

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE MAY 7, 2003

AMENDED IN SENATE APRIL 24, 2003

SENATE BILL

No. 700

Introduced by Senators Florez and Sher

February 21, 2003

An act to amend Section 42310 of, and to add Sections 39011.5, 39023.3, 40724, 40724.5, 41511.5, and 44559.9 to, the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, Florez. Air quality: emissions: stationary sources: agricultural operations.

(1) Existing law authorizes the board of every air quality management district and air pollution control district to establish a permit system that requires any person that uses certain types of equipment that may cause the emission of air contaminants to obtain a permit. Existing law exempts vehicles and certain types of equipment from those permit requirements.

This bill would eliminate that exemption for any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals. To the extent that the bill would increase the number of permits that a district board, electing to establish a permit system prior to January 1, 2004, would be required to issue, the bill would impose a state-mandated local program.

(2) Existing law defines various terms governing the construction of air pollution control laws in the state, and authorizes the state board to revise those definitions to conform with federal law.

This bill would define the terms “agricultural stationary source of air pollution” and “fugitive emissions,” and would prohibit, notwithstanding the existing authority, the state board from revising those definitions.

(3) The existing federal Clean Air Act requires districts to adopt local programs for issuing operating permits to major stationary sources of air pollutants. The existing act defines a stationary source as any building, structure, facility, or installation that emits or may emit any air pollutant.

This bill would require, by July 1, 2004, each district in which a stationary source of air pollution is located, to adopt a rule or regulation that requires the district to issue, each agricultural stationary source to obtain, by January 1, 2005, every operating permit required by the federal act for stationary sources. The bill would require, by January 1, 2005, each district in which an agricultural activity is conducted to adopt, ~~for incorporation into the state implementation plan for the federal act, best management control measures for criteria air pollutant emissions from agricultural area source activities, and control measures to achieve the lowest achievable emissions rate for criteria pollutants at agricultural major stationary sources~~ *best management practices for that activity.*

This bill would require that an agricultural source of air pollution be regarded as a stationary source in the state for the purposes of the federal act. The bill would also require a district, when determining if an agricultural stationary source is a major stationary source of air pollution for the purposes of the federal act, to include precursor emissions from those sources. The additional duties for districts under the bill would impose a state-mandated local program.

(4) Existing law establishes the Capital Access Loan Program for Small Businesses, administered by the California Pollution Control Financing Authority, which provides loans through participating financial institutions to entities authorized to conduct business in the state and whose primary business location is in the state.

This bill would require the authority to expand the program to include outreach to financial institutions that service agricultural interests in the state for the purposes of funding air pollution control measures.

(5) Under existing law, any person who violates a rule, regulation, permit, or order of a district is ~~guilt~~ *guilty* of a misdemeanor. Because this bill would increase the number of people who are subject to that



provision, it would expand the scope of a crime, thereby imposing a state-mandated local program.

~~(6) 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.~~

(6) 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 specified reasons.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Agricultural operations necessary for growing crops or
- 4 raising fowl or animals are a significant source of directly emitted
- 5 particulates, and precursors of ozone and fine particulate matter.
- 6 These emissions have a significant adverse effect on the ability of
- 7 areas of the state, including, but not limited to, the San Joaquin
- 8 Valley, to achieve health-based state and federal ambient air
- 9 quality standards.
- 10 (2) Since 1999, the agriculture industry has reduced emissions
- 11 of oxides of nitrogen (NOx) by more than 200 tons per year,
- 12 emissions of particulate matter of 10 microns in diameter (PM 10)
- 13 by more than 400 tons per year, and emissions of volatile organic
- 14 compounds (VOCs) from agricultural chemicals by more than 20



1 percent. According to the state board, however, agricultural
2 sources of air pollution still contribute twenty-six percent of the
3 smog-forming emissions in the San Joaquin Valley.

4 (3) In the San Joaquin Valley, a large portion of the sources of
5 PM 10 emissions are areawide sources whose emissions are
6 directly related to growth in population and the resulting vehicle
7 miles traveled. According to the state board, however, agricultural
8 sources of air pollution account for over fifty percent of the
9 particulate air pollution generated in the valley during the fall,
10 amounting to over 170 tons per day of emissions.

11 (4) All parties living or operating a business in an area that has
12 been classified as being a nonattainment area with respect to the
13 attainment of federal or state ambient air quality standards share
14 the responsibility of reducing emissions from all criteria
15 pollutants.

16 (5) The federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.)
17 prohibits the state from adopting emission standards or limitations
18 less stringent than those established under the federal act,
19 including limitations on emissions from agricultural sources.

20 (6) Division 26 (commencing with Section 39000) of the
21 Health and Safety Code establishes numerous policies and
22 programs to reduce air pollutants for the protection of public
23 health.

24 (7) The purpose of the act adding this section is to establish a
25 new program at the state and regional levels to reduce air emissions
26 from agricultural sources in order to protect public health and the
27 environment.

28 (b) It is therefore the intent of the Legislature to require the
29 State Air Resources Board and air quality management districts
30 and air pollution control districts in the state to regulate stationary,
31 mobile, and area sources of agricultural air pollution.

32 SEC. 2. Section 39011.5 is added to the Health and Safety
33 Code, to read:

34 39011.5. "Agricultural stationary source of air pollution" or
35 "agricultural stationary source" means a source of air pollution or
36 a group of sources on contiguous property under common
37 ownership or control that meets either of the following criteria:

38 (a) Is a confined animal facility, including, but not limited to,
39 any structure, building, installation, barn, corral, coop, feed
40 storage area, milking parlor, or system for the collection, storage,



1 treatment, and distribution of liquid and solid manure, if
2 domesticated animals, including, but not limited to, cattle, calves,
3 horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are
4 corralled, penned, or otherwise cause to remain in restricted areas
5 for commercial agricultural purposes and feeding is by means
6 other than grazing.

7 (b) Is an internal combustion engine used in the production of
8 crops or the raising of fowl or animals, except an engine that is used
9 to propel implements of husbandry, as that term is defined in
10 Section 36000 of the Vehicle Code, as that section existed on
11 January 1, 2003. Notwithstanding subdivision (b) of Section
12 39601, the state board may not revise this definition for the
13 purposes of this section.

14 SEC. 3. Section 39023.3 is added to the Health and Safety
15 Code, to read:

16 39023.3. “Fugitive emissions” mean those emissions that
17 cannot reasonably pass through a stack, chimney, vent, or other
18 functionally equivalent opening, when using the best available
19 control technology . Notwithstanding subdivision (b) of Section
20 39601, the state board may not revise this definition for the
21 purposes of this section.

22 SEC. 4. Section 40724 is added to the Health and Safety Code,
23 to read:

24 40724. Not later than July 1, 2004, each district in which an
25 agricultural stationary source of air pollution is located shall adopt
26 a rule or regulation that requires the district to issue, and each
27 agricultural stationary source to obtain, not later than January 1,
28 2005, every operating permit required for stationary sources
29 pursuant to Subchapter V (commencing with Section 7661) of
30 Chapter 85 of Title 42 of the United States Code. Nothing in this
31 section is intended to delay or affect any action taken by a district
32 to reduce emissions of air contaminants from an agricultural
33 stationary source prior to January 1, 2004.

34 SEC. 5. Section 40724.5 is added to the Health and Safety
35 Code, to read:

36 40724.5. Not later than January 1, 2005, and ~~consistent with~~
37 *in addition to* any applicable requirement of the federal Clean Air
38 Act (42 U.S.C. Sec. 7401 et seq.), each district in which an
39 agricultural activity, including, but not limited to, tilling, discing,
40 or activities related to tilling or discing, is conducted shall adopt



1 *best management practices for those activities.* ~~, for incorporation~~
2 ~~into the state plan to implement the federal Clean Air Act (42~~
3 ~~U.S.C. Sec. 7401 et seq.), both of the following measures:~~

4 ~~(a) Best available control measures for criteria air pollutant~~
5 ~~emissions, including, but not limited to, precursor emissions from~~
6 ~~agricultural area source activities, including, but not limited to,~~
7 ~~unpaved roads, tilling, discing, harvesting, and the raising of fowl~~
8 ~~or animals or activities related to tilling, discing, harvesting, and~~
9 ~~the raising of fowl or animals.~~

10 ~~(b) Control measures to achieve the lowest achievable~~
11 ~~emissions rate for criteria pollutants, including, but not limited to,~~
12 ~~precursor emissions, at agricultural major stationary sources that~~
13 ~~are subject to Part D (commencing with Section 7501) of~~
14 ~~Subchapter I of Chapter 85 of Title 42 of the United States Code.~~
15 Nothing in this section is intended to delay or affect any action by
16 a district to reduce emissions of air contaminants from those
17 activities prior to January 1, 2004.

18 SEC. 6. Section 41511.5 is added to the Health and Safety
19 Code, to read:

20 41511.5. (a) An agricultural source of air pollution shall be
21 regarded as a stationary source, as that term is defined in Section
22 7411 of Title 42 of the United States Code.

23 (b) For the purpose of determining if an agricultural stationary
24 source of air pollution is a major stationary source of air pollution,
25 the state board and a district shall include precursor emissions,
26 including, but not limited to, ammonia, nitrogen oxides, sulfur
27 oxides, reactive organic gases and fugitive emissions from those
28 sources.

29 (c) Nothing in this section shall limit or abridge the authority
30 granted pursuant to this division to the state board or a district to
31 regulate emissions of air contaminants from agricultural sources.

32 SEC. 7. Section 42310 of the Health and Safety Code is
33 amended to read:

34 42310. A permit shall not be required for any of the following:

35 (a) Any vehicle.

36 (b) Any structure designed for and used exclusively as a
37 dwelling for not more than four families.

38 (c) An incinerator used exclusively in connection with a
39 structure described in subdivision (b).



1 (d) Barbecue equipment that is not used for commercial
2 purposes.

3 (e) Repairs or maintenance not involving structural changes to
4 any equipment for which a permit has been granted.

5 As used in this section, maintenance does not include operation.

6 SEC. 8. Section 44559.9 is added to the Health and Safety
7 Code, to read:

8 44559.9. The authority shall expand the Capital Access Loan
9 Program established by this article to include outreach to financial
10 institutions that service agricultural interests in the state for the
11 purpose of funding air pollution control measures.

12 SEC. 9. The provisions of the act adding this section are
13 severable. If any provision of this act or its application is held
14 invalid, that invalidity shall not affect other provisions or
15 applications that can be given effect without the invalid provision
16 or application.

17 ~~SEC. 10. No reimbursement is required by this act pursuant~~
18 ~~to Section 6 of Article XIII B of the California Constitution for~~
19 ~~certain costs that may be incurred by a local agency or school~~
20 ~~district because in that regard this act creates a new crime or~~
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~
23 ~~the Government Code, or changes the definition of a crime within~~
24 ~~the meaning of Section 6 of Article XIII B of the California~~
25 ~~Constitution.~~

26 ~~However, notwithstanding Section 17610 of the Government~~
27 ~~Code, if the Commission on State Mandates determines that this~~
28 ~~act contains other costs mandated by the state, reimbursement to~~
29 ~~local agencies and school districts for those costs shall be made~~
30 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
31 ~~4 of Title 2 of the Government Code. If the statewide cost of the~~
32 ~~claim for reimbursement does not exceed one million dollars~~
33 ~~(\$1,000,000), reimbursement shall be made from the State~~
34 ~~Mandates Claims Fund.~~

35 *SEC. 10. No reimbursement is required by this act pursuant*
36 *to Section 6 of Article XIII B of the California Constitution for*
37 *certain costs that may be incurred by a local agency or school*
38 *district because in that regard this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*



1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 *In addition, no reimbursement is required by this act pursuant*
5 *to Section 6 of Article XIII B of the California Constitution for*
6 *certain other costs that may be incurred by a local agency or*
7 *school district because a local agency or school district has the*
8 *authority to levy services charges, fees, or assessments sufficient*
9 *to pay for the program or level of service mandated by this act,*
10 *within the meaning of Section 17556 of the Government Code.*

