

AMENDED IN SENATE MAY 3, 2005  
AMENDED IN SENATE APRIL 18, 2005  
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~~ of 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~~ *Contract* Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 497, as amended, Simitian. 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 to implement the Cleaner Construction Program to reduce air pollution emissions from 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 provide 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~~ *make available to the public all contracts covered by the Cleaner Construction Program, including information on each contractor's proposed approach for meeting Cleaner Construction Program standards.*

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

1 that these emissions account for 70 percent of the cancer risks  
2 associated with airborne toxins.

3 (f) According to California's emission inventory prepared for  
4 2003, construction is a major source of diesel pollution,  
5 accounting for almost one-third of all diesel fine particulates and  
6 one-fifth of all diesel emissions of nitrogen oxides.

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

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

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

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

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

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

32  
33 CHAPTER 8. THE CLEANER CONSTRUCTION PROGRAM  
34

35 39950. For the purposes of this chapter:

36 (a) "Board" means the State Air Resources Board.

37 (b) "Department" means the State Department of General  
38 Services.

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

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

(e) “Level 3 controls” means those technologies that achieve at least 85 percent or greater reduction in particulate matter or less than 0.01 g/bhp-h per hour emission level, as described in Chapter 14 of Division 3 of Title 13 of the California Code of Regulations.

~~(f) “MBACT” means the verified diesel emission control strategy that achieves the highest level of pollution control for off-road equipment.~~

*(f) “Most effective verified diesel emission control strategy” means the device, system or strategy that is verified pursuant to Chapter 14 of Division 3 of Title 13 of the California Code of Regulations that achieves the highest level of pollution control from off-road equipment.*

(g) “NOx” means oxides of nitrogen.

(h) “Off-road equipment” means all self-propelled nonroad equipment having an engine with a horsepower rating of 50 or greater.

(i) “PM” means particulate matter.

(j) “Ppm” means parts per million.

(k) “Sensitive receptor sites” refers to schools and schoolyards, playgrounds, nursing homes, and hospitals.

*(l) “State-funded construction project” means any construction, remodel, rehabilitation, or upgrade of public buildings, roads, highways, bridges, or other infrastructure for which state funds are used.*

~~(m)~~

(m) “Tier 2 standards” are those standards for off-road equipment as described in Chapter 9 of Division 3 of Title 13 of the California Code of Regulations.

~~(n)~~

(n) “Tier 3 standards” are those standards for off-road equipment as described in Chapter 9 of Article 4 of Title 13 of the California Code of Regulations.

~~(n)~~

(o) “Tier 4 standards” are those standards for off-road equipment as described in Chapter 9 of Article 4 of Title 13 of the California Code of Regulations.

~~(p)~~

(p) “Ultra-low sulfur diesel fuel” is diesel fuel that has a sulfur content of 15 ppm or less.

~~(p) “Verified diesel emission control strategy” means any device, system, or strategy, used by off-road equipment to reduce emissions, that is verified pursuant to Chapter 14 of Division 3 of Title 13 of the California Code of Regulations.~~

39951. (a) The board, not later than March 1, 2006, shall provide an online document listing verified diesel emission control strategies for stationary and mobile diesel construction equipment. The technologies described in the online list may include technologies verified by the board or the United States Environmental Protection Agency.

(b) The board shall update the online document at least twice per year.

39952. ~~Every~~ *For state-funded construction projects, every* contract subject to this chapter shall comply with the following requirements:

(a) All diesel-powered off-road equipment shall:

(1) Use ultra-low sulfur diesel fuel.

(2) ~~Meet Tier 2 standards or comply with the MBACT~~ *apply the most effective verified diesel emission control strategy* for emission reductions of PM, and where ~~the MBACT is available and compatible, NOx. If no MBACT for PM exists, the equipment shall meet Tier 2 standards. and compatible, for~~ *reductions of NOx.*

(3) For calendar years, beginning on and after January 1, 2010, ~~all engines shall meet MBACT or~~ *equipment shall apply the most effective verified diesel emission control strategy or meet* Tier 3 standards.

(4) For calendar years, beginning on or after January 1, 2013, ~~all engines shall meet MBACT~~ *all equipment shall apply the most effective verified diesel emission control strategy that* achieves, at a minimum, the emissions reductions of Level 2 controls or, if promulgated, Tier 4 standards.

(b) Notwithstanding subdivision (a), all diesel-powered off-road equipment within 1,000 feet of a sensitive receptor site

1 shall either be equipped with Level 3 control standards, or shall  
2 use ultra-low sulfur diesel fuel and shall comply with the  
3 following applicable emission standards:

4 (1) For calendar years ending on or before January 1, 2010,  
5 *the equipment* shall meet the Tier 2 standards.

6 (2) For calendar years ~~ending~~ *beginning* on and after January  
7 1, 2010, ~~and ending on or before January 1, 2013~~, the equipment  
8 shall meet Tier 3 standards.

9 (3) For calendar years beginning on and after January 1, 2013,  
10 the equipment shall meet Tier 4 standards, if promulgated.

11 39953. (a) Every advertisement or notice for bids for a  
12 contract subject to this chapter shall specify in the advertisement  
13 or notice for bids that the contract will be subject to the Cleaner  
14 Construction Program and shall reference this chapter.

15 (b) The department shall distribute, in conjunction with any  
16 information package that is provided to a person that submits  
17 bids for a contract that is subject to this chapter, information  
18 about diesel emissions and existing state and federal incentive  
19 programs to retrofit, repower, or replace older, more polluting  
20 diesel equipment.

21 (c) No state agency or contractor shall be required to replace  
22 ~~MBACT~~ *the most effective verified diesel emission control*  
23 *strategy* for diesel-powered off-road equipment in accordance  
24 with the provisions of subdivision (a) of Section 39952 within  
25 three years of installation of that technology.

26 (d) Any other local, state, or federal statute, regulation, or rule  
27 that is more stringent than a provision of this chapter shall  
28 supersede that provision.

29 (e) ~~This~~ *Notwithstanding subdivision (b) of Section 44281, this*  
30 chapter shall not be interpreted or applied in a manner that would  
31 affect the eligibility of any person that is otherwise eligible for  
32 any program administered or offered under the Carl Moyer Air  
33 Quality Standards Attainment Program.

34 ~~39954. Beginning January 1, 2008, and on each January 1~~  
35 ~~thereafter, the department, in consultation with the board, shall~~  
36 ~~prepare and submit an annual report to the Legislature that~~  
37 ~~describes the progress of the program, the technologies used, and~~  
38 ~~the emissions benefits gained through the implementation of the~~  
39 ~~program.~~

1     39954. *Beginning July 1, 2006, the department shall make*  
2 *available to the public, posting online where feasible, all*  
3 *contracts covered by the Cleaner Construction Program,*  
4 *including the information on each awarded contractor's*  
5 *proposed approach for meeting Cleaner Construction Program*  
6 *requirements.*

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

10  
11             Article 7. The Cleaner Construction Program  
12

13     10390. The Department of General Services shall implement  
14 the Cleaner Construction Program. The program requires all state  
15 agency and department contracts, entered into on or after July 1,  
16 2006, for the ~~construction of roads, highways, buildings, and~~  
17 ~~other state infrastructure projects,~~ *construction, remodel,*  
18 *rehabilitation, or upgrade of public buildings, roads, highways,*  
19 *bridges, or other infrastructure* to comply with Chapter 8 of Part  
20 2 of Division 26 of the Health and Safety Code, in the use of  
21 off-road equipment.