can have significant and far-reaching consequences for individuals, nonprofit organizations, and businesses throughout the state.

(d) When the law allows the same agency responsible for seeking out violations and imposing fines to directly benefit by placing fine moneys in its operating budget, it provides an incentive for the agency to act in a manner that raises a question as to the motivation for enforcement of regulations.

(e) It is the exclusive province of the Legislature to determine the budget of state agencies, and, especially in times of economic despair, an agency should not be permitted to fill a budget shortfall by increasing collection of fines through regulatory activity.

(f) The primary object of enforcement of regulations promulgated by agencies is for the protection of the people of this state, and any fines collected from enforcement of these regulations should revert to the General Fund so the Legislature may determine how those moneys will best serve the people of this state.

SEC. 2. Section 13332.18 of the Government Code is amended to read:

13332.18. (a) Notwithstanding any other provision of law, and except as specified in subdivision (b) *and in Section 13332.185*, revenues derived from the assessment of fines and penalties by any state agency shall not be expended unless the Legislature specifically provides authority for the expenditure of these funds in the annual Budget Act or other legislation. A fine or penalty is a charge imposed by an agency or department for wrongdoing, in excess of the cost of investigating, processing, or prosecuting the conduct for which the charge is assessed, or the cost of collecting it. A charge reasonably related to a service provided by a

department or agency is not a fine or penalty for purposes of this section.

(b) This section shall not apply to the following:

(1) Any governmental cost fund if the use of revenues subject to this section that are deposited in that fund for General Fund purposes is prohibited by the California Constitution or the United States Constitution.

(2) Late charges collected by state agencies.

(3) Funds collected by a state agency that are required to be maintained by that agency for purposes of administration of a federal program.

(4) A fund established for restitution to victims of the conduct for which the fine or penalty was imposed or for repairing damage to the environment caused by the conduct for which the fine or penalty was imposed.

(5) The following funds, though the omission of any other fund from the list contained in this paragraph shall not be grounds for inferring the applicability of this section:

(A) The Fish and Game Preservation Fund.

(B) The Restitution Fund.

(C) The Peace Officers' Training Fund.

(D) The Driver Training Penalty Assessment Fund.

(E) The Corrections Training Fund.

(F) The Local Public Prosecutors and Public Defenders Training Fund.

(G) The Victim-Witness Injury Fund.

(H) The Traumatic Brain Injury Fund.

(I) The Industrial Relations Construction Industry Enforcement Fund.

(J) The Workplace Health and Safety Revolving Fund.

(K) The Oil Spill Response Trust Fund.

(L) The Oil Spill Prevention and Administration Fund.

(M) The Environmental Enhancement Fund.

(N) The Recovery Account of the Real Estate Fund.

(O) The Motor Vehicle Account in the State Transportation Fund.

(P) The State Highway Account in the State Transportation Fund.

(Q) The Motor Vehicle License Fee Account in the Transportation Tax Fund.

(R) Funds for programs established pursuant to the Food and Agricultural Code that can be terminated through an industry referendum vote.

(c) For the purposes of this section, revenues derived from the assessment of fines and penalties includes interest accrued from the assessment of the fines and penalties.

SEC. 3. Section 13332.185 is added to the Government Code, to read:

13332.185. (a) The applicability of this section is limited to the Department of Toxic Substances Control, the Division of Occupational Safety and Health in the Department of Industrial Relations, the State Air Resources Board, and the State Water Resources Control Board.

(b) Notwithstanding Section 13332.18 or any other law, a fine or penalty imposed by a state agency included in subdivision (a) for a violation of a regulation adopted by that state agency shall be deposited into the General Fund.

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ASSEMBLY BILL No. 1740

Introduced by Assembly Member Jeffries

February 8, 2010

An act to amend Section 44017.4 of the Health and Safety Code, and to amend Section 4750.1 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1740, as introduced, Jeffries. Vehicles: specially constructed vehicles.

Existing law establishes a registration amnesty program for specially constructed vehicles, as defined, that have been previously registered or classified incorrectly and requires that a specially constructed vehicle, upon registration with the Department of Motor Vehicles, be inspected by stations authorized to perform referee functions, for the purposes of determining the engine model-year used in the vehicle or the vehicle model-year, and the emission control system application.

Existing law also requires the department to annually provide a registration to no more than the first 500 of these vehicles that meet specified criteria.

This bill would delete the first 500 vehicle limitation and instead require the department to provide registration to any specially constructed vehicle that meets the specified criteria. The bill would provide that the registered owner of a specially constructed vehicle that is currently registered or incorrectly registered may change the vehicle's registration by complying with those specified criteria.

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

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

SECTION 1. Section 44017.4 of the Health and Safety Code is amended to read:

44017.4. (a) Upon *initial* registration with the Department of Motor Vehicles, a passenger vehicle or pickup truck that is a specially constructed vehicle, as defined in Section 580 of the Vehicle Code, shall be inspected by stations authorized to perform referee functions. This inspection shall be for the purposes of determining the engine model-year used in the vehicle or the vehicle model-year, and the emission control system application. The owner shall have the option to choose whether the inspection is based on the engine model-year used in the vehicle or the vehicle model-year.

(1) In determining the engine model-year, the referee shall compare the engine to engines of the era that the engine most closely resembles. The referee shall assign the 1960 model-year to the engine in any specially constructed vehicle that does not sufficiently resemble a previously manufactured engine. The referee shall require only those emission control systems that are applicable to the established engine model-year and that the engine reasonably accommodates in its present form.

(2) In determining the vehicle model-year, the referee shall compare the vehicle to vehicles of the era that the vehicle most closely resembles. The referee shall assign the 1960 model-year to any specially constructed vehicle that does not sufficiently resemble a previously manufactured vehicle. The referee shall require only those emission control systems that are applicable to the established model-year and that the vehicle reasonably accommodates in its present form.

(b) Upon the completion of the inspection, the referee shall affix a tamper-resistant label to the vehicle and issue a certificate that establishes the engine model-year or the vehicle model-year, and the emission control system application.

(c) The Department of Motor Vehicles shall ~~annually~~ provide a registration to ~~no more than the first 500 vehicles that meet~~ *any vehicle that meets* the criteria described in subdivision (a) that ~~are~~ *is* presented to that department for registration pursuant to this section. ~~The 500-vehicle annual limitation does not apply to the~~

~~renewal of registration of a vehicle registered pursuant to this section.~~

(d) The registered owner of a specially constructed vehicle that is currently registered or incorrectly registered may change the vehicle's registration by complying with the requirements of subdivision (a).

(e) There shall not be a limit on the number of specially constructed vehicles that may be registered by the department pursuant to this section.

SEC. 2. Section 4750.1 of the Vehicle Code is amended to read:

4750.1. (a) If the department receives an application for registration of a specially constructed passenger vehicle or pickup truck~~ after it has registered 500 specially constructed vehicles during that calendar year pursuant to Section 44017.4 of the Health and Safety Code,~~ and the vehicle has not been previously registered, the vehicle shall be~~ assigned the same model-year as the calendar year in which the application is submitted,~~ *inspected and registered pursuant to Section 44017.4 of the Health and Safety Code,* for purposes of determining *the model-year and the* emissions inspection requirements for the vehicle.

~~(b) (1) If the department receives an application for registration of a specially constructed passenger vehicle or pickup truck that has been previously registered after it has registered 500 specially constructed vehicles during that calendar year pursuant to Section 44017.4 of the Health and Safety Code, and the application requests a model-year determination different from the model-year assigned in the previous registration, the application for registration shall be denied and the vehicle owner is subject to the emission control and inspection requirements applicable to the model-year assigned in the previous registration.~~

~~(2)~~

(b) For a vehicle~~ participating~~ *that participated* in the amnesty program in effect from January 1, 2010, until December 31, 2010, pursuant to Section 9565, the model-year of the previous registration shall be the calendar year of the year in which the vehicle owner applied for amnesty.~~ However, a denial of an application for registration issued pursuant to this paragraph does not preclude the vehicle owner from applying for a different model-year determination and application for registration under~~

~~Section 44017.4 of the Health and Safety Code in a subsequent calendar year.~~

(c) (1) The Bureau of Automotive Repair may charge the vehicle owner who applies to participate in the amnesty program a fee for each referee station inspection conducted pursuant to Section 9565. The fee shall be one hundred sixty dollars ($160) and shall be collected by the referee station performing the inspection.

(2) A contract to perform referee services may authorize direct compensation to the referee contractor from the inspection fees collected pursuant to paragraph (1). The referee contractor shall deposit the inspection fees collected from the vehicle owner into a separate trust account that the referee contractor shall account for and manage in accordance with generally accepted accounting standards and principles. Where the department conducts the inspections pursuant to Section 9565, the inspection fees collected by the department shall be deposited into the Vehicle Inspection and Repair Fund.

O

ASSEMBLY BILL No. 1863

Introduced by Assembly Member Gaines

February 12, 2010

An act to amend Section 41514.1 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1863, as introduced, Gaines. Diesel generators: health facilities.

(1) Existing law requires a health facility, as defined, to test its diesel-powered backup generators 12 times a year with testing intervals of not less than 20 days and not more than 40 days, and in accordance with specified test procedures. Violation of these requirements constitutes a crime. These requirements will be repealed on January 1, 2011.

This bill would extend this repeal date to January 1, 2016.

By extending the operation of provisions a violation of which would constitute a crime, this bill would create a state-mandated local program.

(2) 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 no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 41514.1 of the Health and Safety Code is amended to read:

41514.1. (a) A health facility shall test each of its diesel backup generators 12 times a year with testing intervals of not less than 20 days and not more than 40 days. The tests shall be conducted for at least 30 continuous minutes pursuant to either of the following:

(1) A dynamic load that is at least 30 percent of the nameplate rating of the generator.

(2) A test conducted at less than 30 percent of the nameplate rating of the generator, if the health facility revises its existing documented management plan to conform with the National Fire Protection Association 110: Standard for Emergency and Standby Power Systems, 2005 edition, testing and maintenance activities. These activities shall include inspection procedures for assessing the prime mover's exhaust gas temperature against the minimum temperature recommended by the manufacturer.

(b) If a diesel backup generator cannot be tested pursuant to the requirements of either paragraph (1) or (2) of subdivision (a), it shall be tested for 30 continuous minutes at intervals described in subdivision (a) with available Emergency Power Supply Systems (EPSS) load and tested annually with supplemental loads of all of the following in the following order for a total of two continuous hours:

(1) Twenty-five percent of nameplate rating for 30 minutes.

(2) Fifty percent of nameplate rating for 30 minutes.

(3) Seventy-five percent of nameplate rating for 60 minutes.

(c) A health facility shall submit all data collected under this section to the State Department of Public Health when requested by the department.

(d) This section shall remain in effect only until January 1, ~~2011~~ *2016*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2011~~ *2016*, deletes or extends that date.

(e) For the purposes of this section, "health facility" has the same meaning as Section 1250, but includes only those facilities described in subdivision (a), (b), (c), (d), (f), (g), or (k) of that section.

(f) Nothing in this section affects the authority of the state board or a district to regulate diesel backup generators owned by a health facility.

SEC. 2. No reimbursement is required by 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 will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

ASSEMBLY BILL No. 1949

Introduced by Assembly Member Logue

February 17, 2010

An act to add Section 11349.95 to the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1949, as introduced, Logue. Regulations: five-year review and report.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would additionally require the California Environmental Protection Agency, the Division of Occupational Safety and Health in the Department of Industrial Relations, and the State Air Resources Board to review and report on regulations that it adopts or amends on and after January 1, 2011, five years after adoption, as specified. If an agency fails to complete and submit the review and report, the bill would require that regulation be inoperative immediately and would not become operative again until the agency satisfies the requirements for the adoption of a new regulation. The bill would require that the review and report include 10 specified factors, including a summary of the written criticisms of the regulation received by the agency within the immediately preceding five years and the estimated economic, small business, and consumer impact of the regulation. The bill would require the Office of Administrative Law to make the review and report available on the agency's Internet Web site.

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

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

SECTION 1. Section 11349.95 is added to the Government Code, to read:

11349.95. (a) The applicability of this section is limited to the California Environmental Protection Agency, the Division of Occupational Safety and Health in the Department of Industrial Relations, or the State Air Resources Board.

(b) (1) A state agency included in subdivision (a) shall review and report on all regulations that it adopts or amends on and after January 1, 2011, as required by this section. The review and report shall be completed and submitted to the office on or before May 1 immediately following five years after the date the regulation was adopted or amended.

(2) If an agency fails to complete and submit the review and report to the office as required in paragraph (1) for any regulation, then that regulation shall be inoperative immediately. A regulation that has become inoperative pursuant to this paragraph shall not become operative again until the agency has satisfied the requirements of this chapter for the adoption of a new regulation.

(3) The office shall make the report required by paragraph (1) available on the agency's Internet Web site.

(c) The review and report required by this section shall include all of the following factors:

(1) The general and specific statutes authorizing the regulation.

(2) The objective of the regulation.

(3) The effectiveness of the regulation in achieving the objective.

(4) The consistency of the regulation with state and federal statutes and regulations and a listing of the statutes or regulations used in determining the consistency.

(5) The agency enforcement policy, including whether the regulation is currently being enforced and, if so, whether there are any problems with enforcement.

(6) The agency view regarding current wisdom of the regulation.

(7) The clarity, conciseness, and understandability of the regulation.

(8) A summary of the written criticisms of the regulation received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings, to which the agency was a party, that the regulation is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings.

(9) The estimated economic, small business, and consumer impact of the regulation as compared to the economic, small business, and consumer impact statement prepared on the last making of the regulation, or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the regulation.

(10) Course of action the agency proposes to take regarding each regulation, including the month and year in which the agency anticipates submitting the rules to the office if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule.

O

ASSEMBLY BILL No. 2289

Introduced by Assembly Member Eng

February 18, 2010

An act to amend Sections 44010, 44010.5, 44012, 44014, 44014.2, 44014.5, 44024.5, 44036, 44052, 44055, and 44056 of, to add Section 44001.1 to, to repeal Sections 44050.5, 44051.5, 44053, and 44054 of, and to repeal and add Sections 44050 and 44051 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2289, as introduced, Eng. Smog check program: testing: penalties.

(1) Existing law establishes a motor vehicle inspection and maintenance (smog check) program, developed, implemented, and administered by the Department of Consumer Affairs. The smog check program provides for the inspection of a motor vehicle, among other circumstances, upon its initial registration, upon transfer of ownership, and for vehicles registered in certain areas of the state, biennially upon renewal of registration. Existing law requires the smog tests to include, at minimum, loaded mode dynamometer testing in enhanced areas, and 2-speed testing in all other program areas, and a visual or functional check of emission control devices specified by the department.

This bill would authorize the department, in consultation with the State Air Resources Board, to determine the appropriate test procedures, as specified.

The bill would authorize the department to contract with one or more entities that would assist the department to manage smog check stations.

The bill would authorize the department to adopt, by regulation, a process by which vehicles that present prohibitive or unusual inspection

circumstances are inspected by referees, as provided. A referee would be authorized to charge a fee sufficient to cover the costs of providing certain referee services.

The bill would authorize the department to issue performance standards that stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for certain vehicles.

The bill would make other changes to the department's authority with respect to the smog check program, including requirements relating to testing equipment and motor vehicle emission data.

(2) Existing law authorizes the Department of Consumer Affairs to issue a citation to a smog check station or technician that may specify certain civil penalties.

This bill would repeal this provision and related provisions specifying the circumstances in which such a citation may be issued and certain minimum and maximum amounts for civil penalties. It would, instead, authorize the department to issue a citation to a licensee, contractor, or fleet owner for a violation of smog check requirements. The citation could contain an order of abatement or the assessment of an administrative fine up to $5,000, or both, meeting specified requirements. The bill would make other changes to smog check penalty provisions, including authorizing civil penalties up to $5,000 for a violation of smog check requirements.

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

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

SECTION 1. Section 44001.1 is added to the Health and Safety Code, to read:

44001.1. (a) The Legislature finds and declares that additional reductions of motor vehicle emissions could be achieved by effective repairs to motor vehicle emission control components.

(b) It is the intent of the Legislature that the department work with the California Community Colleges and other training institutions to encourage the development of innovative training programs for motor vehicle technicians that focus on reducing air pollution from vehicles needing repair and that increase the number and skill level of motor vehicle technicians.

SEC. 2. Section 44010 of the Health and Safety Code is amended to read:

44010. *(a)* The motor vehicle inspection program shall provide for privately operated stations which shall be referred to as smog check stations and are authorized pursuant to Section 44015 to issue certificates of compliance or noncompliance to vehicles ~~which~~ *that* meet the requirements of this chapter.

(b) The department may contract with one or more entities to provide assistance to the department to manage smog check stations. If the implementation of this subdivision reduces state costs, the department shall reduce the fee described in subdivision (c) of Section 44060, as appropriate.

SEC. 3. Section 44010.5 of the Health and Safety Code is amended to read:

44010.5. (a) The department shall implement a program with the capacity to commence, by January 1, 1995, the testing at test-only facilities, in accordance with this chapter, of 15 percent of that portion of the total state vehicle fleet consisting of vehicles subject to inspection each year in the biennial program and that are registered in the enhanced program area, as established pursuant to paragraph (1) of subdivision (a) of Section 44003.

(b) (1) The department shall increase the capacity of the program so that the capacity exists to commence, by January 1, 1996, the testing at test-only facilities of that portion of the state vehicle fleet that is subject to inspection and is registered in the enhanced program area, which is sufficient to meet the emission reduction performance standards established by the *United States* Environmental Protection Agency in regulations adopted pursuant to the Clean Air Act Amendments of 1990, taking into account the results of the pilot demonstration program established pursuant to Section 44081.6.

(2) Upon increasing the capacity of the program pursuant to paragraph (1), the department shall afford smog check stations that are licensed and certified pursuant to Sections 44014 and 44014.2 the initial opportunity to perform the required inspections. The department shall adopt, by regulation, the requirements to provide that initial opportunity.

(3) If the department determines that there is an insufficient number of licensed test-only smog check stations operating in an enhanced area to meet the increased demand for test-only inspections, the department may increase the capacity of the program by utilizing existing contracts.

(c) The program shall utilize the testing procedures described in Section 44012. *Vehicles selected for testing pursuant to this section shall include vehicles equipped without second generation on-board diagnostic systems (OBD II) and vehicles with emission problems that may not be adequately detected by the vehicle's OBD II, as determined by the department in consultation with the state board.*

(d) Vehicles that are not diesel-powered in the enhanced program area which are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 that use loaded mode dynamometers. Diesel-powered vehicles in the enhanced program area that are not subjected to the program established by this section may be tested at smog check stations licensed pursuant to Section 44014 using appropriate testing procedures as determined by the department.

(e) (1) The department may implement the program established pursuant to subdivision (a) through a network of privately operated test-only facilities established pursuant to contracts to be awarded pursuant to this section.

(2) The initial contracts awarded pursuant to this section shall terminate not later than seven years from the date that the contracts were executed.

(f) No person shall be a contractor of the department for test-only facilities in all air basins, exclusively, where the enhanced program is in effect unless the department determines, after a public hearing, that there is not more than one qualified contractor. The South Coast Air Basin shall have at least two contractors, and the combined enhanced program area that includes Bakersfield, Fresno, and Sacramento shall have at least two contractors. The department may operate test-only facilities on an interim basis while contractors are being sought.

(g) (1) In awarding contracts under this section, the department shall request bids through the issuance of a request for proposal.

(2) The department shall first determine which bidders are qualified, and then award the contract to the qualified bidder, giving priority to the test cost and convenience to motorists.

(3) The department shall provide a contractual preference, as determined by the department, not to exceed 10 percent of the total proposal evaluation score, based on the following factors:

(A) Up to 5 percent to bidders providing firm commitments to employ businesses that are licensed or otherwise substantially participating in the smog check program after January 1, 1994.

(B) Up to 5 percent to bidders based on the extent to which bidders maximize the potential economic benefit of the smog check program on this state over the term of the contract. That potential economic benefit shall include the percentage of work performed by California-based firms, the potential of the total project workforce who will be California residents, and the percentage of subcontracts that will be awarded to California-based firms.

(4) Any contract executed by the department for the operation of a test-only facility shall expressly require compliance with this chapter and any regulations adopted by the department pursuant to this chapter.

(h) The department shall ensure that there is a sufficient number of test-only facilities, and that they are properly located, to ensure reasonable accessibility and convenience to all persons within an enhanced program area, and that the waiting time for consumers is minimized. The department may operate test-only facilities on an interim basis to ensure convenience to consumers. The department shall specify in the request for proposal the minimum number of test-only facilities that are required for the program. Any contracts initially awarded pursuant to this section shall ensure that the contractors are capable of fulfilling the requirements of subdivision (a).

(i) Any data generated at a test-only facility shall be the property of the state, and shall be fully accessible to the department at any time. The department may set contract specifications for the storage of that data in a central data storage system or facility designated by the department.

(j) The department shall ensure an effective transition to the new program by implementing an effective public education program and may specify in the request for proposal a dollar amount that bidders are required to include in their bids for public education activities, to be implemented pursuant to Section 44070.5.

(k) The department shall ensure the effective management of the test-only facilities and shall specify in the request for proposal that a manager be present during all hours of station operation.

(*l*) The department shall ensure and facilitate the effective transition of employees of businesses that are licensed or otherwise substantially participating in the smog check program and may specify in the request for proposal that test-only facility management be Automotive Service Excellence (ASE) certified, or be certified by a comparable program as determined by the department.

(m) As part of the contracts to be awarded pursuant to subdivision (e), the department may require contractors to perform functions previously undertaken by referee stations throughout the state, as determined by the department, at some or all of the affected stations in enhanced areas, and at additional stations outside enhanced areas only to the extent necessary to provide appropriate access to referee functions.

(n) Notwithstanding any other provision of law, to avoid delays to the program implementation timeline required by this chapter or the Clean Air Act, the Department of General Services, at the request of the department, may exempt contracts awarded pursuant to this section from existing laws, rules, resolutions, or procedures that are otherwise applicable, including, but not limited to, restrictions on awarding contracts for more than three years. The department shall identify any exemptions requested and granted pursuant to this subdivision and report thereon to the Legislature.

(o) The department shall implement the program established in this section only in urbanized areas classified by the *United States* Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and shall not implement the program in any other area.

(p) If existing smog check stations, in order to participate in the enhanced program, have been required to make additional investments of more than ten thousand dollars ($10,000), the department shall submit recommendations to the Governor and the Legislature for any appropriate mitigation measures.

SEC. 4. Section 44012 of the Health and Safety Code, as added by Section 5 of Chapter 739 of the Statutes of 2007, is amended to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department~~,~~

~~pursuant to Section 44013,~~ and ~~shall~~ *may* require~~, at a minimum, for all vehicles that are not diesel-powered,~~ loaded mode dynamometer testing in enhanced areas,~~ and~~ two-speed testing~~ in all other program areas~~, *testing utilizing a vehicle's on-board diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board*. The department shall ensure~~ all of~~, *as appropriate to the test method*, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the department, that may include, but are not limited to, on-board diagnostic testing. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

~~(i) This section shall become operative on January 1, 2010.~~

SEC. 5. Section 44014 of the Health and Safety Code is amended to read:

44014. (a) Except as otherwise provided in this chapter, the testing and repair portion of the program shall be conducted by smog check stations licensed by the department, and by smog check technicians who have qualified pursuant to this chapter.

(b) ~~(1)~~ A smog check station may be licensed by the department as a smog check test-only station and, when so licensed, need not comply with the requirement for onsite availability of current service and adjustment procedures specified in paragraph (3) of subdivision (b) of Section 44030. A smog check technician employed by a smog check test-only station shall be qualified in accordance with this section.

~~(2) The department may authorize the placement of referees in qualified test-only stations to provide referee services as a matter of convenience to the public. The~~

(c) (1) The department shall supply ~~those referees directly or through a contractor~~ *a network of referees*. A referee shall have no ownership interest in ~~the facility at which the referee is located~~, *or business or economic interest with, a smog check station*. Referees ~~shall be solely responsible for issuing~~ *may issue* repair cost waivers, certificates of compliance or noncompliance, and hardship extensions, in accordance with regulations adopted by the department, and ~~for issuing~~ *issue* exhaust system certificates of compliance in accordance with Section 27150.2 of the Vehicle Code. *Referees shall make inspections of specially constructed vehicles pursuant to Section 44017.4 and Section 9565 of the Vehicle Code.*

~~The~~

(2) The department may adopt regulations to establish qualification standards and any special administrative, operational, and licensure standards that the department determines to be necessary for ~~test-only stations that perform~~ *the provision of* referee services.

(3) The department may adopt, by regulation, a process by which vehicles that present prohibitive or unusual inspection circumstances are inspected by referees, including, but not limited to, the inspection of vehicles in which the manufacturer's physical or operational design presents inspection incompatibilities, vehicles equipped with emission control configurations that do not match United States Environmental Protection Agency or state board certified configurations, including direct import vehicles and vehicles with engine changes, and vehicles equipped with retrofit alternative fuel conversion kits.

(4) (A) A referee may charge a fee sufficient to cover the costs of providing referee services for inspections of specially constructed vehicles pursuant to Section 44017.4 and Section 9565 of the Vehicle Code, inspections pursuant to Section 27150.2 of the Vehicle Code, and other appropriate categories of referee services as determined by the department. Requirements applicable to the fee, including its amount, shall be established by the department by regulation and the amount may be adjusted to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics. The fee may be collected by either a contracted referee or by the department, if the department is providing the referee service.

(B) If the fee is imposed and collected by a contracted referee, the contracted referee shall deposit the fees collected from the vehicle owner into a separate trust account that the referee shall account for and manage in accordance with generally accepted accounting practices.

(C) If the fee is imposed and collected by the department, the fees shall be deposited into the Vehicle Inspection and Repair Fund.

~~(c)~~

(d) A smog check station may also be licensed as a repair-only station, and if so licensed, may perform repairs to reduce excessive emissions on vehicles which have failed the smog check test. Repair procedures and equipment requirements shall be established

by the department. Technicians employed by a smog check repair-only station shall be qualified in accordance with this section.

~~(d)~~

(e) Smog check technicians are qualified to test and repair only those classes and categories of vehicles for which they have passed a qualification test administered by the department. The department shall provide for smog check technicians to be qualified for different categories of motor vehicle inspection based on vehicle classification and model-year.

~~(e)~~

(f) The consumer protection-oriented quality assurance portion of the program, *including the provision of referee services,* may be conducted by one or more private entities pursuant to contracts with the department.

SEC. 6. Section 44014.2 of the Health and Safety Code is amended to read:

44014.2. (a) The department shall develop a program for the voluntary certification of licensed smog check stations, or the department may accept a smog check station certification program proposed by accredited industry representatives. The certification program, which may be called a "gold shield" program, shall be for the purpose of providing consumers, whose vehicles fail an emissions test at a test-only facility, an option of services at a single location to prevent the necessity for additional trips back to the test-only facility for vehicle certification. *The department may establish performance standards for stations certified under this program that the stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for vehicles selected pursuant to Sections 44010.5 and 44014.7, or vehicles identified by the department as gross polluters.*

(b) ~~As soon as is practicable, but not later than January 1, 2004, the~~ *The* department shall adopt regulations that apply to all enhanced areas of the state, including those areas subject to the enhanced program pursuant to Section 44003.5, that permit both of the following:

(1) Any vehicle that fails a required smog test at a test-only facility may be repaired, retested, and certified at a facility licensed pursuant to Section 44014, and certified pursuant to subdivision (a).

(2) Any vehicle that is identified as a gross polluter may be repaired, retested, and certified at a facility licensed pursuant to Section 44014, and certified pursuant to subdivision (a).

(c) Smog check stations that seek voluntary certification under this section shall enter into an agreement with the department to provide repair services pursuant to Section 44062.1.

(d) An agreement made pursuant to this section shall not be deemed to be a contract subject to the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

SEC. 7. Section 44014.5 of the Health and Safety Code is amended to read:

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Sections 44010.5 and 44014.2 and this section.

(b) The repair of vehicles at test-only facilities ~~shall be~~ *is* prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair that is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only facilities of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only facility may not refer a vehicle owner to any particular provider of vehicle repair services.

(d) *(1)* The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(2) (A) The department may establish performance standards that test-only stations would be required to meet to be eligible to issue certificates of compliance or noncompliance for vehicles selected pursuant to Section 44010.5 or 44014.7, or vehicles identified by the department as gross polluters. Failure at any time to meet these standards shall result in an automatic suspension by operation of law of the certification to test these vehicles granted by the department. A test-only station not meeting the performance standards may continue to issue certificates of compliance and noncompliance for other vehicles. The department shall adopt

measures to ensure the requirements of this subparagraph are met, including through the use of the computer database and computer network authorized by Section 44037.1.

(B) The department shall provide the test-only station with notice, written or electronic, of the suspension pursuant to subparagraph (A) within 24 hours of the suspension.

(C) A test-only station whose certification has been suspended pursuant to subparagraph (A) may apply to the department for a hearing to contest the evidence supporting the certification suspension. The application for a hearing shall be in writing and shall be received by the department within 30 days after the date of suspension. The department shall set the matter for a hearing within 30 days of receipt of the written request. The hearing requirements of Section 44072 shall not apply.

(e) The department shall prohibit test-only facilities from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only facility may charge a fee, established by the department, sufficient to cover the facility's cost to perform the tests or services, including, but not limited to, referee services and the issuance of waivers and hardship extensions required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to facilities contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

(1) All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.

(2) (A) Vehicles initially identified as gross polluters by a smog check station licensed as a test-and-repair station may be issued a certificate of compliance by a test-only facility or by a licensed smog check station certified pursuant to Section 44014.2.

(B) For purposes of this section, the department shall implement a program that allows vehicles initially identified as gross polluters to be repaired and issued a certificate of compliance by a facility licensed and certified pursuant to Section 44014.2.

(3) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.

(4) Vehicles issued an economic hardship extension in the previous biennial inspection of the vehicle.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to, and receive a certificate of compliance from, a test-only facility by this chapter, including all of the following:

(1) All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

(2) All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

(3) Any other vehicles that may be designated by the department.

(i) Gross polluters shall be referred to a test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2, for a postrepair inspection and retest pursuant to subdivision (g). ~~Simply passing~~ *Passing* the emissions test ~~shall~~ *is* not ~~be~~ a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle that does not have any defects with its emission control system or any defects that could lead to damage of its emission control system, as provided in regulations adopted by the department.

SEC. 8. Section 44024.5 of the Health and Safety Code is amended to read:

44024.5. (a) The department shall compile and maintain statistical and emissions profiles ~~of~~ *and data from* motor vehicles that are subject to the motor vehicle inspection program. The department may use data from any source, including remote sensing data*, in use data,* and other motor vehicle inspection program data, to develop and confirm the validity of the profiles*, to evaluate the program, and to assess the performance of smog check stations. The department shall undertake these requirements directly or seek a qualified vendor for these services*.

(b) The department, in cooperation with the state board, shall perform ~~periodic~~ analyses of ~~the statistical and emissions profiles created~~ *data collected* pursuant to subdivision (a) *and report the results to the public annually, beginning no later than July 1, 2011*. The *report shall include, at a minimum, all of the following:*

(1) An independent validation of the evaluation methods, findings, and conclusions presented in the report.

(2) The percentage of vehicles that initially passed a smog check inspection and then failed a subsequent inspection as indicated by the data collected pursuant to subdivision (a).

(3) The percentage of vehicles that initially failed a smog check inspection and then failed a subsequent inspection as indicated by the data collected pursuant to subdivision (a).

(4) An estimate of excessive emissions resulting from vehicles identified in paragraphs (2) and (3).

(c) The department and the state board, in consultation with the Inspection and Maintenance Review Committee, may determine that, in addition to the vehicles excepted pursuant to Section 44011, certain other motor vehicles may be excepted from the biennial certification requirements of this chapter without significantly compromising the emission reduction objectives set forth in the State Implementation Plan (SIP).

~~(c)~~

(d) The department may conduct a pilot program to except from the biennial certification requirement those vehicles that may be jointly determined by the department and the state board, after consultation with the Inspection and Maintenance Review Committee, to warrant exception. The department shall provide written notification to the Legislature specifying the number of vehicles to be exempted as well as the geographic location and duration of the pilot program not less than 30 days prior to the implementation of the pilot program. The department shall submit the results of the pilot program to the state board and the Inspection and Maintenance Review Committee for review. Subject to the approval of the United States Environmental Protection Agency as an amendment to the SIP, the department may establish the exception program as a permanent program.

~~(d)~~

(e) For vehicles four model years old or less, the department shall use test data generated pursuant to Section 44014.7 to develop statistical and emissions profiles. The department may use data from any source, including remote sensing data, warranty repair and recall data, and other motor vehicle inspection program data, to develop and confirm the validity of the data. If the department and state board jointly determine that the emissions from a class

of motor vehicles would potentially compromise the emission reduction objectives set forth in the SIP, the state board shall consider appropriate corrective action, including, but not limited to, recall pursuant to Section 43105.

SEC. 9. Section 44036 of the Health and Safety Code is amended to read:

44036. (a) The consumer protection-oriented quality assurance portion of the motor vehicle inspection program shall ensure uniform and consistent tests and repairs by all qualified smog check technicians and licensed smog check stations throughout the state, and shall include a number of stations providing referee functions available to consumers.

(b) *(1)* All licensed smog check stations shall utilize original equipment and replacement parts that are certified by the department. The *department may enter into a contract for the supply or service of certified equipment with the manufacturers and service providers of this equipment. The department shall afford to the smog check station the option to purchase the equipment or service directly from the contractor or any other provider of certified equipment or service, as determined by the department. A contract executed pursuant to this paragraph may authorize compensation to the contractor as provided in subdivision (c) of Section 44037.2.*

(2) The department shall charge a fee for certification testing of the equipment or the replacement parts. The fee for certification testing of equipment shall be fixed by the department based upon its actual costs of certification testing, shall be calculated from the time that the equipment is submitted for certification testing until the time that the certification testing is complete, and shall not exceed ten thousand dollars ($10,000). The fee for certification testing of replacement parts shall be determined by the department based upon its actual costs of certification testing, shall be calculated from the time that the replacement part is submitted for certification testing until the time that the certification testing is complete, and shall not exceed two thousand five hundred dollars ($2,500). ~~The~~

(3) The department shall adopt, and may revise, standards for certification and decertification of the equipment, ~~which~~ *that* may include a device for testing of emissions of oxides of nitrogen. ~~As expeditiously as possible, the~~ *The* department shall adopt, *and*

update as necessary, equipment standards that *may* include a test analyzer system containing *any or* all of the following *components*:

~~(1)~~

(A) A microprocessor to control test sequencing, selection of proper test standards, the automatic pass or fail decision, and the format for the test report and the recorded data file. The microprocessor shall be capable of using a standardized programming language specified by the department.

~~(2)~~

(B) An exhaust gas analysis portion with an analyzer for hydrocarbons, carbon monoxide, and carbon dioxide that is designed to accommodate an optional oxides of nitrogen analyzer. An oxides of nitrogen analyzer shall be required in the enhanced program areas.

~~(3)~~

(C) Equipment necessary to perform visual and functional tests of emission control devices required by the department.

~~(4)~~

(D) A device to accept and record motor vehicle identification information, including a device capable of reading bar code information pursuant to regulations of the state board. The device shall have the ability to identify, with the cooperation of the Department of Motor Vehicles, smog inspections performed on vehicles sold by used car dealers.

~~(5)~~

(E) A device to provide a printed record of the test process and diagnostic information for the motorist.

~~(6)~~

(F) A mass storage device capable of storing not less than the minimum amount of program software and data specified by the department.

~~(7)~~

(G) A device to provide for the periodic modification of all program and data files contained on the mass storage device, using a standardized form of removable media conforming to specifications of the department.

~~(8)~~

(H) A device that provides for the storage of test records on a standardized form of removable media conforming to specifications of the department.

~~(9)~~

(I) One or more communications ports conforming to the specifications established by the department as necessary to provide real time communication, or communication that is consistent with maintaining a superior quality assurance program and efficient information transfer, between the test equipment and the centralized computer data base through the computer network maintained by the department pursuant to Section 44037.1.

~~(10)~~

(J) An interface capable of monitoring equipment used with loaded mode testing, idle testing, on board diagnostic testing, or other tests prescribed by the department.

~~(11)~~

(K) Any other features that the department determines are necessary to increase the effectiveness of the program, including, but not limited to, a loaded mode dynamometer for purposes of oxides of nitrogen detection, and other equipment necessary to detect nonexhaust-related volatile organic compound emissions, such as those found in fuel system evaporative emissions and crankcase ventilation emissions.

(c) The department shall require *in regulation the date by which* all smog check stations ~~to~~ *are required to* use equipment meeting the requirements of subdivision (b) ~~as soon as possible, but not later than January 1, 1996~~. However, the department may defer the requirement for any equipment, external to the chassis of the test analyzer system, needed to read bar code information, until a substantial portion of the vehicles subject to this chapter are equipped with bar code labels. Prior to the imposition of a requirement for equipment meeting the requirements of subdivision (b), every smog check station shall use equipment meeting the specifications of the department in effect on January 1, ~~1988~~ *1996*.

(d) The quality assurance portion shall provide for inspections of licensed smog check stations, data collection and forwarding, equipment accuracy checks, operation of referee stations, and other necessary functions. If the services are contracted for pursuant to subdivision (e) of Section 44014, the department shall prepare detailed specifications and solicit bids from private entities for the implementation of the quality assurance functions.

(e) The department may revise the specifications for equipment annually if the cost thereof is less than 20 percent of the total

system cost. A more comprehensive revision to the specifications may be required not more often than every five years.

(f) (1) Equipment manufacturers shall furnish to the department, and shall install, software and hardware updates as specified by the department. The department shall allow equipment manufacturers six months, from the date the department issues its proposed specifications for periodic software and hardware updates, to obtain department approval that the updates meet the proposed specifications and to install the updates in all equipment subject to the updates. During the first 30 days of the six-month period, the manufacturers shall be permitted to review and to comment upon the proposed specifications. However, notwithstanding any other provision of this section, the department may order manufacturers to install software and hardware changes in a shorter period of time upon a finding by the department that a previously installed update does not meet current specifications.

(2) The department may establish hardware specifications, performance standards, and operational requirements for the certification and continuing certification of the equipment specified in subdivision (b).

(3) A manufacturer's failure to furnish or install required software updates or to meet the specifications, standards, or requirements established pursuant to paragraph (2), is cause for the department to decertify the manufacturer's test analyzer system or to issue a citation to the manufacturer. The citation shall specify the nature of the violation and may specify a civil penalty not to exceed one thousand dollars ($1,000) for each day the manufacturer fails to furnish or install the specified software updates by the specified period. In assessing a civil penalty pursuant to this paragraph, the department shall give due consideration, in determining the appropriateness of the amount of the civil penalty, to factors such as the gravity of the violation, the good faith of the manufacturer, and the history of previous violations.

(4) The citations shall be served pursuant to subdivision (c) of Section 11505 of the Government Code. The manufacturer may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing shall be submitted in writing within 30 days of service of the citation, and shall be delivered to the office of the department in Sacramento. Hearings and related

procedures under this paragraph shall be conducted in the same manner as proceedings for adjudication of an accusation under that Chapter 5, except as otherwise specified in this article.

(5) If within 30 days from the date of service of the citation, the manufacturer fails to request a hearing, the citation shall be deemed the final order of the department.

(6) Any failure to comply with the final order of the department for payment of a civil penalty, or to pay the amount specified in any settlement executed by the licensee and the Director of Consumer Affairs, is cause for decertification of the manufacturer's test analyzer system.

SEC. 10. Section 44050 of the Health and Safety Code is repealed.

~~44050. (a) If, upon investigation, the department has probable cause to believe that a licensed smog check station, a test-only station contractor, or a fleet owner licensed under Section 44020 has violated this chapter, or any regulation adopted pursuant to this chapter, the department may issue a citation to the licensee, contractor, or fleet owner. The citation shall specify the nature of the violation and may specify a civil penalty assessed by the department pursuant to Section 44051 or 44051.5.~~

~~(b) If, upon investigation, the department has probable cause to believe that a qualified smog check technician has violated Section 44012, 44015, 44016, or 44032, or any regulation of the department adopted pursuant to this chapter, the department may issue a citation to the technician. The citation shall specify the nature of the violation and, in addition, whichever of the following applies:~~

~~(1) For a first citation, the smog check technician shall successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5.~~

~~(2) For a second citation, the smog check technician shall successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5 and the technician shall perform inspections or repairs pursuant to this chapter under the direction of a technician in good standing, as defined by the department.~~

~~(3) For a third citation, the smog check technician shall successfully complete an advanced retraining course prescribed~~

~~by the department and shall perform no inspection or repair pursuant to this chapter until that completion.~~

~~(4) For a fourth citation, the smog check technician's qualification may be permanently revoked.~~

~~(c) The citation shall be served pursuant to subdivision (c) of Section 11505 of the Government Code.~~

SEC. 11. Section 44050 is added to the Health and Safety Code, to read:

44050. (a) In addition to or in lieu of any other remedy or penalty, the department may issue a citation to a licensee, contractor, or fleet owner for a violation of the requirements of this chapter or a regulation adopted pursuant to this chapter. The citation may contain an order of abatement or the assessment of an administrative fine, or both.

(b) An administrative fine issued pursuant to this section shall not exceed five thousand dollars ($5,000) for each violation. The department shall base its assessment of the administrative fine on all of the following:

(1) The nature and seriousness of the violation.

(2) The persistence of the violation.

(3) The good faith of the violator.

(4) The history of previous violations by that violator, including the commission of numerous and repeated violations.

(5) The failure to perform work for which money was received.

(6) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.

(7) The failure to make restitution to consumers affected by the violation.

(8) The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.

(9) The purposes and goals of this chapter.

(c) An order of abatement issued pursuant to this section shall fix a reasonable time for abatement of the violation. An order of abatement may require any or all of the following:

(1) The licensee, contractor, or fleet owner to whom the citation is issued to demonstrate how future compliance with this chapter, and regulations adopted pursuant to this chapter, will be accomplished. This demonstration may include, but is not limited to, submission of a corrective action plan.

(2) The smog check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5, or successfully complete one or more advanced retraining courses prescribed by the department, or both.

(3) The smog check technician to perform no inspection or repair pursuant to this chapter until training courses prescribed by the department are successfully completed.

(d) A citation issued pursuant to this section shall be in writing and shall describe the nature of the violation and the specific provision of law determined to have been violated. The citation shall inform in writing the licensee, contractor, or fleet owner of the right to request a hearing, as described in Section 44051. If a hearing is not requested, payment of the administrative fine shall not constitute an admission of the violation charged. If a hearing is requested, the department shall provide a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except insofar as those provisions are inconsistent with the provisions of this article. Payment of the administrative fine shall be due 30 days after the citation was issued if a hearing is not requested, or when a final order is entered if a hearing is requested. The department may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(e) Failure to comply with an order of abatement or payment of an administrative fine issued by the department pursuant to this section is grounds for suspension or revocation of the license, or placing the licensee on probation.

(f) Administrative fines collected pursuant to this section shall be deposited in the High Polluter Repair or Removal Account within the Vehicle Inspection and Repair Fund.

SEC. 12. Section 44050.5 of the Health and Safety Code is repealed.

~~44050.5. In assessing a civil penalty pursuant to Section 44050 against a person who has not previously been cited for a violation of the same statute or regulation, the department shall fix the penalty at an amount within the minimum and maximum penalties specified in Section 44051 or 44051.5, as the case may be, for each violation.~~

SEC. 13. Section 44051 of the Health and Safety Code is repealed.

~~44051. The civil penalty for a violation of the specified provisions of this chapter is as follows:~~

~~Section~~	~~Short Description of Violation~~	~~Civil Penalty Minimum~~	~~Civil Penalty Maximum~~
~~44002~~	~~Smog check estimates and invoices~~	~~$ 50~~	~~$ 500~~
~~44012~~	~~No emission control system inspection, no emissions test, or inspection test procedures~~	~~250~~	~~1,500~~
~~44014~~	~~Unlicensed smog check station~~	~~250~~	~~1,500~~
~~44015~~	~~Improper issuance of certificate, including economic hardship extension certificate~~	~~150~~	~~1,000~~
~~44016~~	~~Failure to follow established repair procedures~~	~~150~~	~~1,000~~
~~44017~~	~~Cost limit or economic hardship extension requirement~~	~~150~~	~~1,000~~
~~44031.5~~	~~Test/repair by unlicensed smog check station or nonqualified smog check technician~~	~~250~~	~~1,500~~
~~44032~~	~~Qualified smog check technician required~~	~~250~~	~~500~~
~~44033~~	~~Smog check station requirement, test on condition of mandatory repair, written estimate requirements~~	~~250~~	~~1,500~~
~~44036~~	~~Smog check station certified equipment requirement~~	~~150~~	~~1,500~~

~~Section~~	~~Short Description of Violation~~	~~Civil Penalty Minimum~~	~~Civil Penalty Maximum~~
~~44060~~	~~Sale, transfer, or purchase of certificate, including economic hardship extension certificate, and certificate or economic hardship extension charges~~	~~250~~	~~1,500~~

SEC. 14. Section 44051 is added to the Health and Safety Code, to read:

44051. (a) If a person cited pursuant to Section 44050 wishes to contest the citation, that person shall, within 30 days after service of the citation, file in writing a request for an administrative hearing to the chief of the bureau or a designee.

(b) (1) In addition to, or instead of, requesting an administrative hearing pursuant to subdivision (a), the person cited pursuant to Section 44050 may, within 30 days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the chief of the bureau or a designee.

(2) Upon receipt of a written request for an informal citation conference, the chief of the bureau or a designee shall, within 60 days of the request, hold an informal citation conference with the person requesting the conference. The cited person may be accompanied and represented by an attorney or other authorized representative.

(3) If an informal citation conference is held, the request for an administrative hearing shall be deemed withdrawn and the chief of the bureau, or designee, may affirm, modify, or dismiss the citation at the conclusion of the informal citation conference. If so affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reasons for the decision, shall be issued. The affirmed or modified citation shall be mailed to the cited person and that person's counsel, if any, within 10 days of the date of the informal citation conference.

(4) If a cited person wishes to contest a citation affirmed or modified pursuant to paragraph (3), the person shall, within 30 days after service of the modified or affirmed citation, contest the affirmed or modified citation by submitting a written request for

an administrative hearing to the chief of the bureau or a designee. An informal citation conference shall not be held on affirmed or modified citations.

SEC. 15. Section 44051.5 of the Health and Safety Code is repealed.

~~44051.5. The civil penalty for a violation of the specified sections of Title 16 of the California Code of Regulations is as follows:~~

~~Section~~	~~Short Description of Violation~~	~~Civil Penalty Minimum~~	~~Civil Penalty Maximum~~
~~3340.10~~	~~Unlicensed operation of smog check station~~	~~$250~~	~~$1,500~~
~~3340.15~~	~~Smog check station general requirements~~	~~100~~	~~500~~
~~3340.16~~	~~Smog check station equipment and testing procedures~~	~~150~~	~~1,000~~
~~3340.16.5~~	~~Smog check station equipment and testing procedures~~	~~150~~	~~1,000~~
~~3340.17~~	~~Smog check station equipment maintenance and calibration~~	~~150~~	~~1,000~~
~~3340.22~~	~~Smog check station sign requirement~~	~~100~~	~~500~~
~~3340.22.1~~	~~Sign restrictions~~	~~100~~	~~500~~
~~3340.23~~	~~Smog check cease operations~~	~~250~~	~~1,500~~
~~3340.25~~	~~Licensed inspector requirement~~	~~150~~	~~1,000~~
~~3340.30~~	~~Qualified mechanic's training and certification requirement~~	~~100~~	~~500~~
~~3340.35~~	~~Certification of compliance and noncompliance requirement~~	~~250~~	~~1,500~~
~~3340.37~~	~~NOx device/sticker requirement~~	~~100~~	~~500~~
~~3340.41~~	~~Inspection/test/repair requirement~~	~~150~~	~~1,000~~
~~3340.41.3~~	~~Invoice requirements~~	~~100~~	~~500~~
~~3340.42~~	~~Inspection standards, test procedures, and exhaust emissions requirement~~	~~100~~	~~500~~

SEC. 16. Section 44052 of the Health and Safety Code is amended to read:

44052. (a) ~~When~~ *If* a citation lists more than one violation, the amount of the civil penalty *or administrative fine* assessed shall be stated separately for each statute and regulation violated.

(b) ~~When~~ *If* a citation lists more than one violation arising from a single motor vehicle inspection or repair, the total penalties assessed shall not exceed ~~two thousand five hundred dollars ($2,500)~~ *five thousand dollars ($5,000)*.

SEC. 17. Section 44053 of the Health and Safety Code is repealed.

~~44053. (a) Any person issued a citation pursuant to Section 44050 may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing shall be submitted in writing within 30 days of service of the citation, and shall be delivered to the office of the department in Sacramento. Hearings and related procedures under this section shall be conducted in the same manner as proceedings for adjudication of an accusation under that Chapter 5, except as otherwise specified in this article.~~

~~(b) If, within 30 days from service of the citation, the licensee or fleet owner licensed pursuant to Section 44020 or qualified mechanic fails to request a hearing, the citation shall be deemed the final order of the department.~~

~~(c) As it applies to this article, the service required in Section 11505 of the Government Code includes service personally, by registered mail, or by courier with receipt of delivery.~~

SEC. 18. Section 44054 of the Health and Safety Code is repealed.

~~44054. In assessing a civil penalty pursuant to a citation issued pursuant to Section 44050, the director shall give due consideration to the gravity of the violation, including, but not limited to, a consideration of whether any of the following apply to the licensee:~~

~~(a) A failure to perform work for which money was received.~~

~~(b) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.~~

~~(c) The commission of numerous or repeated violations.~~

~~(d) A failure to make restitution to customers affected by the licensee's violation.~~

SEC. 19. Section 44055 of the Health and Safety Code is amended to read:

44055. (a) Any failure by an applicant for a license or for the renewal of a license, or by any partner, officer, or director thereof, to comply with the final order of the department for the payment of ~~civil penalties~~ *an administrative fine*, or to pay the amount specified in a settlement executed by the applicant and the Director of the Department of Consumer Affairs, shall result in denial of a license or of the renewal of the license. The department shall not allow the issuance of any certificate of compliance or noncompliance by a licensee until all civil penalties *and administrative fines* which have become final, or amounts agreed to in a settlement, have been paid by the licensee.

(b) The department may deny an application for the renewal of a test station or repair station license if the applicant, or any partner, officer, or director thereof, has failed to pay any civil penalty *or administrative fine* in accordance with this article.

SEC. 20. Section 44056 of the Health and Safety Code is amended to read:

44056. (a) ~~Except as otherwise provided in Sections 44051 and 44051.5, any~~ *In addition to an administrative fine pursuant to Section 44050, any* person who violates this chapter, or any order, rule, or regulation of the department adopted pursuant to this chapter, is liable for a civil penalty of ~~not less than one hundred fifty dollars ($150) and~~ not more than ~~two thousand five hundred dollars ($2,500)~~ *five thousand dollars ($5,000)* for each day in which each violation occurs. Any action to recover civil penalties shall be brought by the Attorney General in the name of the state on behalf of the department, or may be brought by any district attorney, city attorney, or attorney for a district.

(b) The penalties specified in subdivision (a) do not apply to an owner or operator of a motor vehicle, except an owner or operator who does any of the following:

(1) Obtains, or who attempts to obtain, a certificate of compliance or noncompliance, a repair cost waiver, or an economic hardship extension without complying with Section 44015.

(2) Obtains, or attempts to obtain, a certificate of compliance, a repair cost waiver, or an economic hardship extension by means of fraud, including, but not limited to, offering or giving any form of financial or other inducement to any person for the purpose of obtaining a certificate of compliance for a vehicle that has not been tested or has been tested improperly.

(3) Registers a motor vehicle at an address other than the owner's or operator's residence address for the purpose of avoiding the requirements of this chapter.

(4) Obtains, or attempts to obtain, a certificate of compliance by other means when required to report to the test-only facility after being identified as a tampered vehicle or gross polluter pursuant to Section 44015 or 44081.

(c) Any person who obtains or attempts to obtain a repair cost waiver, or economic hardship extension pursuant to this chapter by falsifying information shall be subject to a civil penalty of ~~not less than one hundred fifty dollars ($150) and~~ not more than ~~one thousand dollars ($1,000)~~ *five thousand dollars ($5,000)*, and shall be made ineligible for receiving any repair assistance of any kind pursuant to this chapter.

(d) Any person who obtains or attempts to obtain a certificate of compliance pursuant to this chapter by falsifying information shall be subject to a civil penalty of not more than five thousand dollars ($5,000).

O

ASSEMBLY BILL No. 2311

Introduced by Assembly Member Mendoza

February 19, 2010

An act to add Section 38569 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2311, as introduced, Mendoza. California Global Warming Solutions Act of 2006: transportation fuels: review.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reduction.

This bill would require the state board to review any regulation adopted by the state board that establishes greenhouse gas emission standards for transportation fuels and adopt a report relating to this review, as provided. The bill would require the state board, based on that report, to revise the compliance schedule or schedules in the regulation to avoid impacts on California fuel supplies or prices, competitiveness of California businesses relative to out of state or international competitors, impacts on the California economy, and impacts on California small businesses.

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

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

SECTION 1. Section 38569 is added to the Health and Safety Code, to read:

38569. (a) No later than December 31, 2011, and at least every three years thereafter, the state board shall review any regulation adopted by the state board that establishes greenhouse gas emission standards for transportation fuels and adopt a report relating to that review.

(b) (1) For each review pursuant to subdivision (a), the executive officer of the state board shall publish a draft review report that contains the information described in subdivision (c), for a 45-day public comment period, at least 90 days prior to presenting the draft review report to the state board. The executive officer of the state board shall use generally accepted modeling and analytical methods in preparing the draft review report.

(2) During the public comment period, the State Energy Resources Conservation and Development Commission, the Public Utilities Commission, the Department of General Services, the Department of Food and Agriculture, the Natural Resources Agency, the State Water Resources Control Board, the State Department of Public Health, the Department of Finance, and the Legislative Analyst shall provide written comments on the draft review report.

(3) During the public comment period, the executive officer of the state board shall obtain an external peer review of the draft review report.

(4) Following receipt of the peer review described in paragraph (3), public comments, and the comments of the agencies described in paragraph (2), the executive officer of the state board shall prepare a written response to the comments and peer review at least 15 days prior to presentation of the final report to the state board. The final report shall be revised to address comments received from the public and the agencies described in paragraph (2).

(5) The executive officer of the state board shall present the final review report to the state board at a regularly scheduled public hearing prior to the completion date set forth in subdivision (a). At that hearing, the state board shall take public testimony on the

review report and shall adopt or reject the report by a majority vote of the state board.

(c) The draft and final reports shall address, at a minimum, all of the following:

(1) The regulation's progress against its targets.

(2) Adjustments to the compliance schedule that are needed.

(3) Advances in full fuel life-cycle assessments.

(4) Advances in fuels and production technologies, including the feasibility and cost-effectiveness of these advances.

(5) The commercial availability and scope of use of ultra low-carbon fuels to achieve the regulation's standards.

(6) An assessment of supply availabilities and the rates of commercialization of fuels and vehicles.

(7) The regulation's impact on the state's fuel supplies.

(8) The regulation's impact on state revenues, consumers, and economic growth.

(9) An analysis of the public health impacts of the regulation at the state and local level, including the impacts of local infrastructure or fuel production facilities in place or under development to deliver low-carbon fuels.

(10) An assessment of the air quality impacts in the state associated with the implementation of the regulation, including, but not limited to, whether the use of low-carbon fuels in the state will affect progress towards achieving state or federal air quality standards, or result in any significant changes in toxic air contaminant emissions, and recommendations for mitigation to address adverse air quality impacts identified.

(11) Identification of hurdles or barriers including, but not limited to, permitting issues, infrastructure adequacy, and the availability of research funds, and recommendations for addressing these hurdles or barriers.

(12) Significant economic issues, fuel adequacy, reliability, and supply issues, and environmental issues that have arisen.

(13) The advisability of harmonizing with international, federal, regional, and state regulations, including, but not limited to, competing fuel life-cycle assessments.

(d) (1) Prior to publishing a draft of the report as required by subdivision (b), the executive officer of the state board shall consult with public and private persons that would be significantly impacted by the implementation of the regulation to identify those

investigative or preventive actions that may be necessary to ensure consumer acceptance, product availability, acceptable performance, and equipment reliability. The significantly impacted persons to be consulted shall include, but are not limited to, fuel manufacturers, fuel distributors, independent marketers, vehicle manufacturers, and fuel users.

(2) Prior to publishing a draft of the report as required by subdivision (b), the executive officer of the state board shall hold at least two public workshops on the subjects to be covered in the report.

(e) Based upon the information in the final report adopted by the state board, the state board shall revise the compliance schedule or schedules in the regulation to avoid impacts on California fuel supplies or prices, competitiveness of California businesses relative to out of state or international competitors, impacts on the California economy, and impacts on California small businesses.

O

ASSEMBLY BILL No. 2469

Introduced by Assembly Member Bill Berryhill

February 19, 2010

An act to add Chapter 9 (commencing with Section 39950) to Part 2 of Division 26 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2469, as introduced, Bill Berryhill. State Air Resources Board: dispute resolutions.

Existing law authorizes the State Air Resources Board to regulate pollution from primarily vehicular sources, and designates the state board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases.

This bill would allow a person to seek relief regarding that person's ability to comply with any requirement imposed or administered by the state board, by applying for a dispute resolution order from a hearing officer, pursuant to specified requirements.

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

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

SECTION 1. Chapter 9 (commencing with Section 39950) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

Chapter 9. Dispute Resolution Orders

39950. (a) Any person may apply to the executive officer of the state board for a dispute resolution order regarding that person's ability to comply with any requirement of Division 25.5 (commencing with Section 38500), any requirement of this division administered by the state board, or of any rule, regulation, or order of the state board.

(b) A dispute resolution order granted by a hearing officer pursuant to this chapter may provide any relief deemed appropriate by the hearing officer after a hearing conducted in accordance with this chapter, including, but not limited to, any of the following:

(1) Modification of a greenhouse gas emissions limit or related requirements, as established pursuant to Division 25.5 (commencing with Section 38500).

(2) Adjustment of greenhouse gas emission allowance allocations under Division 25.5 (commencing with Section 38500).

(3) Extension or adjustment of performance or delivery deadlines.

(4) Temporary or permanent revision to the terms or conditions of an operating permit imposed pursuant to Division 25.5 (commencing with Section 38500).

(5) Issuance of advisory or declaratory opinions regarding agency authority where multiple agencies exercise potentially conflicting jurisdiction.

(6) Making findings or declarations regarding actions that may be desirable or necessary by other agencies or departments.

(c) The hearing officer shall hold a hearing pursuant to this chapter to determine under what conditions, and to what extent, a dispute resolution order shall be granted. No dispute resolution order may be issued, modified, or revoked by a hearing officer, unless a public hearing has been held by the hearing officer pursuant to this chapter.

39951. (a) Any person who is, or will be, out of compliance with any requirement of Division 25.5 (commencing with Section 38500), any requirement of this division administered by the state board, or of any rule, regulation or order of the state board, who has submitted an application for a dispute resolution order and who desires to commence or continue operation pending the

decision of the hearing officer on the application, may submit an application for an interim dispute resolution order.

(b) An interim dispute resolution order may be granted for good cause stated in the dispute resolution order. The interim dispute resolution order shall not be valid beyond the date of decision of the hearing officer on the application of the dispute resolution order, or for more than 90 days from date of issuance of the interim dispute resolution order, whichever occurs first.

(c) The hearing officer shall not grant an interim dispute resolution order after the hearing officer has held a hearing in compliance with the requirements of this chapter, or when such an order is being sought to avoid the notice requirements of Section 39962.

39952. If a person granted a dispute resolution order with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing officer sufficiently in advance to allow the hearing officer to schedule a public hearing on the application, the hearing officer shall not grant more than one interim authorization, valid for 30 days or less, to that person to continue operation pending the decision of the hearing officer on the application. The interim authorization shall not be granted for a requested extension of a final compliance date or when the original dispute resolution order expressly required advance application for the modification of an increment of progress.

39953. (a) A dispute resolution order shall not be granted unless the hearing officer makes all of the following findings:

(1) The petitioner for a dispute resolution order is, or will be, in violation of any requirement of Division 25.5 (commencing with Section 38500), any requirement of this division administered by the state board, or of any rule, regulation, or order of the state board.

(2) Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of a lawful business. When the petitioner is a public agency, the hearing officer shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service.

(3) The closing or taking would be without a corresponding benefit in reducing air pollution.

(4) The applicant for the dispute resolution order has given consideration to curtailing operations of the source of the emissions in lieu of obtaining a dispute resolution order.

(5) During the period the dispute resolution order is in effect, that the applicant will reduce excess emissions to the maximum extent feasible or will take all reasonably available actions to achieve the pertinent regulatory objective.

(6) During the period the dispute resolution order is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the state board, and report these emission levels to the state board pursuant to a schedule established by the state board.

(b) As used in this section, the following terms have the following meanings:

(1) "Essential public service" means a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.

(2) "Public agency" means any state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision of the state.

39954. The hearing officer, in determining whether or not the petitioner has presented evidence sufficient to make the finding specified in paragraph (2) of subdivision (a) of Section 39953 shall consider, in addition to any other relevant factors, both of the following:

(a) In determining whether or not conditions exist that are beyond the reasonable control of the petitioner, the hearing officer shall consider the extent to which the petitioner took actions to comply or seek a dispute resolution order, which were timely and reasonable under the circumstances. In so doing, the hearing officer shall consider actions taken by the petitioner since the adoption of the rule, regulation, or order from which the dispute resolution order is sought.

(b) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the hearing officer shall consider whether or not an unreasonable

burden would be imposed upon the petitioner if immediate compliance is required.

39955. Upon making the specific findings set forth in Section 39953, the hearing officer shall prescribe requirements no more onerous than those imposed by statute or by any rule, regulation, or order of the state board, that would be applicable to plants and equipment operated by specified industry or business or for specified activity, or to the operations of individual persons. In prescribing other and different requirements, in accordance with this section, the hearing officer, insofar as is consistent with the Legislature's declarations in Sections 39000 and 39001, shall exercise a wide discretion in weighing the equities involved and the advantages to the residents of the state from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation, or activity involved, resulting from requiring compliance with these requirements.

39956. (a) The hearing officer may require, as a condition of granting a dispute resolution order, that a bond be posted by the party to whom the dispute resolution order was granted to ensure performance of any construction, alteration, repair, or other work required by the terms and conditions of the dispute resolution order. The bond may provide that, if the party granted the dispute resolution order fails to perform the work by the agreed date, the bond shall be forfeited to the state board, or the sureties shall have the option of promptly remedying the dispute resolution order default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the dispute resolution order.

(b) This section does not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.

39957. After notice and a hearing, the hearing officer may modify or revoke, by written order, any dispute resolution order. After notice and a hearing, the hearing officer may review and for good cause, including a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in that schedule.

39958. (a) The hearing officer, in making any dispute resolution order, shall specify the time during which the order shall

be effective, which shall not exceed one year, except as otherwise provided in subdivision (b), and shall set a final compliance date.

(b) A dispute resolution order may be issued for a period exceeding one year if the dispute resolution order includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the dispute resolution order is granted will be brought into compliance with applicable emission standards.

39959. (a) The state board may modify or revoke any dispute resolution order granted by any hearing officer if, in its judgment, the dispute resolution order does not require compliance with a schedule of increments of progress or emission standards as expeditiously as practicable, or the dispute resolution order does not meet the requirements of this chapter.

(b) Prior to revoking or modifying a dispute resolution order pursuant to this section, the state board shall conduct a hearing. The person to whom the dispute resolution order was granted shall be given immediate notice of the hearing, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if he were a party to the hearing.

39960. The state board may adopt rules for the conduct of hearings pursuant to this chapter. The rules shall be consistent with this chapter and, so far as practicable, shall conform to the rules for administrative adjudications by state agencies in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

39961. For any hearing conducted under this chapter, the hearing officer shall be an administrative law judge from the Office of Administrative Hearings. An officer or employee of the state board shall not serve as a hearing officer for any hearing conducted pursuant to this chapter.

39962. (a) In case of a hearing to consider an application for an interim dispute resolution order, the hearing officer shall serve reasonable notice of the time and place of the hearing upon the executive officer of the state board and upon the applicant.

(b) In case of a hearing to consider an application for a modification of a final compliance date in a dispute resolution order previously granted, the hearing officer shall serve notice of the time and place of a hearing upon the executive officer of the

state board, and upon the applicant, not less than 10 days prior to the hearing. The hearing officer shall also send notice of the hearing to every person who requests notice, and shall obtain publication of the notice in at least one daily newspaper of general circulation within the state. The notice shall state the time and place of the hearing and other information as may be necessary to reasonably apprise the people of the state of the nature and purpose of the meeting.

(c) In case of a hearing to consider an application for a dispute resolution order other than those described in subdivision (a) or (b), the hearing officer shall serve notice of the time and place of a hearing upon the executive officer of the state board and upon the applicant, not less than 30 days prior to the hearing. The hearing officer shall also publish a notice of the hearing in at least one daily newspaper of general circulation in the state, and shall send the notice to every person who requests the notice, not less than 30 days prior to the hearing. The notice shall state the time and place of the hearing, the place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection, and any other information that may be necessary to reasonably apprise the people within the state of the nature and purpose of the meeting.

(d) A hearing officer shall serve notice pursuant to subdivision (a), (b), or (c) either by personal service or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the hearing officer shall serve that person by publication of notice in the state pursuant to Section 6060 of the Government Code.

39963. (a) Any hearing conducted by a hearing officer shall be held in a location readily accessible to the public.

(b) The hearing officer shall allow interested members of the public a reasonable opportunity to testify with regard to the matters under consideration, and shall consider that testimony in making his or her decision.

(c) The hearing officer shall prepare a record of the witnesses and the testimony of each witness at the hearing. The record may be an audio recording. The record shall be retained by the hearing officer while the dispute resolution order is in effect, or for the period of one year, whichever is longer.

39964. (a) The hearing officer may administer oaths in any hearing in which the officer participates. At any hearing, the hearing officer shall require any witness to be sworn before testifying.

(b) Whenever the hearing officer conducting any hearing deems it necessary to examine any person as a witness at the hearing, the hearing officer shall issue a subpoena, in proper form, commanding that person to appear before it, at a time and place specified, to be examined as a witness. The subpoena may require the person to produce all books, papers, and documents in his or her possession, or under his or her control, material to the hearing. A subpoena to appear before a hearing officer shall be served in the same manner as a subpoena in a civil action.

(c) Whenever any person duly subpoenaed to appear and give evidence, or to produce any books and papers, before a hearing officer commits the acts described in Section 11455.10 of the Government Code, that person shall be deemed in contempt of court, and the hearing officer shall report the fact to the superior court of the county in which the hearing is held. Upon receipt of that report, the superior court shall proceed as specified in Section 11455.20 of the Government Code. On the return of the attachment and the production of the body of the defendant, the superior court has jurisdiction of the matter. The person charged may purge himself or herself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

39965. (a) A hearing officer shall announce his or her decision in writing. The decision of a hearing officer shall include the reasons for the decision. Copies of the decision shall immediately be filed with the clerk of the state board and mailed to all of the affected parties or their attorneys. The decision shall become effective upon filing, unless the hearing officer orders otherwise.

(b) A hearing officer, in his or her discretion, within 30 days of the effective date of the decision, may order the rehearing of any matter if a person petitions for a rehearing within 10 days after a copy of the decision has been mailed.

39966. (a) Judicial review may be made of a decision of a hearing officer by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

Except as otherwise provided in this section, the petition for a writ of mandate shall be filed within 30 days after the decision has been mailed pursuant to Section 39965. The right to petition for a writ of mandate shall not be affected by the failure to seek a rehearing before the hearing officer.

(b) (1) The complete record of the proceedings, or parts thereof as are designated by the petitioner for a writ of mandate, shall be prepared by the hearing officer and shall be delivered to the petitioner within 30 days after a request, upon payment of the fee specified in Section 69950 of the Government Code for the transcript, the cost of preparation of other portions of the record, and for certification thereof.

(2) The complete record includes the pleadings, all notices and orders issued by the hearing officer, any proposed decision by the hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence, and any other papers in the case.

(3) If the petitioner for a writ of mandate, within 20 days after the decision has been mailed, requests the hearing officer to prepare all or any part of the record, the time within which a petition for a writ of mandate may be filed shall be extended until 35 days after the decision has been mailed. The hearing officer may file with the court the original of any document in the record in lieu of a copy.

(c) In any proceeding pursuant to this section, the court shall receive in evidence any order, rule, or regulation of the state board, any transcript of the proceedings before the hearing officer, and further evidence as the court, in its discretion, deems proper.

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ASSEMBLY BILL No. 2691

Introduced by Assembly Member Hall

February 19, 2010

An act to amend Sections 38594 and 38598 of, and to add Section 38598.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2691, as introduced, Hall. California Global Warming Solutions Act of 2006: fees.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act. The fee revenues are deposited into the Air Pollution Control Fund and are available, upon appropriation by the Legislature, for purposes of carrying out the act. The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for compliance with those regulations.

This bill would prohibit a state agency, city, county, city and county, air pollution control or air quality management district, or another political subdivision of the state from imposing a greenhouse gas

emissions fee, whether emissions-based or otherwise, on a source of greenhouse gas emissions that is included in a market-based compliance mechanism and a fee regulation adopted by the state board. The bill would require the state board to transfer, upon appropriation by the Legislature, to an air pollution control or air quality management district $1 for every $1 expended by that district in providing requested assistance to the state board.

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

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

SECTION 1. Section 38594 of the Health and Safety Code is amended to read:

38594. ~~Nothing~~ *Except as provided in Section 38598.5, nothing* in this division shall limit or expand the existing authority of any district, as defined in Section 39025.

SEC. 2. Section 38598 of the Health and Safety Code is amended to read:

38598. (a) ~~Nothing~~ *Except as provided in Section 38598.5, nothing* in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

SEC. 3. Section 38598.5 is added to the Health and Safety Code, to read:

38598.5. (a) (1) A state agency, city, county, city and county, district as defined in Section 39025, or another political subdivision of the state shall not impose a greenhouse gas emissions fee, whether emissions-based or otherwise, on a source of greenhouse gas emissions that is included in both of the following:

(A) A market-based compliance mechanism established by the state board pursuant to Section 38570.

(B) A fee regulation adopted by the state board pursuant to Section 38597.

(2) Paragraph (1) does not apply to a fee adopted solely to mitigate for, or pay the administrative costs relating to, air pollutants not including greenhouse gases, if legal authority exists for the imposition of that fee.

(b) Whenever a district, as defined in Section 39025, provides information, support, analysis, or another type of assistance requested by the state board, in connection with the state board's duties under this division, the state board, upon appropriation by the Legislature, shall transfer to that district one dollar ($1) for every dollar expended by that district in providing the requested assistance.

O

ASSEMBLY BILL No. 2565

Introduced by Assembly Member Ammiano

February 19, 2010

An act to add Section 21092.7 to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2565, as introduced, Ammiano. Environment: CEQA: notices.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the lead agency to provide specified notices to a person who files a written request for the notices. If a draft EIR is submitted to the State Clearinghouse for review, CEQA requires the lead agency to provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

This bill would authorize the lead agency, in lieu of providing an interested party and a public agency with a notice, response, or document as required by CEQA, to notify the interested party or public agency of the availability of the notice, response, or document on the lead agency's Internet Web site. The bill would authorize the lead agency

to post, maintain, and make available on the lead agency's Internet Web site, any notices, responses, and documents that are required to be made available to the public or to other public agencies.

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

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

SECTION 1. Section 21092.7 is added to the Public Resources Code, to read:

21092.7. (a) The lead agency may post, maintain, and make available on the lead agency's Internet Web site, any notices, responses, and documents that are required by this division to be made available to the public or to other public agencies.

(b) Notwithstanding other law, in lieu of providing an interested party and a public agency with a notice, response, or document as required by this division, the lead agency may notify the interested party or public agency of the availability of the notice, response, or document on the lead agency's Internet Web site.

O

SENATE BILL No. 942

Introduced by Senator Dutton

February 3, 2010

An act to add Sections 11349.10 and 11349.11 to the Government Code, relating to the State Auditor.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as introduced, Dutton. State Auditor: analysis of regulations.

Under existing law, the State Auditor is required to perform financial and performance audits as directed by statute. Existing law also requires the Office of Administrative Law to review existing regulations, at the request of a legislative committee, to determine if they meet specified standards. If the office determines that the regulations do not meet those standards, existing law requires the office to order the repeal of those regulations, pursuant to specified procedures.

This bill would require the State Auditor to survey and perform a cost-benefit analysis of specified regulations that impose a cost on private persons or business, publish a catalog of these regulations and other findings related to them in the California Regulatory Notice Register, and consider public comment on them. The bill would require the State Auditor, if he or she determines that any of the regulations yield more costs to private persons or business than benefits, to notify the adopting agency in writing the reasons for its determination and to publish this determination and the reasons for it in the California Regulatory Notice Register. The bill would require the adopting agency to respond in writing to the State Auditor regarding whether the agency will amend or repeal the regulation or decline to do so. The bill would require the State Auditor to review and consider all information submitted by the agency in this connection and, if the State Auditor confirms that the cost of a regulation to private persons or businesses

exceeds its benefits, he or she would be required to prepare a statement specifying the reasons for its determination and to recommend to the Legislature that it enact legislation that will function to amend or repeal the regulation at the current legislative session. The bill would require that this catalog, analysis, and review process be subject to public comment, as specified.

This bill would also require that all regulations adopted after January 1, 2011, be repealed 10 years after their effective date unless the State Auditor determines, as specified, that the benefits of the regulation to private persons or businesses exceed its costs.

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

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

SECTION 1. Section 11349.10 is added to the Government Code, to read:

11349.10. (a) Upon appropriation by the Legislature, the State Auditor shall review all existing regulations that impose a cost on private persons or business, excluding regulations that give effect to federal law or impose costs on the basis of that private person or business voluntarily contracting with the government. The State Auditor shall make a preliminary determination of which regulations appear to impose the most significant cost on private persons or businesses, and shall prepare a catalog of these regulations that lists them in order of cost, with those regulations with the highest cost listed first. The State Auditor may decline to include those regulations for which the costs appear to be insignificant. The catalog shall be completed within one year of completion of the review, and shall include all of the following:

(1) A brief description of the regulation.

(2) The effective date of the regulation.

(3) Whether the regulation is duplicative of any other regulation.

(4) An identification of the business sectors, if any, impacted by the cost imposed by the regulation.

(b) Based on the regulations listed, the State Auditor shall publish the catalog in the California Regulatory Notice Register and consider the written comments submitted by interested persons as to the order of the regulations listed in the catalog. The public

comment period and any revisions made to the catalog shall be completed within 30 days of the date of publication.

(c) Following the publication of the list in subdivision (b), the State Auditor shall prepare a preliminary cost-benefit analysis of each regulation in the order listed in the catalog, by applying the standards established by the Federal Office of Management and Budget, set out in the most recent publication of "Circular A-4" (Office of Management and Budget), and shall make a preliminary analysis of whether the cost of each regulation to a private person or business outweighs its benefit. In making this analysis, the State Auditor shall analyze the potential prospective costs and benefits of each regulation over the next five to 10 years. During the period of the preliminary analysis made pursuant to this subdivision, all information available to the State Auditor relating to the analysis shall be made available to the public.

(d) Upon completion of the preliminary cost-benefit analysis, the State Auditor shall publish its findings in the California Regulatory Notice Register, and shall consider the written comments submitted by interested persons. The public comment period and any revisions made to the preliminary cost-benefit analysis shall be completed within 30 days of the date of publication of the analysis. The State Auditor may change its findings based on the information received from the public during the comment period.

(e) The State Auditor shall prepare a final cost-benefit analysis within 60 days from the close of the public comment period described in subdivision (d). The final cost-benefit analysis shall list each regulation under which the cost to private persons or business exceeds the benefits of the regulation.

(f) If the State Auditor determines that any of the regulations subject to the analysis yield more costs to private persons or business than benefits, the State Auditor shall notify the adopting agency, and specify, in writing, the reasons for its determination that the cost of the regulation exceeds its benefits. The reasons for his or her determination shall be made available to the public. The State Auditor shall also publish this determination and the reasons for it in the California Regulatory Notice Register.

(g) On or before 60 days after the State Auditor has made the notification described in subdivision (f), the agency shall respond in writing to the State Auditor regarding whether the agency will

amend or repeal the regulation or decline to do so. Upon written application by the agency, the State Auditor may extend the time to respond an additional 30 days.

(h) (1) If the agency responds pursuant to subdivision (g) that it will decline to amend or repeal a regulation, the State Auditor shall review and consider all information submitted by the agency, and determine whether it should reconsider its conclusion that the costs of the regulation to private persons or businesses exceed its benefits. The State Auditor shall make this determination within 60 days of receipt of an agency's response. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days of the publication required by subdivision (f) in the California Regulatory Notice Register. During the period of review and reconsideration, the information available to the State Auditor relating to each regulation shall be made available to the public. The State Auditor shall notify the adopting agency within two working days of the receipt of information submitted by the public in this connection.

(2) If, after reconsideration, the State Auditor confirms that the cost of a regulation to private persons or businesses exceeds its benefits, it shall prepare a statement specifying the reasons for its determination, and shall recommend to the Legislature that it enact legislation that will function to amend or repeal the regulation at the current legislative session. The statement and recommendation shall be delivered to the adopting agency and the Legislature, and shall be made available to the public and the courts.

(i) The requirements of this chapter do not apply to the actions of the State Auditor in carrying out this section.

SEC. 2. Section 11349.11 is added to the Government Code, to read:

11349.11. All regulations adopted on or after January 1, 2011, shall be repealed 10 years after their effective date unless the State Auditor determines, pursuant to Section 11349.10, that the benefits of the regulation to private persons or businesses exceed its costs.

O

SENATE BILL No. 960

Introduced by Senator Dutton

February 5, 2010

An act to add Section 39601.1 to the Health and Safety Code, relating to air resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 960, as introduced, Dutton. State Air Resources Board: regulations: Legislative Analyst's Office: report.

Existing law imposes various functions and duties on the State Air Resources Board relating to reducing emissions of air pollutants. Existing law authorizes the state board to adopt standards, rules, and regulations necessary for the proper execution of those duties.

This bill would require the state board to submit a major regulation, as defined, to the Legislative Analyst's Office, as specified. The bill would require the Legislative Analyst's Office to prepare an analysis of the major regulation, with prescribed elements, to determine the costs and benefits of the regulation and whether the regulation is technologically feasible, and to submit the analysis to the state board and the Legislature, as specified.

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

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

SECTION 1. Section 39601.1 is added to the Health and Safety Code, to read:

39601.1. (a) The state board shall submit any major regulation to the Legislative Analyst's Office immediately upon the completion of the state board's final staff report on the proposal.

(b) (1) The Legislative Analyst's Office shall prepare an analysis of the major regulation proposed by the state board to determine the costs and benefits of the regulation and whether the regulation is technologically feasible. The Legislative Analyst's Office may contract with an independent party to prepare the analysis.

(2) The Legislative Analyst's Office shall submit the prepared analysis to the state board and the Legislature within 90 days of the date of receipt of the final staff report from the state board.

(c) The analysis shall include, but not be limited to, all of the following:

(1) The estimated costs of compliance by the regulated community with the standards in the major regulation.

(2) The estimated impact of the major regulation on state tax revenue.

(3) A determination whether the pollution reduction assumptions are accurate, feasible, and achievable.

(4) The estimated costs of alternative technologies.

(5) The estimated cumulative costs of all regulatory requirements that become effective within the same year on the regulated community.

(6) A determination whether the proposed adoption, amendment, or repeal is technologically feasible.

(7) A determination whether any identified alternative technologies are technologically feasible.

(d) The state board shall reimburse the Legislative Analyst's Office for the cost to that office of the analysis. The state board shall include the cost of reimbursement in the cost of developing the regulation.

(e) As used in this section, "major regulation" means any proposed adoption, amendment, or repeal of a regulation that will have a total economic impact of ten million dollars ($10,000,000) or more on state government, business enterprises, or citizens, as estimated by the state board.

O

SENATE BILL No. 1114

Introduced by Senator Florez

February 17, 2010

An act to amend Section 44281 of, and to add Section 40708.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1114, as introduced, Florez. Emission reduction credits: private and public moneys.

Existing law prohibits the creation of an emission reduction credit from air pollution reductions funded by certain public programs. Existing law creates air quality management districts and air pollution control districts and requires these districts, except as otherwise provided, to establish a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are to be banked prior to use to offset future increases in emissions.

This bill would authorize a district to create an emission reduction credit from a marine vessel or locomotive emission reduction project that is funded by both public and private moneys. An emission reduction credit created pursuant to this provision would be created only for the percentage of the emission reduction project that is paid for by private moneys. The bill would provide that the state share of the credit would be 80%, and the Treasurer would be required to sell this ownership share, and deposit the proceeds into the Emission Reduction Credit Sales Fund, which the bill would create.

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

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

SECTION 1. Section 40708.5 is added to the Health and Safety Code, to read:

40708.5. (a) A district may authorize the creation of an emission reduction credit from a marine vessel or locomotive emission reduction project, including an emission capture project, that is funded by both public and private moneys.

(b) An emission reduction credit shall be created pursuant to subdivision (a) only for the percentage of the emission reduction project that is paid for by private moneys. The emission reduction credit created from the portion of the project paid for by private moneys shall be divided between the person or persons who contributed the private moneys and the state. The state shall receive 20 percent of the credit and the private contributor or contributors shall receive 80 percent of the credit.

(c) The Treasurer shall sell the state's ownership interests in the credits created pursuant to this section. The Treasurer shall deposit the proceeds from these sales into the Emission Reduction Credit Sales Fund, which is hereby created in the State Treasury. The moneys in the Emission Reduction Credit Sales Fund shall be available, upon appropriation by the Legislature.

(d) This section shall be implemented in a manner consistent with the federal Clean Air Act (42 U.S.C. Sec. 4901 et seq.).

SEC. 2. Section 44281 of the Health and Safety Code, as amended by Section 7 of Chapter 707 of the Statutes of 2004, is amended to read:

44281. (a) Eligible projects include, but are not limited to, any of the following:

(1) Purchase of new very low or zero-emission covered vehicles or covered heavy-duty engines.

(2) Emission-reducing retrofit of covered engines, or replacement of old engines powering covered sources with newer engines certified to more stringent emissions standards than the engine being replaced, or with electric motors or drives.

(3) Purchase and use of emission-reducing add-on equipment that has been verified by the state board for covered vehicles.

(4) Development and demonstration of practical, low-emission retrofit technologies, repower options, and advanced technologies

for covered engines and vehicles with very low emissions of oxides of nitrogen.

(5) Light- and medium-duty vehicle projects in compliance with guidelines adopted by the state board pursuant to Title 13 of the California Code of Regulations.

(b) ~~No~~ *A* project shall *not* be funded under this chapter after the compliance date required by any local, state, or federal statute, rule, regulation, memoranda of agreement or understanding, or other legally binding document, except that an otherwise qualified project may be funded even if the State Implementation Plan assumes that the change in equipment, vehicles, or operations will occur, if the change is not required by the compliance date of a statute, regulation, or other legally binding document in effect as of the date the grant is awarded. ~~No~~ *Except as provided in Section 40708.5, a* project funded by the program shall *not* be used for credit under any state or federal emissions averaging, banking, or trading program. ~~No~~ *Except as provided in Section 40708.5, an* emission reduction generated by the program shall *not* be used as marketable emission reduction credits or to offset any emission reduction obligation of any person or entity. ~~Projects~~ *Except as provided in Section 40708.5, projects* involving new engines that would otherwise generate marketable credits under state or federal averaging, banking, and trading programs shall include transfer of credits to the engine end user and retirement of those credits toward reducing air emissions in order to qualify for funding under the program. A purchase of a low-emission vehicle or of equipment pursuant to a corporate or a controlling board's policy, but not otherwise required by law, shall generate surplus emissions reductions and may be funded by the program.

(c) The program may also provide funding toward installation of fueling or electrification infrastructure as provided in Section 44284.

(d) Eligible applicants may be any individual, company, or public agency that owns one or more covered vehicles that operate primarily within California or otherwise contribute substantially to the NO_x, PM, or ROG emissions inventory in California.

(e) It is the intent of the Legislature that all emission reductions generated by this chapter shall contribute to public health by reducing, for the life of the vehicle being funded, the total amount of emissions in California.

(f) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 3. Section 44281 of the Health and Safety Code, as added by Section 7.5 of Chapter 707 of the Statutes of 2004, is amended to read:

44281. (a) Eligible projects are any of the following:

(1) Purchase of new very low or zero-emission covered vehicles or covered engines.

(2) Emission-reducing retrofit of covered engines, or replacement of old engines powering covered sources with newer engines certified to more stringent emissions standards than the engine being replaced, or with electric motors or drives.

(3) Purchase and use of emission-reducing add-on equipment for covered vehicles.

(4) Development and demonstration of practical, low-emission retrofit technologies, repower options, and advanced technologies for covered engines and vehicles with very low emissions of oxides of nitrogen.

(b) ~~No~~ *A* new purchase, retrofit, repower, or add-on equipment shall *not* be funded under this chapter if it is required by any local, state, or federal statute, rule, regulation, memoranda of agreement or understanding, or other legally binding document, except that an otherwise qualified project may be funded even if the State Implementation Plan assumes that the change in equipment, vehicles, or operations will occur, if the change is not required by a statute, regulation, or other legally binding document in effect as of the date the grant is awarded. ~~No~~ *Except as provided in Section 40708.5, a* project funded by the program shall *not* be used for credit under any state or federal emissions averaging, banking, or trading program. ~~No~~ *Except as provided in Section 40708.5, an* emission reduction generated by the program shall *not* be used as marketable emission reduction credits or to offset any emission reduction obligation of any entity. ~~Projects~~ *Except as provided in Section 40708.5, projects* involving new engines that would otherwise generate marketable credits under state or federal averaging, banking, and trading programs shall include transfer of credits to the engine end user and retirement of those credits toward reducing air emissions in order to qualify for funding under the program. A purchase of a low-emission vehicle or of equipment

pursuant to a corporate or a controlling board's policy, but not otherwise required by law, shall generate surplus emissions reductions and may be funded by the program.

(c) The program may also provide funding toward installation of fueling or electrification infrastructure as provided in Section 44284.

(d) Eligible applicants may be any individual, company, or public agency that owns one or more covered vehicles that operate primarily within California or otherwise contribute substantially to the NO_x emissions inventory in California.

(e) It is the intent of the Legislature that all emission reductions generated by this chapter shall contribute to public health by reducing, for the life of the vehicle being funded, the total amount of emissions in California.

(f) This section shall become operative on January 1, 2015.

O

SENATE BILL No. 1120

Introduced by Senator Dutton
(Coauthor: Senator Cox)
(Coauthor: Assembly Member Smyth)

February 17, 2010

An act to amend Section 38570 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1120, as introduced, Dutton. California Global Warming Solutions Act of 2006: market-based compliance mechanisms.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for compliance with those regulations.

This bill would prohibit the state board from implementing a market-based compliance mechanism that includes caps on greenhouse gas emissions and trading among participants unless it is a part of a legally enforceable regional or federal program.

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

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

SECTION 1. Section 38570 of the Health and Safety Code is amended to read:

38570. (a) The state board may include in the regulations adopted pursuant to Section 38562 the use of market-based compliance mechanisms to comply with the regulations. *The state board shall not implement a market-based compliance mechanism, that includes caps on greenhouse gas emissions and trading among participants, unless it is a part of a legally enforceable regional or federal program. A regional program shall include participation by all of the following states and provinces: Arizona, California, Montana, New Mexico, Oregon, Utah, Washington, Quebec, Ontario, Manitoba, and British Columbia.*

(b) Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.

(2) Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.

(3) Maximize additional environmental and economic benefits for California, as appropriate.

(c) The state board shall adopt regulations governing how market-based compliance mechanisms may be used by regulated entities subject to greenhouse gas emission limits and mandatory emission reporting requirements to achieve compliance with their greenhouse gas emissions limits.

O

SENATE BILL No. 1194

Introduced by Senator Hollingsworth

February 18, 2010

An act to add Section 41814 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1194, as introduced, Hollingsworth. Air districts: residential wood-burning devices.

Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources.

This bill would prohibit a district from adopting or implementing a rule or regulation that prohibits the installation of a wood-burning fireplace, wood-burning heater, or wood-burning stove in a new or existing residential structure.

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

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

SECTION 1. Section 41814 is added to the Health and Safety Code, to read:

41814. (a) A district shall not adopt or implement a rule or regulation that prohibits the installation of a wood-burning fireplace, wood-burning heater, or wood-burning stove in a new or existing residential structure.

(b) This section does not limit the authority of a district to regulate the operation or use of a wood-burning fireplace, wood-burning heater, or wood-burning stove in a new or existing

residential structure, including, but not limited to, requiring that there be no burning of wood on certain days of the year.

O

SENATE BILL No. 1263

Introduced by Senator Wyland

February 19, 2010

An act to add Section 38599.5 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1263, as introduced, Wyland. California Global Warming Solutions Act of 2006: inoperative.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions.

This bill would make the provisions of the California Global Warming Solutions Act of 2006, and any regulation adopted pursuant to the act, inoperative.

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

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

SECTION 1. Section 38599.5 is added to the Health and Safety Code, to read:

38599.5. The provisions of this division, and any regulation adopted by the state board pursuant to this division, are suspended and inoperative.

O

SENATE BILL No. 1299

Introduced by Senator Lowenthal

February 19, 2010

An act to add Chapter 3 (commencing with Section 42280) to Division 18 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1299, as introduced, Lowenthal. Vehicles: vehicle miles traveled fee (VMT).

Existing law requires the Department of Motor Vehicles and the Department of the California Highway Patrol to each shall file, at least monthly with the Controller, a report of money received by the department covering all fees for applications accepted by the department and all other moneys received by the Department of Motor Vehicles under the Vehicle Code and, at the same time, to remit all money so reported to the Treasurer.

Existing law requires, not later than January 10 of each 4-year period after January 10, 1985, the Secretary of the Business, Transportation and Housing Agency to submit a report to the Legislature on a study of the fees imposed under the Vehicle Code, including any finding or recommendation on changes in the fees necessary to generate sufficient revenues for the Motor Vehicle Account in the State Transportation Fund to finance those operations of state government to be financed from those revenues.

This bill would require the Department of Motor Vehicles to develop and implement, by January 1, 2012, a pilot program designed to assess the following issues related to implementing a vehicle miles traveled (VMT) fee in California. The bill would also require the department to prepare and submit a specified report of its findings to the policy and fiscal committees of the Legislature no later than June 30, 2012.

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

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

SECTION 1. Chapter 3 (commencing with Section 42280) is added to Division 18 of the Vehicle Code, to read:

Chapter 3. Vehicles Miles Traveled (VMT) Fee

42280. The Legislature finds and declares all of the following:

(a) The federal Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) (Public Law 109-59), established the National Surface Transportation Policy and Revenue Study Commission to examine the condition and future needs of the nation's surface transportation system, as well as short- and long-term alternatives to the fuel tax.

(b) The search for an alternative means of revenue is driven by a combination of factors, including the diminishing value of the fuel tax, declining supplies of conventional petroleum-based fuels, and increasingly fuel-efficient vehicles. These factors contribute to a growing disparity in the revenue needed to fund the transportation system with the revenue available.

(c) After months of study, the commission issued its report in December 2007. Among its recommendations was consideration of a mileage-based user fee, also referred to as a vehicle miles traveled (VMT) fee.

(d) Implementing a VMT fee, however, involves a number of technological and institutional challenges, including establishing the method for calculating the mileage driven, the process by which mileage data is transmitted to a tax collection agency, contingencies to address potential equipment failures, adequate privacy protections, and a strategy for transitioning from the fuel tax to this new method of fee payment.

42281. (a) The department shall develop and implement, by January 1, 2012, a pilot program designed to assess the following issues related to implementing a vehicle miles traveled (VMT) fee in California:

(1) Different methods for calculating mileage.

(2) Processes for transmitting data to protect the integrity of the data and ensure drivers' privacy.

(3) Types of equipment that may be required of the state and of drivers in order to implement a VMT fee, including a discussion of the advantages and disadvantages of the equipment and contingencies in the event of equipment failure.

(b) The department shall prepare and submit a report of its findings to the appropriate policy and fiscal committees of the Legislature no later than June 30, 2012. The report shall include, but not be limited to, all of the following elements:

(1) Recommendations regarding how best to implement a VMT fee in a manner that minimizes confusion and inconvenience to California's drivers while also ensuring their privacy.

(2) Given the technological and institutional demands associated with implementing a VMT fee, a discussion of different processes that may be used to transition from the fuel tax to a VMT fee over time.

(3) A discussion of issues the Legislature may wish to consider when evaluating whether and how to implement a VMT fee.

O

SENATE BILL No. 1340

Introduced by Senator Kehoe

February 19, 2010

An act to amend Section 44272 of the Health and Safety Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1340, as introduced, Kehoe. Energy: alternative fuels and vehicle technologies.

Existing law establishes the Alternative and Renewable Fuel and Vehicle Technology Program, administered by the State Energy Resources Conservation and Development Commission (Energy Commission), to provide to specified entities, upon appropriation by the Legislature, grants, loans, loan guarantees, revolving loans, or other appropriate measures, for the development and deployment of innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change goals. Existing law specifies that only certain projects or programs are eligible for funding.

This bill would, additionally, specify projects eligible for funding under the program to include a program to provide funding for homeowners who purchase an electric vehicle to offset costs associated with modifying electrical sources to include an in-home electric vehicle charging station.

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

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

SECTION 1. Section 44272 of the Health and Safety Code is amended to read:

44272. (a) The Alternative and Renewable Fuel and Vehicle Technology Program is hereby created. The program shall be administered by the commission. The commission shall implement the program by regulation pursuant to the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The program shall provide, upon appropriation by the Legislature, competitive grants, revolving loans, loan guarantees, loans, or other appropriate funding measures, to public agencies, vehicle and technology entities, businesses and projects, public-private partnerships, workforce training partnerships and collaboratives, fleet owners, consumers, recreational boaters, and academic institutions to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies. The emphasis of this program shall be to develop and deploy technology and alternative and renewable fuels in the marketplace, without adopting any one preferred fuel or technology.

(b) A project funded by the commission shall be approved at a noticed public hearing of the commission and shall be consistent with the priorities established by the investment plan adopted pursuant to Section 44272.5.

(c) The commission shall provide preferences to those projects that maximize the goals of the Alternative and Renewable Fuel and Vehicle Technology Program, based on the following criteria, as applicable:

(1) The project's ability to provide a measurable transition from the nearly exclusive use of petroleum fuels to a diverse portfolio of viable alternative fuels that meet petroleum reduction and alternative fuel use goals.

(2) The project's consistency with existing and future state climate change policy and low-carbon fuel standards.

(3) The project's ability to reduce criteria air pollutants and air toxics and reduce or avoid multimedia environmental impacts.

(4) The project's ability to decrease, on a life-cycle basis, the discharge of water pollutants or any other substances known to damage human health or the environment, in comparison to the production and use of California Phase 2 Reformulated Gasoline or diesel fuel produced and sold pursuant to California diesel fuel regulations set forth in Article 2 (commencing with Section 2280)

of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(5) The project does not adversely impact the sustainability of the state's natural resources, especially state and federal lands.

(6) The project provides nonstate matching funds.

(7) The project provides economic benefits for California by promoting California-based technology firms, jobs, and businesses.

(8) The project uses existing or proposed fueling infrastructure to maximize the outcome of the project.

(9) The project's ability to reduce on a life-cycle assessment greenhouse gas emissions by at least 10 percent, and higher percentages in the future, from current reformulated gasoline and diesel fuel standards established by the state board.

(10) The project's use of alternative fuel blends of at least 20 percent, and higher blend ratios in the future, with a preference for projects with higher blends.

(11) The project drives new technology advancement for vehicles, vessels, engines, and other equipment, and promotes the deployment of that technology in the marketplace.

(d) Only the following shall be eligible for funding:

(1) Alternative and renewable fuel projects to develop and improve alternative and renewable low-carbon fuels, including electricity, ethanol, dimethyl ether, renewable diesel, natural gas, hydrogen, and biomethane, among others, and their feedstocks that have high potential for long-term or short-term commercialization, including projects that lead to sustainable feedstocks.

(2) Demonstration and deployment projects that optimize alternative and renewable fuels for existing and developing engine technologies.

(3) Projects to produce alternative and renewable low-carbon fuels in California.

(4) Projects to decrease the overall impact of an alternative and renewable fuel's life cycle carbon footprint and increase sustainability.

(5) Alternative and renewable fuel infrastructure, fueling stations, and equipment. The preference in paragraph (10) of subdivision (c) shall not apply to renewable diesel or biodiesel infrastructure, fueling stations, and equipment used solely for renewable diesel or biodiesel fuel.

(6) Projects to develop and improve light-, medium-, and heavy-duty vehicle technologies that provide for better fuel efficiency and lower greenhouse gas emissions, alternative fuel usage and storage, or emission reductions, including propulsion systems, advanced internal combustion engines with a 40 percent or better efficiency level over the current market standard, light-weight materials, energy storage, control systems and system integration, physical measurement and metering systems and software, development of design standards and testing and certification protocols, battery recycling and reuse, engine and fuel optimization electronic and electrified components, hybrid technology, plug-in hybrid technology, battery electric vehicle technology, fuel cell technology, and conversions of hybrid technology to plug-in technology through the installation of safety certified supplemental battery modules.

(7) Programs and projects that accelerate the commercialization of vehicles and alternative and renewable fuels including buy-down programs through near-market and market-path deployments, advanced technology warranty or replacement insurance, development of market niches, supply-chain development, and research related to the pedestrian safety impacts of vehicle technologies and alternative and renewable fuels.

(8) Programs and projects to retrofit medium- and heavy-duty on-road and nonroad vehicle fleets with technologies that create higher fuel efficiencies, including alternative and renewable fuel vehicles and technologies, idle management technology, and aerodynamic retrofits that decrease fuel consumption.

(9) Infrastructure projects that promote alternative and renewable fuel infrastructure development connected with existing fleets, public transit, and existing transportation corridors, including physical measurement or metering equipment and truck stop electrification.

(10) Workforce training programs related to alternative and renewable fuel feedstock production and extraction, renewable fuel production, distribution, transport, and storage, high-performance and low-emission vehicle technology and high tower electronics, automotive computer systems, mass transit fleet conversion, servicing, and maintenance, and other sectors or occupations related to the purposes of this chapter.

(11) Block grants administered by not-for-profit technology entities for multiple projects, education and program promotion within California, and development of alternative and renewable fuel and vehicle technology centers.

(12) Life-cycle and multimedia analyses, sustainability and environmental impact evaluations, and market, financial, and technology assessments performed by a state agency to determine the impacts of increasing the use of low-carbon transportation fuels and technologies, and to assist in the preparation of the investment plan and program implementation.

(13) A program to provide funding for homeowners who purchase an electric vehicle to offset costs associated with modifying electrical sources to include an in-home electric vehicle charging station.

(e) The commission may make a single source or sole source award pursuant to this section for applied research. The same requirements set forth in Section 25620.5 of the Public Resources Code shall apply to awards made on a single source basis or a sole source basis. This subdivision does not authorize the commission to make a single source or sole source award for a project or activity other than for applied research. ~~The commission may pursuant to this subdivision make a single source or sole source award for the applied research to be conducted by the Quiet Motorized Road Vehicle and Safe Mobility Committee created pursuant to Section 25227 of the Public Resources Code, if Senate Bill 1174 of the 2007–08 Regular Session, which would add that section, is enacted.~~

(f) Until January 1, 2012, the commission may contract with the Treasurer to expend funds through programs implemented by the Treasurer, if that expenditure is consistent with all of the requirements of this chapter.

O

SENATE BILL No. 1402

Introduced by Senator Dutton
(Coauthors: Senators Calderon, Cogdill, Correa, Cox, Denham, Hollingsworth, and Huff)
(Coauthor: Assembly Member Smyth)

February 19, 2010

An act to amend Sections 43008.6, 43016, 43020, 43023, 43154, and 43212 of, to amend and renumber Section 43031 of, to add Sections 39619.7, 42413, and 43024.5 to, and to repeal Section 43031.5 of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as introduced, Dutton. State Air Resources Board: administrative and civil penalties.

Existing law subjects violators of air pollution laws to specified civil and administrative penalties. Existing law imposes various duties on the State Air Resources Board relative to the reduction of air pollution.

This bill would require a communication, whether written or oral, from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information. The bill would require this information and final mutual settlement agreements reached between the state board and a person alleged to have violated air pollution laws to be made available to the public.

The bill would require the state board to prepare and submit to the Legislature and the Governor a report summarizing the motor vehicle pollution administrative penalties imposed by the state board for calendar year 2011, and annually thereafter, and would require the state

board to adopt and submit to the Legislature a written penalty policy for motor vehicle pollution laws that is based on specified criteria.

This bill would entitle a person alleged to have violated motor vehicle pollution laws the right to an administrative hearing pursuant to existing provisions of law, at the person's request, in lieu of a civil action. It would increase the maximum amount of an administrative penalty imposed pursuant to specified provisions of law per penalty assessment proceeding for any violation arising from the same conduct from $100,000 to $300,000, and would require specified administrative and civil penalties, including proceeds of mutual settlement agreements, be deposited in the General Fund.

The bill would provide that a person would not be liable under more than one civil, administrative, or criminal penalty provision of motor vehicle pollution law for any violation arising from the same conduct, and would prohibit the state board from assessing penalties against multiple persons for the production or sale of the same vehicle or units under motor vehicle pollution law provisions.

This bill, in addition, would provide that any person who fails to obtain a new certification for an engine family certified in the previous model year and sold in the same configuration in the model year for which the failure to obtain new certification was made would be liable for a civil penalty not to exceed $10,000 per engine family for which the person failed to obtain certification, rather than per vehicle.

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

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

SECTION 1. Section 39619.7 is added to the Health and Safety Code, to read:

39619.7. (a) A communication, whether written or oral, from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, shall contain a clear explanation of both of the following:

(1) The manner in which the administrative or civil penalty amount was determined, including the aggravating and mitigating factors the state board considered in arriving at the amount, and, where applicable, the per unit or per vehicle basis for the penalty.

(2) Whether there were direct pollution emissions in excess of legal requirements resulting from the violation, and if there were, a quantification of the specific amount of pollution emitted in excess of the requirements.

(3) The provision of law or regulations under which the alleged violator is being assessed the administrative or civil penalty, including the reason that provision is most appropriate for that violation.

(b) The information described in subdivision (a) and all final mutual settlement agreements reached between the state board and a person alleged to have violated air pollution laws shall be made available to the public.

SEC. 2. Section 42413 is added to the Health and Safety Code, to read:

42413. All penalties collected by the state board pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, including proceeds from mutual settlement agreements, shall be deposited in the General Fund.

SEC. 3. Section 43008.6 of the Health and Safety Code is amended to read:

43008.6. (a) Notwithstanding Section 43012, for the purpose of enforcing or administering Section 27156 of the Vehicle Code, the executive officer of the state board or an authorized representative of the executive officer, upon presentation of credentials or, if necessary under the circumstances, after obtaining a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises owned, operated, used, leased, or rented by an owner or operator of any vehicle operated for commercial purposes in order to inspect any such motor vehicle, secure emission samples therefrom, or inspect and copy any maintenance, use, or other records pertaining to that vehicle.

(b) The state board may collect a civil penalty not to exceed one thousand five hundred dollars ($1,500) for each violation of Section 27156 of the Vehicle Code. Any penalties shall be paid to the Treasurer for deposit in the ~~Air Pollution Control~~ *General* Fund.

(c) The civil penalty specified in subdivision (b) may be collected for one or more violations involving the tampering with or disabling of a gasoline-powered vehicle's air injection, exhaust

gas recirculation, crankcase ventilation, fuel injection, carburetion, ignition timing, or evaporative control system, fuel filler neck restrictor, oxygen sensor or related electronic controls, or catalytic converter, or for the use of leaded fuel in a vehicle certified for the use of unleaded fuel only.

(d) The civil penalty specified in subdivision (b) may not be collected for a violation that is related to any tampering or disabling of a gasoline-powered vehicle specified in subdivision (c) by a rental customer of that vehicle, including, but not limited to, a missing gasoline filler cap and a disconnected or missing heated air intake tube or vacuum hose. However, if more than 20 percent of an owner's or operator's gasoline-powered vehicles are found to be nonconforming during each of three consecutive inspections conducted 30 or more days apart during any one-year period, the civil penalty specified in subdivision (b) applies and shall be collected for each time a vehicle is found in a nonconforming condition.

SEC. 4. Section 43016 of the Health and Safety Code is amended to read:

43016. Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars ($500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations. ~~Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund.~~

SEC. 5. Section 43020 of the Health and Safety Code is amended to read:

43020. (a) Any person who knowingly violates any regulation adopted pursuant to this part by the state board pertaining to motor vehicle fuels is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both, for each violation.

(b) The recovery of civil penalties pursuant to ~~Section 43016~~ *this part* precludes prosecution pursuant to this section for the same offense. When the executive officer refers a violation to a

prosecuting attorney, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to ~~Section 43016~~ *this part* for the same offense.

SEC. 6. Section 43023 of the Health and Safety Code is amended to read:

43023. (a) *(1)* As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board may impose an administrative penalty, as specified in this section, for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. No administrative penalty imposed pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars ($10,000) for each day in which there is a violation up to a maximum of ~~one~~ *three* hundred thousand dollars ~~($100,000)~~ *($300,000)* per penalty assessment proceeding for any violation arising from the same conduct. This ~~one~~ *three* hundred thousand dollar ~~($100,000)~~ *($300,000)* maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.

(2) A person alleged to have violated this part is entitled to an administrative hearing pursuant to this section, at the person's request, in lieu of a civil action.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars ($10,000) for each day in which there is a violation up to a maximum of ~~one~~ *three* hundred thousand dollars ~~($100,000)~~ *($300,000)* per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be

conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

~~(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 43031.~~

~~(g)~~

(f) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

~~(h)~~

(g) This section does not apply to any violation for which a penalty may be assessed pursuant to Chapter 1.5 (commencing with Section 43025)*, except that a person alleged to have violated Chapter 1.5 (commencing with Section 43025) is entitled to an administrative hearing, in lieu of a civil action.*

~~(i)~~

(h) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

~~(j)~~

(i) Any administrative penalty assessed pursuant to this section shall be paid to the ~~State~~ Treasurer for deposit in the General Fund.

~~(k)~~

(j) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

~~(l)~~

(k) This section applies only to violations that occur on or after January 1, 2002.

~~(m) On or before January 1, 2005, the The~~

(l) The state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar ~~years 2002, 2003, 2004, and 2005~~ *year 2011, and annually thereafter*.

SEC. 7. Section 43024.5 is added to the Health and Safety Code, to read:

43024.5. (a) A person shall not be liable under more than one civil, administrative, or criminal penalty provision of Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200) for any violation arising from the same conduct.

(b) The state board shall not assess penalties against multiple persons for the production or sale of the same vehicle or units under the provisions of law described in subdivision (a). The state board shall impose penalties only on the person the state board determines to be most responsible for the violation.

SEC. 8. Section 43031 of the Health and Safety Code is amended and renumbered to read:

~~43031.~~

43024. (a) The civil or administrative civil penalties prescribed ~~in this chapter~~ *under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200)* shall be assessed and recovered either in a civil action brought in the name of the people of the State of California by the Attorney General or by the state board, or in administrative hearings established pursuant to regulations adopted by the state board.

(b) In determining the amount assessed, the court, the Attorney General, or the state board, in reaching any settlement, shall ~~take~~ *act pursuant to the official written policy described in subdivision*

(c) that takes into consideration all relevant circumstances, including, but not limited to, all of the following:

(1) The extent of harm to public health, safety, and welfare caused by the violation.

(2) The nature and persistence of the violation, including the magnitude of the excess emissions.

(3) The compliance history of the defendant, including the frequency of past violations.

(4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.

(5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.

(6) The efforts to attain, or provide for, compliance.

(7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.

(8) For a person who owns a single retail service station, the size of the business, *for violations under Chapter 1.5 (commencing with Section 43025)*.

(c) No later than March 1, 2011, the state board shall adopt and submit to the Legislature a written penalty policy that is based on the criteria in subdivision (b) and that is modeled on the United States Environmental Protection Agency's 2009 Clean Air Act Mobile Source Civil Penalty Policy for Vehicle and Engine Certification Requirements.

(d) All administrative and civil penalties collected under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), including proceeds from mutual settlement agreements, shall be deposited in the General Fund.

SEC. 9. Section 43031.5 of the Health and Safety Code is repealed.

~~43031.5. The revenues from penalties recovered by the state board pursuant to this chapter shall be deposited in the Air Pollution Control Fund and shall only be expended by the state board for environmental cleanup, abatement, or pollution prevention technology.~~

SEC. 10. Section 43154 of the Health and Safety Code is amended to read:

43154. (a) Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars ($5,000) per vehicle, *except that any person who fails to obtain a new certification for an engine family certified in the previous model year and sold in the same configuration in the model year for which the failure to obtain new certification was made shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per engine family for which the person failed to obtain certification, rather than per vehicle*.

(b) Any action to recover a penalty under this section shall be brought in the name of the people of the State of California in the superior court of the county where the violation occurred, or in the county where the defendant's residence or principal place of business is located, by the Attorney General on behalf of the state board, in which event all penalties adjudged by the court shall be deposited in the ~~Air Pollution Control~~ *General* Fund, or by the district attorney or county attorney of such county, or by the city attorney of a city in that county, in which event all penalties adjudged by the court shall be deposited with the treasurer of the county or city, as the case may be.

SEC. 11. Section 43212 of the Health and Safety Code is amended to read:

43212. Any manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board shall be subject to a civil penalty of fifty dollars ($50) for each vehicle which does not comply with the standards or procedures and which is first sold in this state. The payment of ~~such~~ *those* penalties to the state board shall be a condition to the further sale by ~~such~~ *that* manufacturer or distributor of motor vehicles in this state.

~~Any penalty recovered pursuant to this section shall be deposited into the Air Pollution Control Fund.~~

O

SENATE BILL No. 1433

Introduced by Senator Leno

February 19, 2010

An act to add Section 42411 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, as introduced, Leno. Air pollution penalties: inflation adjustments.

Existing law establishes the State Air Resources Board, which is responsible for control of emissions from motor vehicles and is designated the air pollution control agency for all purposes set forth in federal law. Existing law vests air pollution control districts and air quality management districts with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person that violates specified nonvehicular air pollution laws.

This bill would require the state board, on March 1, 2011, and annually thereafter, to adjust these maximum civil and criminal penalties for inflation, and to publish the inflation-adjusted maximum penalties on its Internet Web site.

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

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

SECTION 1. Section 42411 is added to the Health and Safety Code, to read:

42411. (a) On March 1, 2011, and annually thereafter, the state board shall adjust the maximum penalties specified in Sections

42400, 42400.1, 42400.2, 42400.3, 42400.3.5, 42400.4, 42401, 42402, 42402.1, 42402.2, 42402.3, and 42402.4 for inflation based on the Consumer Price Index released in January of that year by the United States Bureau of Labor Statistics. The base year for the first inflation adjustment shall be 2010.

(b) The state board shall publish the inflation-adjusted maximum penalties on its Internet Web site on March 1, 2011, and annually thereafter.

O

SENATE BILL No. 1445

Introduced by Senator DeSaulnier

February 19, 2010

An act to amend Section 65040.6 of, and to add Section 65080.6 to, the Government Code, to amend Section 75125 of the Public Resources Code, and to add Section 9250.20 to the Vehicle Code, relating to planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 1445, as introduced, DeSaulnier. Planning.

(1) Existing law creates the Strategic Planning Council consisting of the Director of State Planning and Research, the Secretary of the Natural Resources Agency, the Secretary for Environmental Protection, the Secretary of Business, Transportation and Housing, the Secretary of California Health and Human Services, and one public member appointed by the Governor. Existing law specifies the powers and duties of the council with respect to identification and review of activities and programs of member agencies that may be coordinated to improve certain planning and resource objectives and associated matters, including provision of financial assistance to support the planning and development of sustainable communities. Existing law requires the council to report to the Legislature not later than July 1, 2010, and every year thereafter, on the financial assistance provided.

This bill would instead provide for an initial reporting date of July 1, 2012. The bill would require the council to coordinate certain of its activities with the Planning Advisory and Assistance Council.

(2) Existing law creates the Planning Advisory and Assistance Council in the Office of Planning and Research in the Governor's Office, with a specified membership appointed by the Director of State Planning and Research consisting of representatives of cities, counties, each

regional planning districts, and Indian tribes and bands, from persons nominated by those entities. Existing law requires the council to provide advice on certain planning matters, including the preparation of state long-range goals and policies, and evaluation of the planning functions of various state agencies.

This bill would delete the reference to regional planning districts and instead require 7 of the council's members to be appointed from the governing boards of specified regional planning organizations. This bill would also provide for the appointment of one member each from the California Transportation Commission, the State Air Resources Board, the State Energy Conservation and Development Commission, the Speaker of the Assembly, and the Senate Committee on Rules. This bill would expand the duties of the council by requiring it to work with the Strategic Growth Council and various regional and local agencies to facilitate the implementation of regional blueprint plans, and to develop and propose recommendations to the Strategic Growth Council and certain state agencies in order to facilitate coordination between regional blueprint plans, state growth and infrastructure plans, and programs that facilitate the implementation of regional blueprint plans. This bill would also require reports by the council to the Legislature on specified matters.

(3) Existing law requires certain transportation planning activities by designated regional transportation planning agencies, including development of a regional transportation plan. Certain of these agencies are designated under federal law as metropolitan planning organizations. Existing law requires metropolitan planning organizations to adopt a sustainable communities strategy, subject to specified requirements, as part of a regional transportation plan, which is to be designed to achieve certain targets established by the State Air Resources Board for the reduction of greenhouse gas emissions from automobiles and light trucks in the region.

This bill would increase the registration fee imposed by the state on the registration of each vehicle by $1, and require the Department of Motor Vehicles to distribute 5% of the net revenues from the fee increase to the Planning Advisory and Assistance Council. The remaining net revenues would be distributed to designated transportation planning agencies based on the number of vehicles registered within the jurisdiction of each agency. The bill would require the transportation planning agencies to use the funds solely to develop and implement a sustainable communities strategy or regional blueprint plan in order to

identify land use strategies to reduce the use of motor vehicles and to carry out transportation-related activities in the strategy or plan, and in the case of an agency preparing a regional blueprint plan, to provide grants to cities, counties, and congestion management agencies for planning and projects related to implementation of the plan. The bill would also provide for sharing of available revenues between various agencies, as specified.

(4) The bill would also make legislative findings and declarations.

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

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

SECTION 1. The Legislature finds and declares as follows:

(a) Uncoordinated and unplanned growth together with a lack of common goals to effect the public's interest in the conservation and wise use of our lands pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.

(b) The enactment of Senate Bill 375 of the 2007–08 Regular Session (Chapter 728 of the Statutes of 2008) and the establishment of requirements for regional transportation plans to address greenhouse gases can only be successfully implemented if regional and local governments have the tools they need to collaboratively plan for the type of growth that can achieve these goals, and if that collaborative planning is coordinated with the efforts of the Governor's Strategic Growth Council and other state agencies as required by the enactment of Senate Bill 732 of the 2007–08 Regular Session (Chapter 729 of the Statutes of 2008).

(c) The successful development of sustainable communities strategies as part of regional transportation plans and implementation of those strategies by the amendment of city and county general and specific plans will result in significantly reduced vehicle travel. The reduced travel will reduce greenhouse gas emissions and air pollution and provide environmental benefits that mitigate the adverse impacts associated with vehicle use. The resulting reduction in traffic congestion provides a user benefit to all vehicle owners which is at least equal in value to a fee of two dollars ($2) per vehicle annually.

(d) Cooperation between regional and local governments and air districts is essential to the achievement of the greenhouse gas emission reductions envisioned in regional transportation plans.

(e) Therefore, it is in the public interest that state residents, communities, local governments, air districts, and the private sector cooperate and coordinate with one another in comprehensive, sustainable land use planning.

(f) It is the intent of the Legislature to update the duties and composition of the Planning Advisory and Assistance Council to assist in the state's land use planning processes by providing funding to support the development and implementation for regional blueprints and related planning and to work with state agencies providing funding for resource protection and local infrastructure to facilitate coordination between state planning and funding decisions and regional blueprints.

SEC. 2. Section 65040.6 of the Government Code is amended to read:

65040.6. (a) The Planning Advisory and Assistance Council is hereby created within the office, the membership of which shall be as follows: three city representatives; three county representatives; ~~one representative of each district, provided that at least two of the district representatives are representatives of metropolitan areawide planning organizations and that at least one of the district representatives is a representative of a nonmetropolitan planning organization;~~ *seven representatives of regional planning organizations; one member of the State Air Resources Board; one member of the California Transportation Commission; one member of the State Energy Resources Conservation and Development Commission; one member appointed by the Speaker of Assembly; one member appointed by the Senate Committee on Rules;* and one representative of Indian tribes and bands which have reservations or rancherias within California. The city and county representatives appointed pursuant to this subdivision shall be selected by the director from nominees submitted by the League of California Cities and by the California State Association of Counties. Representatives of ~~areawide~~ *regional* planning organizations appointed pursuant to this subdivision shall be selected by the director from nominees submitted by the ~~several areawide planning organizations within the state. Other district representatives shall be appointed by the director.~~ *regional*

planning organizations set forth in paragraphs (1) to (5), inclusive, of subdivision (b) and from nominees submitted by the California Association of Councils of Governments for the representatives set forth in paragraphs (6) and (7) of subdivision (b). The representative of Indian tribes and bands shall be a member of one tribe or band, and shall be selected by the director.

Appointment to the advisory council shall be for a term of two years, provided that the members of the first council shall classify themselves by lot so that one-half shall serve an initial term of one year and one-half shall serve an initial term of two years. Vacancies shall be filled in the same manner provided for the original appointment.

(b) Seven of the council's members shall be from the governing body of each of the following:

(1) The Southern California Association of Governments.

(2) The Metropolitan Transportation Commission or the Association of Bay Area Governments. The person appointed to the council pursuant to this paragraph shall be a member of the governing body for both the Metropolitan Transportation Commission and the Association of Bay Area Governments.

(3) The San Diego Association of Governments.

(4) The Sacramento Area Council of Governments.

(5) The San Joaquin Valley Regional Policy Council.

(6) A metropolitan planning organization or council of governments that is not identified in paragraphs (1) to (5), inclusive.

(7) A regional transportation planning agency, as defined in Section 65080, that is neither a metropolitan planning organization nor a council of governments.

~~(b)~~

(c) The council shall provide such advice as may be necessary to assist the office in discharging the requirements of Sections 65040 to 65040.4, inclusive. In particular, the council shall:

(1) Assist the office in the preparation of the state long-range goals and policies, in the manner specified in subdivision (a) of Section 65040.

(2) Evaluate the planning functions of the various state agencies involved in planning, in the manner specified in subdivision (c) of Section 65040.

(3) Make appropriate decisions and provide such advice and assistance as may be required by federal statute or regulation in connection with any federal program administered by the office.

(4) Work with the Strategic Growth Council, created pursuant to Section 75121 of the Public Resources Code, regional agencies, such as metropolitan planning organizations or councils of governments, and with cities and counties to facilitate the implementation of regional blueprint plans.

(5) Develop and propose recommendations to the Strategic Growth Council, created pursuant to Section 75121 of the Public Resources Code, the Department of General Services, the State Allocation Board, the Department of Housing and Community Development, the Department of Transportation, the California Transportation Commission, and any other state agencies that affect land use, housing, or transportation in order to facilitate coordination between regional blueprint plans, state growth and infrastructure funding plans, and programs that facilitate the implementation of regional blueprint plans.

(6) Receive reports, including, but not limited to, a copy of the five-year infrastructure plan described in Section 13102.

(7) Report to the Legislature, in consultation and coordination with the Strategic Growth Council, created pursuant to Section 75121of the Public Resources Code, on the manner in which state agencies are implementing the requirements of Chapter 1016 of the Statutes of 2002.

(8) Report to the Legislature on regional performance measures, evaluating the progress of each region of the state in improving results for its residents in employment, environmental protection, education, housing, mobility, and other criteria as determined by the council. The council shall provide the Legislature with updates to the report periodically, as the council determines is required.

~~(c)~~

(d) The council shall meet on call of the director of the office, who shall convene at least two council meetings during each year.

~~(d)~~

(e) Council members shall serve without compensation, but they may be reimbursed for actual expenses incurred in connection with their duties.

SEC. 3. Section 65080.6 is added to the Government Code, to read:

65080.6. (a) All revenue received pursuant to Section 9250.20 of the Vehicle Code shall be used by the metropolitan planning organization, the council of governments, or a county transportation planning agency solely to develop and implement a sustainable communities strategy or a regional blueprint plan in order to identify land use strategies to reduce the use of motor vehicles in its jurisdiction and carry out applicable transportation-related activities in the strategy or plan, and thereby to achieve the greenhouse gas emission reduction target as specified in Section 65080, and to provide grants to cities, counties, cities and counties, and congestion management agencies for planning and projects related to the implementation of a regional blueprint plan.

(b) A metropolitan planning organization that is jointly preparing a sustainable communities strategy with a council of governments shall share all revenue it receives and expend that revenue in accordance with an agreement between the two agencies.

(c) The Southern California Association of Governments (SCAG) shall distribute a share of revenues received pursuant to Section 9250.20 of the Vehicle Code to a county transportation commission or subregional council of governments that has elected to prepare a subregional sustainable communities strategy pursuant to Section 65080. The share of each eligible agency shall be computed after deducting from total revenues available to SCAG pursuant to Section 9520.20 of the Vehicle Code the costs incurred by SCAG for preparing the regionwide sustainable communities strategy pursuant to Section 65080, and then, with respect to those remaining revenues, computing the proportionate share for an eligible agency based on the percentage of total revenues collected for the region that are attributable to fees collected in the jurisdiction of the eligible agency.

(d) The metropolitan planning organization, the council of governments, or a county transportation commission and a subregional council of governments jointly preparing a subregional sustainable communities strategy, may, pursuant to an agreement with the local air quality management district that has responsibility over the jurisdiction, share revenues received pursuant to this section with the local air quality management district.

(e) All revenue received by the local air quality management district pursuant to subdivision (d) shall be used to assist local and regional governments in reducing greenhouse gas emissions.

Appropriate assistance includes, but is not limited to, all of the following:

(1) Assistance in the development of a subregional sustainable communities strategy.

(2) Assistance in the development of local greenhouse gas emission inventories.

(3) Assistance in the development of greenhouse gas emission reduction strategies in general plans.

(4) Development of and assistance with CEQA guidelines and review of greenhouse gas emissions in CEQA analyses.

(5) Consultation and development of local climate action plans.

(6) Project-specific consultation work to reduce greenhouse gas emissions from local transportation and land use decisions.

(f) For purposes of this section, a sustainable communities strategy and an alternative planning strategy shall both be considered to be a regional blueprint plan.

SEC. 4. Section 75125 of the Public Resources Code is amended to read:

75125. The council shall do all of the following:

(a) Identify and review activities and funding programs of member state agencies that may be coordinated to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner. At a minimum, the council shall review and comment on the five-year infrastructure plan developed pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of the Government Code and the State Environmental Goals and Policy Report developed pursuant to Section 65041 of the Government Code.

(b) Recommend policies and investment strategies and priorities to the Governor, the Legislature, and to appropriate state agencies to encourage the development of sustainable communities, such as those communities that promote equity, strengthen the economy, protect the environment, and promote public health and safety, consistent with subdivisions (a) and (c) of Section 75065.

(c) Provide, fund, and distribute data and information to local governments and regional agencies that will assist in developing and planning sustainable communities.

(d) Manage and award grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, and 75129. To implement this subdivision, the council may do all of the following:

(1) Develop guidelines for awarding financial assistance, including criteria for eligibility and additional consideration.

(2) Develop criteria for determining the amount of financial assistance to be awarded. The council shall award a revolving loan to an applicant for a planning project, unless the council determines that the applicant lacks the fiscal capacity to carry out the project without a grant. The council may establish criteria that would allow the applicant to illustrate an ongoing commitment of financial resources to ensure the completion of the proposed plan or project.

(3) Provide for payments of interest on loans made pursuant to this article. The rate of interest shall not exceed the rate earned by the Pooled Money Investment Board.

(4) Provide for the time period for repaying a loan made pursuant to this article.

(5) Provide for the recovery of funds from an applicant that fails to complete the project for which financial assistance was awarded. The council shall direct the Controller to recover funds by any available means.

(6) Provide technical assistance for application preparation.

(7) Designate a state agency or department to administer technical and financial assistance programs for the disbursing of grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, and 75129.

(e) In making recommendations pursuant to subdivisions (a) and (b) and in providing data and information pursuant to subdivision (c), the council shall consult with and coordinate its recommendations with the Planning Advisory and Assistance Council created pursuant to Section 65040.6 of the Government Code.

~~(e)~~

(f) No later than July 1, ~~2010~~ *2012*, and every year thereafter, provide a report to the Legislature that shall include, but is not limited to, all of the following:

(1) A list of applicants for financial assistance.

(2) Identification of which applications were approved.

(3) The amounts awarded for each approved application.

(4) The remaining balance of available funds.

(5) A report on the proposed or ongoing management of each funded project.

(6) Any additional minimum requirements and priorities for a project or plan proposed in a grant or loan application developed and adopted by the council pursuant to subdivision (c) of Section 75126.

SEC. 5. Section 9250.20 is added to the Vehicle Code, to read:

9250.20. (a) Effective July 1, 2011, the fee imposed by Section 9250 shall be increased by an additional one dollar ($1).

(b) After deducting the costs incurred pursuant to subdivision (c), 5 percent of all revenues received from the additional fee imposed pursuant to this section shall be transmitted to the Planning Advisory and Assistance Council to perform the functions specified in subdivision (c) of Section 65040.6 of the Government Code.

(c) The department shall distribute the remaining revenues from the fee increase to metropolitan planning organizations, councils of governments outside of metropolitan planning organizations, and transportation planning agencies in areas outside of metropolitan planning organizations or councils of governments in accordance with Section 65080.6 of the Government Code, based upon the amount of fees collected from motor vehicles registered within each jurisdiction.

(d) The department may annually expend for its costs not more than the following percentages of the fees collected pursuant to subdivision (a):

(1) Two percent during the first year after the increased fee is imposed.

(2) One percent during any subsequent year.

O

SENATE BILL No. 57

Introduced by Senator Cox
(Coauthor: Assembly Member Niello)

February 12, 2010

An act to add Section 43705.5 to the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 57, as introduced, Cox. Heavy-duty vehicles: particulate matter and nitrous oxides.

(1) Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution. The state board is required to adopt regulations to require that owners or operators of heavy-duty diesel motor vehicles perform regular inspections of their vehicles for excessive emissions of smoke, and regulations to require the utilization of emission control equipment.

This bill would impose a specified compliance schedule on any regulation adopted by the state board after December 11, 2008, that imposes Best Available Control Technology (BACT) requirements on heavy-duty diesel-fueled vehicles for particulate matter (PM) emissions and nitrous oxides (NO_x) emissions.

(2) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The State Air Resources Board has developed regulations that would require retrofits or engine replacements for heavy-duty diesel trucks.

(b) While these regulations would improve air quality by reducing emissions, it is imperative that the economic costs to businesses also be considered.

(c) It has been estimated that retrofits will cost between fifteen thousand dollars ($15,000) and thirty thousand dollars ($30,000) per truck. The cost of a new truck often exceeds one hundred twenty thousand dollars ($120,000). These costs will ultimately have a significant effect on California consumers.

(d) In an effort to balance public health benefits and the economic costs to California businesses, it is necessary for the Legislature to adopt a new compliance schedule for regulations voted to be adopted by the State Air Resources Board on December 12, 2008, that are now in Section 2025 of Title 13 of the California Code of Regulations.

SEC. 2. Section 43705.5 is added to the Health and Safety Code, to read:

43705.5. Any regulation adopted by the state board after December 11, 2008, that imposes Best Available Control Technology (BACT) requirements on heavy-duty diesel-fueled vehicles for particulate matter (PM) emissions and nitrous oxides (NO_x) emissions shall be implemented no earlier than the following dates:

(a) For pre-1994 model-year engines, January 1, 2013, for PM BACT and January 1, 2017, for NO_x BACT.

(b) For 1994 to 1999, inclusive, model-year engines, January 1, 2015, for both PM and NO_x BACT.

(c) For 2000 to 2002, inclusive, model-year engines, January 1, 2016, for both PM and NO_x BACT.

(d) For 2003 and 2004 model-year engines, January 1, 2014, for PM BACT and January 1, 2018, for NO_x BACT.

(e) For 2005 and 2006 model-year engines, January 1, 2015, for PM BACT and January 1, 2019, for NO_x BACT.

(f) For 2007 model-year engines, January 1, 2023, for both PM and NO_x BACT.

(g) For 2008 model-year engines, January 1, 2024, for both PM and NO_x BACT.

(h) For 2009 model-year engines, January 1, 2025, for both PM and NO_x BACT.

SEC. 3. This act addresses the fiscal emergency declared by the Governor by proclamation on January 8, 2010, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to balance health benefits and economic costs in the development of air pollution regulations, it is necessary for this act to take effect immediately.

O