

Assembly Bill No. 2650

CHAPTER 1129

An act to amend Section 42407 of, to add Section 40720 to, to add Chapter 9.8 (commencing with Section 44299.80) to Part 5 of Division 26 of, to add and repeal Section 40720.5 of, and to repeal Section 44299.83 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, Lowenthal. Air pollution: diesel emissions: California Port Community Air Quality Program: Bay Area Air Quality Management District and South Coast Air Quality Management District.

(1) Existing law requires the State Air Resources Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and mobile sources of air pollution in order to accomplish the attainment of the state ambient air quality standards at the earliest practicable date. Existing law delegates to air quality management districts and air pollution control districts primary responsibility for all nonvehicular sources of air pollution.

This bill would require each marine terminal in the state to operate in a manner that does not cause the engines on trucks to idle for more than 30 minutes while waiting to load or unload at the terminal, and would charge the district with geographical jurisdiction over that marine terminal with enforcing the requirement. The bill would make any owner or operator of a marine terminal that acts in violation of that requirement subject to a fine. The bill would also make any action taken by a marine terminal to pass the costs of that fine onto the owner or operator of a truck a violation of nonvehicular air pollution control laws. Because other enforcement provisions of law make a violation of those laws a crime, this bill would create a state-mandated local program by creating a new crime and by imposing additional enforcement duties on local districts. The bill would impose a fine on the owner or operator of the marine terminal or port for taking any action to divert idling trucks to area freeways or alternate staging areas. The bill would exempt from the requirement any marine terminal that provides specified staffing at receiving and delivery gates. The bill also would exempt from the requirement, until July 1, 2003, any marine terminal that implements, or begins to implement, a scheduling or appointment system for trucks



to enter the marine terminal. The bill would require a marine terminal implementing a scheduling or appointment system to adhere to specified criteria.

(2) Existing law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, administered by the state board, which provides grants through the districts to offset the incremental cost of projects that reduce emissions of oxides of nitrogen (NO_x) from specified onroad vehicles, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, stationary agricultural engines, and other high-emitting diesel engine categories.

This bill would create the California Port Community Air Quality Program in the Bay Area Air Quality Management District and the South Coast Air Quality Management District, to be administered and implemented by those districts within their jurisdictions. The bill would require those districts to provide grants to offset the advanced introduction costs of eligible projects that reduce onroad emissions of particulate matter within communities adjacent to marine terminals or ports within the jurisdiction of those districts. The bill would authorize those districts to utilize moneys derived from fines imposed within the district's jurisdiction for a violation of the provisions described in (1) to offset the costs incurred in administering, enforcing, and monitoring the activities described in (1). The bill would authorize any moneys derived from those fines that remain after the district offsets its costs to be used by the district to fund the grant program.

(3) The bill would make certain findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. The Legislature finds and declares all of the following:



(a) Air pollution in the state is an ongoing problem that impacts the health and safety of its residents.

(b) Long lines at California marine terminals and ports often become congested and force trucks to idle for extended periods of time.

(c) Idling trucks emit air contaminants, including oxides of nitrogen (NO_x), carbon dioxide (CO₂), and particulate matter.

(d) Many marine terminals and ports in the state are close in proximity to homes and businesses.

(e) Owners and operators of marine terminals and ports generally do not directly own or control trucks that conduct transactions at their site. However, due to the manner in which some marine terminals and ports are operated, including, but not limited to, setting short gate hours and maintaining systems that do not spread truck transactions throughout the day, and because trucks must operate within the systems established by the owners and operators of marine terminals, trucks are forced to idle for extended periods of time and create severe congestion on public roadways in communities at and near marine terminals and ports.

(f) It is the intent of the Legislature to prohibit extended idling by trucks at marine terminals and ports in the state in order to protect the health and safety of all Californians.

(g) It is the intent of the Legislature, in enacting the provisions of this act, to reduce only emissions of particulate matter that are caused by trucks idling at marine terminals and ports in the state.

(h) It is not the intent of the Legislature, in providing a system for the provisions of grants for the reduction of emission of particulate matter at marine terminals and ports in the state, to delegate any authority for the control of emissions from mobile sources to districts.

SEC. 2. Section 40720 is added to the Health and Safety Code, to read:

40720. (a) Each marine terminal in the state shall operate in a manner that does not cause the engines on trucks to idle or queue for more than 30 minutes while waiting to enter the gate into the marine terminal.

(1) Any owner or operator of a marine terminal that operates in violation of this subdivision is subject to a \$250 fine per vehicle per violation.

(2) Marine terminals in the state shall be monitored by the district with jurisdiction over that terminal to ensure compliance with this subdivision.

(3) Citations for violations of this subdivision shall be issued by the applicable district, and shall include the truck license plate number, the name of the marine terminal and port at which the violation occurred, and the date and time of the violation.



(4) Any action taken by the marine terminal to assess, or seek reimbursement from, the driver or owner of a truck for a violation of this subdivision shall constitute a violation of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4.

(5) Any owner or operator of a marine terminal or port, or any agent thereof, who takes any action intended to avoid or circumvent the requirements of this subdivision or to avoid or circumvent the reduction of emissions of particulate matter from idling or queuing trucks is subject to a seven hundred fifty dollar (\$750) fine per vehicle per violation, including, but not limited to, either of the following actions:

(A) Diverting an idling truck to area freeways or alternate staging areas, including, but not limited to, requiring a truck to idle or queue inside the gate of a marine terminal.

(B) Requiring or directing a truckdriver to turn on and off an engine while queuing.

(6) The owner or operator of a marine terminal does not violate this subdivision by causing a truck to idle for more than 30 minutes while waiting to enter the gate into the marine terminal, if the delay is caused by acts of God, strikes, or declared state and federal emergencies, or if the district finds that an unavoidable or unforeseeable event caused trucks to idle and that the terminal is in good faith compliance with this section.

(7) Failure to pay a fine imposed pursuant to paragraph (1) or (5) shall constitute a violation of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4.

(b) (1) Subdivision (a) does not apply to any marine terminal that provides, as determined by the district, two continuous hours of uninterrupted, fully staffed receiving and delivery gates two hours prior to and after, peak commuter hours each day, at least five days per week.

(2) For the purposes of this subdivision, “peak commuter hours” shall be those hours determined by the district, in consultation with the owners and operators of the marine terminals within each district’s jurisdiction and any labor union that is represented at those marine terminals. The district shall notify the marine terminals of the final determination of the peak commuter hours.

(c) Subdivision (a) does not apply to any marine terminal that operates fully staffed receiving and delivery gates for 65 hours, five days per week, if that marine terminal is located at a port that processes less than 3 million containers (20-foot equivalent units (TEUs)) annually.

(d) Subdivision (a) does not apply to any marine terminal that operates fully staffed receiving and delivery gates for 70 hours, five days per week, if that marine terminal is located at a port that processes more than 3 million containers (20-foot equivalent units (TEUs)) annually.



(e) The district shall determine the necessary level of monitoring and enforcement commensurate with the level of the truck idling problem existing within its jurisdiction.

(f) For the purposes of this section, “marine terminal” means a facility that meets all of the following criteria:

- (1) Is located at a bay or harbor.
- (2) Is primarily used for loading or unloading containerized cargo onto or off of a ship or marine vessel.
- (3) Contains one or more of the following:
 - (A) Piers.
 - (B) Wharves.
 - (C) Slips.
 - (D) Berths.
 - (E) Quays.
- (4) Is located at a port that processes 100,000 or more containers (20-foot equivalent units (TEUs)) annually.

(g) Notwithstanding subdivision (a), if a marine terminal implements a scheduling or appointment system for trucks to enter the terminal, the terminal shall be subject to a fine pursuant to subdivision (a) only for a truck that makes use of the system and whose engine idles for more than 30 minutes while waiting to enter the gate into the terminal, commencing from the start of the appointment or the time the truck arrives, whichever is later. The scheduling or appointment system shall meet all of the following requirements:

- (1) Provide appointments on a first-come, first-served basis.
- (2) Provide appointments that last at least 60 minutes and are continuously staggered throughout the day.
- (3) Not discriminate against any motor carrier that conducts transactions at the marine terminal in scheduling appointments.
- (4) Not interfere with a double transaction once inside the gate.
- (5) Not turn away or fine a motor carrier if that motor carrier misses an appointment.

SEC. 2.5. Section 40720.5 is added to the Health and Safety Code, to read:

40720.5. (a) Subdivision (a) of Section 40720 does not apply to any marine terminal that implements, or begins to implement, a scheduling or appointment system for trucks to enter the marine terminal.

(b) Any marine terminal that implements, or begins to implement a scheduling or appointment system for trucks to enter the marine terminal shall notify the applicable district of that implementation as soon as practicable.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted



before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 42407 of the Health and Safety Code is amended to read:

42407. Except as provided in Sections 40720 and 42403.5, this article is not applicable to vehicular sources.

SEC. 4. Chapter 9.8 (commencing with Section 44299.80) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 9.8. THE CALIFORNIA PORT COMMUNITY AIR QUALITY PROGRAM

44299.80. As used in this chapter, the following terms have the following meanings:

(a) “Advanced introduction cost” means the cost of a project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business based on the actual age and turnover rates of trucks used at ports, and may include, but is not limited to, any of the following: incremental engine costs, re-engine or retrofit costs, additional operational costs, incremental fuel costs, facility modifications, and scrappage costs to eliminate operation on highways in the state.

(b) “Cost-effectiveness” means the funds provided to a project for each ton of particulate matter reduction attributed to a project or to the program as a whole. In calculating cost-effectiveness, a one-time grant of funds made at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project. Cost-effectiveness shall be calculated by dividing annualized costs by local emissions reductions of PM.

(c) “Covered engine” includes an engine from any onroad heavy-duty diesel truck or bus weighing over 33,000 pounds and used in for-hire or proprietary trucking operated by a trucking company that services a port in the state.

(d) “Covered source” includes onroad heavy-duty diesel vehicles and other onroad high-emitting diesel engine categories.

(e) “Covered vehicle” includes any vehicle or piece of equipment powered by a covered engine.

(f) “District” means the Bay Area Air Quality Management District as described in Chapter 4 (commencing with Section 40200) of Part 3 and the South Coast Air Quality Management District as described in Chapter 5.5 (commencing with Section 40400) of Part 3.

(g) “Fund” means the California Port Community Air Quality Program Trust Fund established pursuant to Section 44299.84.



- (h) “Gr-bhph” means grams-per brake horsepower hour.
 - (i) “Marine terminal” has the same meaning as in Section 40720.
 - (j) “New very low-emission vehicle” means a vehicle that qualifies as a very low-emission vehicle when it is a new vehicle, as defined in Section 430 of the Vehicle Code, with regard to particulate matter emissions standards or that is modified with the approval and warranty of the original equipment manufacturer to qualify as a very low-emission vehicle with regard to particulate matter emissions standards within 12 months of delivery to an owner for private or commercial use.
 - (k) “Port” means any sea or river port in the state.
 - (l) “PM” means particulate matter.
 - (m) “Program” means the California Port Community Air Quality Program created by this chapter.
 - (n) “Project” means the replacement, repowering, scrapping or retrofitting of a covered vehicle or covered engine that receives a grant pursuant to this chapter.
 - (o) “Repower” means replacing an engine with a different engine. The term “repower” as used in this chapter, refers to replacing an older, uncontrolled engine with a newer model engine that meets the latest emissions standards.
 - (p) “Retrofit” means making modifications to the engine and fuel system so that the retrofitted engine does not have the same emissions of particulate matter as the original engine.
 - (q) “Very low-emission vehicle” means a vehicle with emissions significantly lower than otherwise applicable baseline emission standards or uncontrolled emission levels.
- 44299.81. (a) The California Port Community Air Quality Program is hereby established in the Bay Area Air Quality Management District and the South Coast Air Quality Management District.
- (b) The program shall be implemented and administered by a district within its jurisdiction. The district shall provide grants to offset the advanced introduction costs of eligible projects that reduce onroad emissions of particulate matter within communities adjacent to marine terminals.
 - (c) A district may use moneys derived from fines imposed within its jurisdiction pursuant to paragraphs (1) and (5) of subdivision (a) of Section 40720 to offset costs incurred performing the administration, enforcement, and monitoring activities as required pursuant to that section.
 - (d) A district shall use any moneys derived from fines imposed within its jurisdiction pursuant to paragraphs (1) and (5) of subdivision (a) of Section 40720 that are not expended to offset costs pursuant to paragraph (c) to fund the grant program.



44299.82. (a) A district shall determine the projects eligible for grants within that district. Those projects may include, but are not limited to, any of the following:

(1) Purchase of a new very-low-emission covered vehicle or covered engine to replace an older heavy-duty diesel vehicle or engine.

(2) Purchase and use of PM emission-reducing add-on equipment for a covered vehicle.

(3) Implementation of a practical, low-emission retrofit technology, repower option, advanced technology, or low sulfur diesel or alternative fuel mixture for a covered engine.

(b) In determining eligible projects, the district shall consider whether the project will have the following effects:

(1) Reduce onroad PM emissions to the maximum extent feasible on a timely and cost-effective basis at the marine terminal or port and within the surrounding communities.

(2) Meet environmental justice goals and objectives set by the state and local air pollution control agencies, including, but not limited to, districts.

(3) Benefit small businesses, giving particular emphasis to independent minority owners and operators.

(4) Assist in meeting the 0.01 gr-bhph emission standards adopted by the federal Environmental Protection Agency for 2007 and later model year diesel heavy-duty engines and vehicles (40 C.F.R. Sec. 86.007-11).

(c) A person that owns a covered vehicle that operates near or in a marine terminal or port is eligible to apply for a project grant if the district with jurisdiction over that marine terminal or port determines that the covered vehicle contributes significantly to the PM emissions inventory in the communities adjacent to that marine terminal or port.

(d) Each district shall allocate grant funds in the following manner:

(1) Covered engines and covered vehicles that are manufactured prior to 1994 shall receive 50 percent of the funds to purchase pre-existing engines or vehicles that are certified by the state board to have been manufactured after 1993. If the replacement engine or vehicle is not equipped with a PM retrofit device verified by the state board, those funds shall be utilized to purchase a PM retrofit device that is verified by the state board and to offset incremental costs incurred during the first year of utilizing low-sulfur diesel fuel with not more than 15 parts per million sulfur. The total cost to offset the incremental costs may not exceed 10 percent of the cost of the retrofit control device.

(2) The remaining 50 percent of the funds shall be used to fund the purchase of engines or vehicles, including, but not limited to, engines that are certified to be cleaner than existing exhaust emission standards, and the repower or retrofit of existing engines to meet the 0.01 gr-bhph



PM emission standard. A new engine purchased pursuant to this section may operate on any fuel source if that fuel source is certified by the state board. If a new engine does not meet the 0.01 gr-bhph PM emission standards, a portion of these funds shall be utilized to purchase a PM retrofit device that is verified by the state board and to offset the incremental costs incurred during the first year of utilizing low-sulfur diesel fuel with not more than 15 parts per million sulfur to achieve the 0.01 gr-bhph PM emission standard. The total cost to offset the incremental costs shall not exceed 10 percent of the cost of the retrofit control device.

(e) A district shall give priority to those grant applicants that provide the greatest reduction in PM emissions.

(f) A district may give priority to any grant applicant who provides matching funds for the grant.

(g) A district may provide a grant to a project that involves replacing an engine that was manufactured before 1988, only if the applicant delivers that engine to the district or its agent for scrapping. The grant award amount shall include the costs the district will incur in scrapping that engine.

(h) A district may provide a grant for a project involving PM control retrofit technology only if that technology has been determined to be eligible for use by the state board.

(i) In determining eligible projects, a district may not exclude any technology based on the type of fuel utilized by that technology.

44299.83. (a) Notwithstanding paragraph (4) of subdivision (b) of Section 44299.82, a district may, on a case by case basis, determine that a project that meets a PM standard that is less stringent than 0.01 gr-bhph, but does not exceed 0.1 gr-bhph, is eligible for funding if it meets all of the following conditions:

(1) The project is proposed, pursuant to paragraph (1) of subdivision (d) of Section 44299.82 to reduce emissions from engines manufactured before 1994.

(2) The district has determined that the applicant's cost of meeting a 0.01 gr-bhph standard will exceed thirty-seven thousand five hundred dollars (\$37,500).

(3) The district has evaluated the emission reductions that can be achieved by the applicant through available purchase and retrofit options and the costs of these options prior to making the determination.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

44299.85. (a) A district may include any reduction in PM emissions that result from the implementation of the program in any



state implementation plan, or revision of that plan, that is submitted to the state board pursuant to Chapter 10 (commencing with Section 40910) of Part 3 for a particulate matter nonattainment area.

(b) All emission reductions or reduction credits resulting from a project funded by a district pursuant to this chapter are the property of the district that approved the grant. The district may utilize those emission reductions or reduction credits first to fulfill local and regional commitments to air quality standards. Any additional reductions or credits that exist after the local or regional commitment to air quality is fulfilled may be used by the state board to fulfill the state's commitment to air quality standards and attainment.

SEC. 5. The Legislature finds and declares that, due to the unique circumstances relating to air quality in the communities surrounding ports in the Bay Area Air Quality Management District and the South Coast Air Quality Management District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

