

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 497**

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**Introduced by Senator Simitian**

February 18, 2005

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An act to *add Chapter 8 (commencing with Section 39950) to Part 2 of Division 26 to the Health and Safety Code, and to add Article 7 (commencing with Section 10390) to Chapter 2 of Part 2 of Division 2 of the Public Contracts Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 497, as amended, Simitian. ~~Low-Emissions Contractor Incentive Program~~ *Cleaner Construction Program*.

Existing law requires the State Energy Resources Conservation and Development Commission, the Department of General Services, and the State Air Resources Board to develop and adopt fuel efficiency specifications governing the purchase of state motor vehicles and replacement tires that will reduce petroleum consumption of the state vehicle fleet to the maximum extent practicable and cost-effective.

This bill makes legislative findings with regard to the need to provide incentives to encourage the reduction of air pollution emissions from specified vehicles. This bill would require the Department of General Services, ~~in consultation with the State Air Resources Board,~~ to develop and implement a statewide ~~Low-Emission Contractor Incentive Program~~ *the Cleaner Construction Program* to reduce air pollution emissions from ~~specified vehicles utilized~~ *off-road equipment used* in the performance of all state agency and department contracts for the construction of roads, highways, buildings, and other state infrastructure projects.

*The bill would require the board to publish and update an online list of verified diesel emission control strategies. The bill would require every advertisement or notice for bids on state-funded contracts to*

*include program requirements with respect to the use of specified diesel equipment used in the performance of those contracts. The bill would also require the department to prepare and submit an annual program progress report to 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:*

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

3 (a) Air pollution is a major public health threat in California.  
4 More than 90 percent of Californians live in areas that fail to  
5 meet federal or state air quality standards.

6 (b) A long-term children's health study, funded by the State  
7 Air Resources Board, revealed that exposure to high air pollution  
8 levels can slow the growth rate of a child's lung function by up to  
9 10 percent.

10 (c) Each year, air pollution costs California, its residents, and  
11 its businesses billions of dollars for costs related to health care  
12 and for the costs attributable to lost workdays and lost days of  
13 school attendance.

14 (d) The State Air Resources Board estimates, if this state is  
15 able to meet an acceptable particulate matter standard, that each  
16 year 6,500 premature deaths, or 3 percent of all deaths in this  
17 state, would be prevented. In addition, the State Air Resources  
18 Board estimates that, each year, diesel pollution, alone, is the  
19 cause of between 700 and 3,570 premature deaths, 2,600 cases of  
20 chronic bronchitis, and 5,270 hospital admissions for respiratory  
21 and cardiovascular illnesses.

22 (e) Diesel engine emissions from both on-road and off-road  
23 heavy-duty vehicles include fine particulate matter that can be  
24 breathed deeply into the lungs and enter into a person's blood  
25 system. The State Air Resources Board classifies diesel  
26 *particulate* emissions as a toxic air contaminant and estimates  
27 that these emissions account for 70 percent of the cancer risks  
28 associated with airborne toxins.

29 (f) According to California's emission inventory prepared for  
30 2003, construction is a major source of diesel pollution,

1 accounting for almost one-third of all diesel fine particulates and  
2 one-fifth of all diesel emissions of nitrogen oxides.

3 (g) The Legislature has, through prior legislation, taken a lead  
4 in addressing the reduction of diesel emissions and has provided  
5 incentives to encourage the reduction of those emissions. By  
6 enacting these measures, the Legislature has demonstrated that  
7 the reduction of air pollution constitutes an important statewide  
8 policy.

9 (h) The State of California spends billions of dollars each year  
10 on the construction of roads, highways, and other state  
11 infrastructure projects and buildings.

12 (i) There is a need for stronger incentives in California's state  
13 contracting process to encourage contractors to invest in or use  
14 low-emission diesel vehicles and equipment, and thereby protect  
15 public health.

16 (j) The State of California has an interest in the protection of  
17 public health and the reduction of exposure to diesel emissions  
18 generated at state-funded construction sites.

19 (k) The State of California, through its public contract  
20 procedures, can both reduce the exposure to diesel emissions and  
21 encourage contractors to reduce emissions from on-road and  
22 off-road diesel vehicle fleets and from onsite diesel generators  
23 through the utilization of existing state incentive programs such  
24 as the Carl Moyer Air Quality Standards Attainment Program.

25 *SEC. 2. Chapter 8 (commencing with Section 39950) is*  
26 *added to Part 2 of Division 26 of the Health and Safety Code, to*  
27 *read:*

28

29 *CHAPTER 8. THE CLEANER CONSTRUCTION PROGRAM*

30

31 *39950. For the purposes of this chapter:*

32 (a) *"Board" means State Air Resources Board.*

33 (b) *"Department" means the State Department of General*  
34 *Services.*

35 (c) *"G/bhp-h" means grams per brake horsepower hour.*

36 (d) *"Level 2 controls" means those technologies that achieve*  
37 *at least 50 percent or greater reduction in particulate matter, as*  
38 *described in Chapter 14 of Division 3 of Title 13 of the*  
39 *California Code of Regulations.*

- 1 (e) “Level 3 controls” means those technologies that achieve  
2 at least 85 percent or greater reduction in particulate matter or  
3 less than 0.01 g/bhp-h per hour emission level, as described in  
4 Chapter 14 of Division 3 of Title 13 of the California Code of  
5 Regulations.
- 6 (f) “MBACT” means the verified diesel emission control  
7 strategy that achieves the highest level of pollution control for  
8 off-road equipment.
- 9 (g) “NOx” means oxides of nitrogen.
- 10 (h) “Off-road equipment” means all self-propelled nonroad  
11 equipment having an engine with a horsepower rating of 50 or  
12 greater.
- 13 (i) “PM” means particulate matter.
- 14 (j) “Ppm” means parts per million.
- 15 (k) “Sensitive receptor sites” refers to schools and  
16 schoolyards, playgrounds, nursing homes, and hospitals.
- 17 (l) “Tier 2 standards” are those standards for off-road  
18 equipment as described in Chapter 9 of Division 3 of Title 13 of  
19 the California Code of Regulations.
- 20 (m) “Tier 3 standards” are those standards for off-road  
21 equipment as described in Chapter 9 of Article 4 of Title 13 of  
22 the California Code of Regulations.
- 23 (n) “Tier 4 standards” are those standards for off-road  
24 equipment as described in Chapter 9 of Article 4 of Title 13 of  
25 the California Code of Regulations.
- 26 (o) “Ultra-low sulfur diesel fuel” is diesel fuel that has a  
27 sulfur content of 15 ppm or less.
- 28 (p) “Verified diesel emission control strategy” means any  
29 device, system, or strategy, used by off-road equipment to reduce  
30 emissions, that is verified pursuant to Chapter 14 of Division 3 of  
31 Title 13 of the California Code of Regulations.
- 32 39951. (a) The board, not later than March 1, 2006, shall  
33 publish an online document listing verified diesel emission  
34 control strategies for stationary and mobile diesel construction  
35 equipment. The technologies described in the online list may  
36 include technologies verified by the board or the United States  
37 Environmental Protection Agency.
- 38 (b) The board shall update the online document at least twice  
39 per year.

1 39952. (a) Every contract, and every advertisement or notice  
2 for bids for a contract, subject to this chapter shall comply with  
3 the following requirements:

4 (1) For state-funded construction projects that use off-road  
5 diesel equipment of 50 horsepower, all equipment shall:

6 (A) Use ultra-low sulfur diesel fuel.

7 (B) Comply with the MBACT for emission reductions of PM,  
8 and where the MBACT is available and compatible, NOx. If no  
9 MBACT for PM exists, the equipment shall meet Tier 2  
10 standards.

11 (C) For calendar years, beginning on and after January 1,  
12 2010, all engines shall meet MBACT or Tier 3 standards.

13 (D) For calendar years, beginning on or after January 1,  
14 2013, all engines shall meet MBACT that achieves, at a  
15 minimum, the emissions reductions of Level 2 controls or, if  
16 promulgated, Tier 4 standards.

17 (2) No state agency or contractor shall be required to replace  
18 MBACT for a diesel-powered off-road vehicle in accordance  
19 with the provisions of this section within three years of  
20 installation of that technology.

21 (3) The department shall distribute, in conjunction with any  
22 information package that is provided to a person that submits a  
23 bid for a contract that is subject to this article, information about  
24 diesel emissions and existing state and federal incentive  
25 programs to retrofit, repower, or replace older, more polluting  
26 diesel equipment.

27 39953. All off-road diesel equipment used in a state-funded  
28 project that is operated within 1,000 feet of a sensitive receptor  
29 site shall either be equipped with Level 3 control standards, or  
30 shall comply with the following applicable emission standards:

31 (a) For calendar years ending on or before January 1, 2010,  
32 shall meet the Tier 2 standards.

33 (b) For calendar years ending on and after January 1, 2010,  
34 and ending on or before January 1, 2013, the equipment shall  
35 meet Tier 3 standards.

36 (c) For calendar years beginning on and after January 1,  
37 2013, the equipment shall meet Tier 4 standards, if promulgated.

38 39954. Beginning January 1, 2008, and on each January 1  
39 thereafter, the department, in consultation with the board, shall  
40 prepare and submit an annual report to the Legislature that

1 *describes the progress of the program, the technologies used,*  
2 *and the emissions benefits gained through the implementation of*  
3 *the program.*

4 39955. *This article shall not be interpreted or applied in a*  
5 *manner that would affect the eligibility of any person that is*  
6 *otherwise eligible for any program administered or offered under*  
7 *the Carl Moyer Air Quality Standards Attainment Program.*

8 ~~SEC. 2.~~

9 SEC. 3. Article 7 (commencing with Section 10390) is added  
10 to Chapter 2 of Part 2 of Division 2 of the Public Contract Code,  
11 to read:

12

13 Article 7. ~~The Low-Emission Contractor Incentive Program~~  
14 *The Cleaner Construction Program*

15

16 ~~10390. The Department of General Services, in cooperation~~  
17 ~~with the State Air Resources Board, shall develop and implement~~  
18 ~~a green contracting program to reduce air pollution emissions~~  
19 ~~from on-road and off-road construction equipment utilized in the~~  
20 ~~performance of all state agency and department contracts for the~~  
21 ~~construction of roads, highways, buildings, and other state~~  
22 ~~infrastructure projects.~~

23 10390. *The Department of General Services shall implement*  
24 *the Cleaner Construction Program. The program requires all*  
25 *state agency and department contracts, entered into on or after*  
26 *July 1, 2006, for the construction of roads, highways, buildings,*  
27 *and other state infrastructure projects, to comply with Chapter 8*  
28 *of Part 2 of Division 26 of the Health and Safety Code, in the use*  
29 *of off-road equipment.*