

AMENDED IN SENATE MAY 20, 2009
AMENDED IN SENATE APRIL 23, 2009
AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 346

Introduced by Senators Kehoe and Simitian

February 25, 2009

An act to add Article 13.5 (commencing with Section 25250.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 346, as amended, Kehoe. Hazardous materials: motor vehicle brake friction materials.

(1) Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding the management of hazardous waste. Existing law, administered by the department, prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any mercury-containing vehicle light switch from a vehicle, and the regulations adopted by the department. A violation of the hazardous waste control laws is a crime.

This bill would require the department to conduct a baseline survey, on or before January 1, 2013, of the concentration levels of nickel, zinc, copper, and antimony in motor vehicle brake friction materials. The bill would require the department, commencing on January 1, 2013, and at least every 3 years thereafter, to monitor the concentration levels of nickel, zinc, and antimony in motor vehicle brake friction materials

to ensure that those levels do not increase by more than 50% above the baseline levels established through the baseline survey. In that case, the bill would require the department to ask the State Water Resources Control Board or the Office of Environmental Health Hazard Assessment, as specified, to determine whether there is a need for controlling the use of the relevant constituent in brake friction material. If the department determines that there is a demonstrated need for controlling the use of the studied constituents in ~~brake-pads~~ *friction materials*, the bill would require the department to prioritize the presence of those constituents in brake friction materials for regulation, as specified. The bill also would require the department to monitor copper.

The bill, commencing on January 1, 2014, would prohibit the sale of any motor vehicle brake friction materials containing specified constituents, including, but not limited to, cadmium, lead, and mercury, in amounts that exceed certain concentrations. The bill, commencing on January 1, 2021, would restrict the concentration of copper in motor vehicle brake friction materials sold in California, as specified. The bill, commencing on January 1, 2014, would require all manufacturers of friction materials used in brakes on new motor vehicles, or as replacement parts, that are sold in this state to obtain a certification of compliance with these requirements from a 3rd party testing agency, and to mark proof of certification on the friction materials. The bill would require the department to enforce these provisions, and would require the department to remove from sale any replacement ~~brake-pads~~ *with* friction materials determined to be not in compliance. A violation of these provisions would be subject to a civil fine of up to \$10,000 per violation. Because a violation of these provisions would also be a crime pursuant to the hazardous waste control laws, the bill would impose a state-mandated local program.

The bill would require the department, commencing on January 1, 2011, to impose a fee of \$1 on each new axle-~~brake~~ *friction materials* set sold in the state, whether fitted to a new vehicle or sold separately, and would ~~authorize~~ *require* the department, commencing on January 1, ~~2015~~ *2012*, and ~~after consulting interested parties every year thereafter~~, to adjust the fee to a level sufficient to ~~fully implement these provisions~~ *by an amount necessary to compensate for inflation. If the department determines, after January 1, 2016, that the average annual revenue from the fee is less than an amount equivalent to \$13,000,000 in 2011 dollars, or more than an amount equivalent to \$16,000,000 in 2011 dollars, the bill would require the department to adjust the fee to*

an amount necessary to fall within that range. The bill would establish the Brake Friction Materials Water Pollution Fund in the State Treasury, for deposit of the fee. The bill would require the fee to be used to cover specified costs related to copper and other constituents in brake friction materials, and for grants for the purpose of planning, implementing, and measuring the effectiveness of actions to improve water quality in surface waters that receive runoff containing pollutants for vehicle brake friction materials.

The bill would require the department to keep accurate books, records, and accounts of all of its dealings under the bill, and would subject those books, records, and accounts, and amounts paid into or from the fund, to an annual audit.

(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:

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

3 (a) Friction materials are an essential component of motor
4 vehicle brake systems and of critical importance to transportation
5 safety and the public safety in general.

6 (b) Debris from friction materials *containing copper* are
7 generated and released to the surrounding environment in the
8 course of normal brake system operation.

9 ~~(c) Brake friction materials on motor vehicles are known to
10 contain constituents, including copper, that have been proven to
11 be harmful when found in significant quantities in the environment,
12 and are regulated as part of a system of laws and regulations
13 intended to prevent pollution and preserve the environment.~~

14 ~~(d) Limits on the harmful constituents in brake friction materials
15 are necessary to protect and enhance California's environment.~~

16 (e)

17 (c) Limits on the copper content of brake friction materials are
18 necessary for compliance with copper water quality standards and

1 successful implementation of copper total maximum daily loads
2 in California's urban watersheds.

3 ~~(f)~~

4 ~~(d) Changes in the composition of brake friction materials made~~
5 ~~to protect and enhance California's environment~~ *comply with*
6 *copper water quality standards and successfully implement copper*
7 *total maximum daily loads in California's urban watersheds* should
8 meet all applicable safety standards.

9 ~~(g) Manufacturers of brake friction materials should use due~~
10 ~~diligence to ensure that formulations that replace copper in brake~~
11 ~~friction materials are less harmful to public health and the~~
12 ~~environment.~~

13 SEC. 2. Article 13.5 (commencing with Section 25250.50) is
14 added to Chapter 6.5 of Division 20 of the Health and Safety Code,
15 to read:

16

17 Article 13.5. Motor Vehicle Brake Friction Materials

18

19 25250.50. For purposes of this article, the following definitions
20 apply:

21 (a) "Board" means the State Water Resources Control Board.

22 (b) "Department" means the Department of Toxic Substances
23 Control.

24 (c) "Motor Vehicle" has the same meaning as "vehicle" is
25 defined in Section 670 of the Vehicle Code.

26 (d) "Testing agency" means an agency approved by the
27 department as qualified and equipped for the testing of products,
28 materials, equipment, and installations in accordance with
29 nationally recognized standards.

30 25250.52. (a) On and after January 1, 2021, any motor vehicle
31 brake friction materials exceeding 5 percent copper by weight shall
32 not be sold in this state.

33 (b) On and after January 1, 2032, any motor vehicle brake
34 friction materials exceeding 0.5 percent copper by weight shall
35 not be sold in this state.

36 (c) Manufacturers of vehicles and vehicle brake friction
37 materials shall monitor and provide two reports to the department
38 on the reduction of the concentration level of copper in motor
39 vehicle brake friction materials. The first report shall be due on or

1 before January 1, 2016, and the second report shall be due on or
2 before January 1, 2018.

3 25250.54. On and after January 1, 2014, any motor vehicle
4 brake friction materials containing any of the following constituents
5 in an amount that exceeds the following concentrations shall not
6 be sold in this state:

7 (a) Cadmium and its compounds: 0.01 percent by weight.

8 (b) Chromium(VI)-salts: 0.1 percent by weight.

9 (c) Lead and its compounds: 0.1 percent by weight.

10 (d) Mercury and its compounds: 0.1 percent by weight.

11 (e) Asbestiform fibers: 0.1 percent by weight.

12 25250.56. (a) On or before January 1, 2013, the department
13 shall conduct a baseline survey of the concentration levels of
14 nickel, zinc, copper, and antimony in motor vehicle brake friction
15 materials. Commencing on January 1, 2013, and at least every
16 three years thereafter, the department shall monitor the following
17 constituents to ensure that concentration levels of those constituents
18 in motor vehicle brake friction materials do not increase by more
19 than 50 percent above the baseline levels established through the
20 baseline survey:

21 (1) Nickel and its compounds.

22 (2) Zinc and its compounds.

23 (3) Antimony and its compounds.

24 (b) In the monitoring required by subdivision (a), the department
25 also shall monitor copper.

26 (c) If monitoring results for zinc show that concentration levels
27 have increased by more than 50 percent above the baseline levels,
28 the department shall ask the board to use published data from
29 scientific literature to estimate the relative contribution of zinc
30 from brake friction materials to the total quantity of zinc in urban
31 runoff. On the basis of this estimate, the board shall determine
32 whether there is a need for controlling the use of zinc in brake
33 friction material.

34 (d) If monitoring results for nickel show that concentration
35 levels have increased by more than 50 percent above the baseline
36 levels, the department shall ask the board to use published data
37 from scientific literature to estimate the relative contribution of
38 nickel from brake friction materials to the total quantity of nickel
39 in urban runoff. On the basis of this estimate, the list adopted as
40 required by Section 303(d) of the federal Clean Water Act (33

1 U.S.C. Sec. 1313(d)), and available water quality monitoring data,
2 the board shall determine whether there is a need for controlling
3 the use of nickel in brake friction material.

4 (e) If monitoring results for antimony show that concentration
5 levels have increased by more than 50 percent above the baseline
6 levels, the department shall ask the Office of Environmental Health
7 Hazard Assessment to review scientific literature to determine
8 whether there is a need for controlling the use of antimony in brake
9 friction material.

10 (f) All studies and surveys conducted by the department under
11 this section shall be subject to public review and comment.

12 (g) If the department determines that the scientific studies
13 demonstrate the need for controlling the use of the studied
14 constituents in brake ~~pads~~ *friction materials*, the department shall
15 prioritize the presence of the studied constituents in brake friction
16 materials for regulation pursuant to Section 25252.

17 (h) Vehicle brake manufacturers shall follow an alternative
18 evaluation process, for the studied constituents in brake ~~pads~~
19 *friction materials*, adopted by the department pursuant to Section
20 25253.

21 25250.58. The following motor vehicle classes and brakes are
22 exempt from this article:

23 (a) Military combat vehicles.

24 (b) Vehicles employing internal closed oil immersed brakes, or
25 a similar brake system that is fully contained and emits no copper,
26 other debris, or fluids under normal operating conditions.

27 (c) Brakes designed for the primary purpose of holding the
28 vehicle stationary and not designed to be used while the vehicle
29 is in motion.

30 25250.60. (a) Commencing on January 1, 2014, all
31 manufacturers of friction materials used in brakes on new motor
32 vehicles, or as replacement parts, that are sold in this state shall
33 obtain a certification of compliance with the requirements of
34 Section 25250.54 from a third-party testing agency. Proof of
35 certification shall be marked on the friction materials.

36 (b) Commencing on January 1, 2021, and until December 31,
37 2031, all manufacturers of friction materials used in brakes on new
38 motor vehicles, or as replacement parts, that are sold in this state
39 shall obtain a certification of compliance with the requirements of
40 subdivision (a) of Section 25250.52 and Section 25250.54 from a

1 third-party testing agency. Proof of certification shall be marked
2 on the friction materials.

3 (c) Commencing on January 1, 2032, all manufacturers of
4 friction materials used in brakes on new motor vehicles, or as
5 replacement parts, that are sold in this state shall obtain certification
6 of compliance with the requirements of subdivision (b) of Section
7 25250.52 and Section 25250.54 from a third-party testing agency.
8 Proof of certification shall be marked on the friction materials.

9 (d) Manufacturers of friction materials used for brakes on new
10 motor vehicles, or as replacement parts, may obtain certification
11 of compliance with the requirements of subdivision (a) or (b) of
12 Section 25250.52 or Section 25250.54 at any time.

13 (e) The department, in consultation with all interested parties,
14 and on or before January 1, 2011, shall develop all certification
15 and marking criteria required pursuant to this section.

16 (f) Commencing on January 1, 2014, vehicle manufacturers and
17 retailers of friction materials shall ensure that only brakes certified
18 for sale in this state are offered for sale in this state.

19 25250.62. (a) A violation of this article, including, but not
20 limited to, the falsification of third-party certification, by vehicle
21 manufacturers, ~~brake-pads~~ *friction materials* manufacturers,
22 distributors, or retailers, shall be subject to a civil fine of up to ten
23 thousand dollars (\$10,000) per violation.

24 (b) The department shall enforce this article. The department
25 shall remove from sale in this state any replacement brake-pads
26 ~~with~~ friction materials determined to be not in compliance with
27 this article.

28 (c) In enforcing this article, the department shall not recall
29 automobiles fitted with brake-pads *friction materials* that do not
30 comply with this article, but the department may impose fines and
31 penalties authorized pursuant to subdivision (a) on automobile
32 manufacturers whose vehicles are fitted with brake-pads *friction*
33 *materials* that do not comply with this article.

34 25250.64. (a) (1) Commencing on January 1, 2011, the
35 department shall impose a fee of one dollar (\$1) on each new axle
36 ~~brake~~ *friction materials* set sold in the state, whether fitted to a
37 new vehicle or sold separately.

38 ~~(2) Commencing on January 1, 2015, and after consulting~~
39 ~~interested parties, the department may adjust the fee on each new~~

1 ~~axle brake set sold in this state, whether fitted to a new vehicle or~~
2 ~~sold separately, to a level sufficient to fully implement this article.~~

3 (2) *Commencing on January 1, 2012, and every year thereafter,*
4 *the department shall adjust the fee on each new axle friction*
5 *materials set sold in the state, whether fitted to a new vehicle or*
6 *sold separately, by the amount necessary to compensate for*
7 *inflation.*

8 (3) *Commencing on January 1, 2016, and every two years*
9 *thereafter, the department shall calculate the average annual*
10 *revenue amount raised by the fee based on the previous four years'*
11 *revenues.*

12 (4) *If the department determines that the average annual revenue*
13 *amount calculated pursuant to paragraph (3) is less than an*
14 *amount equivalent to thirteen million dollars (\$13,000,000) in*
15 *2011 dollars, or more than an amount equivalent to sixteen million*
16 *dollars (\$16,000,000) in 2011 dollars, it shall, pursuant to*
17 *procedures established by regulation, adjust the fee by the amount*
18 *necessary to provide revenue of at least the equivalent of thirteen*
19 *million dollars (\$13,000,000) in 2011 dollars but no more than*
20 *the equivalent of sixteen million dollars (\$16,000,000) in 2011*
21 *dollars.*

22 (5) *On January 1, 2040, the department shall, pursuant to*
23 *procedures established by regulation, reduce the fee to the amount*
24 *necessary solely to provide sufficient revenue for the*
25 *implementation of this article by the department and the board*
26 *pursuant to paragraph (1) of subdivision (b) of Section 25250.65.*

27 (b) *The fee shall only be used to cover costs for outreach,*
28 *administration, fee collection, enforcement, monitoring, mitigation,*
29 *and control measures related to copper and other constituents in*
30 *brake friction materials, and for making grants pursuant to Section*
31 *25250.65.*

32 (c) *Not more than 5 percent of the fees collected pursuant to*
33 *this section shall be used to offset accounting costs incurred for*
34 *fee collection.*

35 (d) *Funds for outreach may be allocated by the department to*
36 *trade associations associated with the manufacture and sale of*
37 *brake friction materials for purposes of outreach to, and education*
38 *of, their memberships.*

39 (e) *The department shall consult with the board prior to*
40 *allocating funds to, or implementing any provisions of this article*

1 relating to, motor vehicle brake friction materials constituent
2 monitoring, mitigation, or control measures.

3 25250.65. (a) *The Brake Friction Materials Water Pollution*
4 *Fund is hereby established in the State Treasury. All fees collected*
5 *by the department pursuant to this article shall be deposited in the*
6 *fund.*

7 (b) *The moneys in the fund shall be expended, upon*
8 *appropriation by the Legislature in the annual Budget Act, in the*
9 *manner and in the order of priority as follows:*

10 (1) *By the department and the board for the purpose of*
11 *implementing this article. No more than 5 percent of the funds*
12 *shall be expended by the department and the board to reimburse*
13 *the costs of administering paragraphs (2) and (3).*

14 (2) (A) *By the department, 90 percent of the balance of moneys*
15 *remaining in the fund after moneys have been expended pursuant*
16 *to paragraph (1), for grants to qualified entities, on a per capita*
17 *basis, for the purpose of planning, implementing, and measuring*
18 *the effectiveness of actions to improve water quality in surface*
19 *waters that receive runoff containing pollutants from vehicle brake*
20 *friction materials.*

21 (B) *For purposes of subparagraph (A), “qualified entities”*
22 *include cities, counties, cities and counties, organizations*
23 *representing municipalities on a watershed basis, and*
24 *organizations representing copermittees in a single National*
25 *Pollutant Discharge Elimination System permit.*

26 (C) *The amount for which a city or a county is eligible shall be*
27 *based on the total population of the incorporated area of the city*
28 *or the total unincorporated area of the county, whichever is*
29 *applicable.*

30 (3) (A) *By the department, the remaining 10 percent of the*
31 *moneys in the fund, plus any moneys reserved for grants pursuant*
32 *to subparagraph (A) of paragraph (2) that have not been allocated,*
33 *for grants to be issued on a competitive basis for the purpose of*
34 *planning, implementing, and measuring the effectiveness of actions*
35 *on a regional or statewide basis to improve water quality in surface*
36 *waters that receive runoff containing pollutants from vehicle brake*
37 *friction materials.*

38 (B) *Eligible applicants for competitive grants include, but are*
39 *not limited to, qualified entities, as defined in subparagraph (B)*
40 *of paragraph (2), and nonprofit organizations.*

1 (c) The department, in consultation with the board, shall prepare
2 and adopt guidelines for the awarding and administration of grants
3 awarded from the fund.

4 (d) The revenue from the Brake Friction Materials Water
5 Pollution Fund allocated for the purposes stated in paragraphs
6 (2) and (3) of subdivision (b) shall not be expended on activities
7 unrelated to the improvement of water quality in surface waters
8 that receive runoff containing pollutants from vehicle brake friction
9 materials, consistent with *Sinclair Paint Co. v. State Bd. of*
10 *Equalization* (1997) 15 Cal.4th 866.

11 (e) The department shall keep accurate books, records, and
12 accounts of all of its dealings, and these books, records, and
13 accounts, and any amounts paid into or from the fund, are subject
14 to an annual audit by an auditing firm selected by the department.
15 The annual audit shall be posted on the department’s Internet Web
16 site. The auditing firm or the department shall also conduct a
17 selective audit of entities making payments to, or receiving
18 payments from, the board to determine whether payments required
19 by Section 25250.64 are being paid to the department on all new
20 axle friction materials sets sold in California, and that grants are
21 being paid out properly by the department.

22 SEC. 3. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

O