

AMENDED IN SENATE JUNE 1, 2009  
AMENDED IN SENATE MAY 20, 2009  
AMENDED IN SENATE APRIL 23, 2009  
AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 346**

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**Introduced by Senators Kehoe and Simitian**

February 25, 2009

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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 *those metals* 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~~ *The bill would require the department to take specified acting if any of those metals increased by more than 50%, and 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 friction materials, the bill would require the department to prioritize the presence of those constituents in brake friction materials for regulation, as specified. The*

*The bill also would require the department to monitor copper. The bill would require manufacturer of motor vehicle brake friction materials to monitor and report to the department on the reduction of copper concentration in motor vehicle brake friction material. The bill would require the department to review the reports and, within 6 months of receipt, report certain information to the Legislature.*

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 *motor vehicle brake* 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~~ *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 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 friction materials set sold in the state, whether fitted to a new vehicle or sold separately, and would

require the department, commencing on January 1, 2012, ~~and every year thereafter~~, to adjust *annually* the fee 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~~ *from* 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) Limits on the copper content of brake friction materials are
- 10 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 (d) Changes in the composition of brake friction materials made  
4 to comply with copper water quality standards and successfully  
5 implement copper total maximum daily loads in California’s urban  
6 watersheds should meet all applicable safety standards.

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

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11 Article 13.5. Motor Vehicle Brake Friction Materials

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13 25250.50. For purposes of this article, the following definitions  
14 apply:

15 (a) “Board” means the State Water Resources Control Board.

16 (b) “Department” means the Department of Toxic Substances  
17 Control.

18 (c) “Motor Vehicle” has the same meaning as “vehicle” is  
19 defined in Section 670 of the Vehicle Code.

20 (d) “Testing agency” means an agency approved by the  
21 department as qualified and equipped for the testing of products,  
22 materials, equipment, and installations in accordance with  
23 nationally recognized standards.

24 25250.52. (a) On and after January 1, 2021, any motor vehicle  
25 brake friction materials exceeding 5 percent copper by weight shall  
26 not be sold in this state.

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

30 (c) Manufacturers of vehicles and vehicle brake friction  
31 materials shall monitor and provide ~~two~~ *four* reports to the  
32 department on the reduction of the concentration level of copper  
33 in motor vehicle brake friction materials. The first report shall be  
34 due on or before January 1, 2016, ~~and~~ the second report shall be  
35 due on or before January 1, 2018, *the third report shall be due on*  
36 *or before January 1, 2027, and the fourth report shall be due on*  
37 *or before January 1, 2029.*

38 (d) *The department shall review the reports received pursuant*  
39 *to subdivision (c) and provide the Legislature with reports pursuant*

1 to subdivision (e) no later than six months after receiving each  
2 report required pursuant to subdivision (c).

3 (e) The reports made by the department to the Legislature shall  
4 include, but not be limited to, all of the following:

5 (1) A summary of the information contained in the reports  
6 received pursuant to subdivision (c).

7 (2) Statistics on certifications issued by third-party testing  
8 agencies for friction materials found to be in compliance with any  
9 or all of the requirements of this article pursuant to Section  
10 25250.60.

11 (3) A summary of the results of the department's monitoring of  
12 copper pursuant to Section 25250.56.

13 25250.54. On and after January 1, 2014, any motor vehicle  
14 brake friction materials containing any of the following constituents  
15 in an amount that exceeds the following concentrations shall not  
16 be sold in this state:

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

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

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

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

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

22 25250.56. (a) On or before January 1, 2013, the department  
23 shall conduct a baseline survey of the concentration levels of  
24 nickel, zinc, copper, and antimony in motor vehicle brake friction  
25 materials. Commencing on January 1, 2013, and at least every  
26 three years thereafter, the department shall monitor the following  
27 constituents to ensure that concentration levels of those constituents  
28 in motor vehicle brake friction materials do not increase by more  
29 than 50 percent above the baseline levels established through the  
30 baseline survey:

31 (1) Nickel and its compounds.

32 (2) Zinc and its compounds.

33 (3) Antimony and its compounds.

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

36 (c) If monitoring results for zinc show that concentration levels  
37 have increased by more than 50 percent above the baseline levels,  
38 the department shall ask the board to use published data from  
39 scientific literature to estimate the relative contribution of zinc  
40 from brake friction materials to the total quantity of zinc in urban

1 runoff. On the basis of this estimate, the board shall determine  
2 whether there is a need for controlling the use of zinc in brake  
3 friction material.

4 (d) If monitoring results for nickel show that concentration  
5 levels have increased by more than 50 percent above the baseline  
6 levels, the department shall ask the board to use published data  
7 from scientific literature to estimate the relative contribution of  
8 nickel from brake friction materials to the total quantity of nickel  
9 in urban runoff. On the basis of this estimate, the list adopted as  
10 required by Section 303(d) of the federal Clean Water Act (33  
11 U.S.C. Sec. 1313(d)), and available water quality monitoring data,  
12 the board shall determine whether there is a need for controlling  
13 the use of nickel in brake friction material.

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

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

22 (g) If the department determines that the scientific studies  
23 demonstrate the need for controlling the use of the studied  
24 constituents in brake friction materials, the department shall  
25 prioritize the presence of the studied constituents in brake friction  
26 materials for regulation pursuant to Section 25252.

27 (h) Vehicle brake manufacturers shall follow an alternative  
28 evaluation process, for the studied constituents in brake friction  
29 materials, adopted by the department pursuant to Section 25253.

30 25250.58. The following motor vehicle classes and brakes are  
31 exempt from this article:

32 (a) Military combat vehicles.

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

36 (c) Brakes designed for the primary purpose of holding the  
37 vehicle stationary and not designed to be used while the vehicle  
38 is in motion.

39 25250.60. (a) Commencing on January 1, 2014, all  
40 manufacturers of friction materials used in brakes on new motor

1 vehicles, or as replacement parts, that are sold in this state shall  
2 obtain a certification of compliance with the requirements of  
3 Section 25250.54 from a third-party testing agency. Proof of  
4 certification shall be marked on the friction materials.

5 (b) Commencing on January 1, 2021, and until December 31,  
6 2031, all manufacturers of friction materials used in brakes on new  
7 motor vehicles, or as replacement parts, that are sold in this state  
8 shall obtain a certification of compliance with the requirements of  
9 subdivision (a) of Section 25250.52 and Section 25250.54 from a  
10 third-party testing agency. Proof of certification shall be marked  
11 on the friction materials.

12 (c) Commencing on January 1, 2032, all manufacturers of  
13 friction materials used in brakes on new motor vehicles, or as  
14 replacement parts, that are sold in this state shall obtain certification  
15 of compliance with the requirements of subdivision (b) of Section  
16 25250.52 and Section 25250.54 from a third-party testing agency.  
17 Proof of certification shall be marked on the friction materials.

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

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

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

28 25250.62. (a) A violation of this article, including, but not  
29 limited to, the falsification of third-party certification, by vehicle  
30 manufacturers, brake friction materials manufacturers, distributors,  
31 or retailers, shall be subject to a civil fine of up to ten thousand  
32 dollars (\$10,000) per violation.

33 (b) The department shall enforce this article. The department  
34 shall remove from sale in this state any replacement brake friction  
35 materials determined to be not in compliance with this article.

36 (c) In enforcing this article, the department shall not recall  
37 automobiles fitted with brake friction materials that do not comply  
38 with this article, but the department may impose fines and penalties  
39 authorized pursuant to subdivision (a) on automobile manufacturers

1 whose vehicles are fitted with brake friction materials that do not  
2 comply with this article.

3 25250.64. (a) (1) Commencing on January 1, 2011, the  
4 department shall impose a fee of one dollar (\$1) on each new axle  
5 friction materials set sold in the state, whether fitted to a new  
6 vehicle or sold separately.

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

12 (3) Commencing on January 1, 2016, and every two years  
13 thereafter, the department shall calculate the average annual  
14 revenue amount raised by the fee based on the previous four years'  
15 revenues.

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

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

30 (b) The fee shall only be used to cover costs for outreach,  
31 administration, fee collection, enforcement, monitoring, ~~mitigation,~~  
32 and control measures related to copper and other constituents in  
33 brake friction materials, and for making grants pursuant to Section  
34 25250.65.

35 (c) Not more than 5 percent of the fees collected pursuant to  
36 this section shall be used to offset accounting costs incurred for  
37 fee collection.

38 (d) Funds for outreach may be allocated by the department to  
39 trade associations associated with the manufacture and sale of

1 brake friction materials for purposes of outreach to, and education  
2 of, their memberships.

3 (e) The department shall consult with the board prior to  
4 allocating funds to, or implementing any provisions of this article  
5 relating to, motor vehicle brake friction materials constituent  
6 monitoring, mitigation, or control measures.

7 25250.65. (a) The Brake Friction Materials Water Pollution  
8 Fund is hereby established in the State Treasury. All fees collected  
9 by the department pursuant to this article shall be deposited in the  
10 fund.

11 (b) The moneys in the fund shall be expended, upon  
12 appropriation by the Legislature in the annual Budget Act, in the  
13 manner and in the order of priority as follows:

14 (1) By the department and the board for the purpose of  
15 implementing this article. No more than 5 percent of the funds  
16 shall be expended by the department and the board to reimburse  
17 the costs of administering paragraphs (2) and (3).

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

25 (B) For purposes of subparagraph (A), “qualified entities”  
26 include cities, counties, cities and counties, organizations  
27 representing municipalities on a watershed basis, and organizations  
28 representing copermittees in a single National Pollutant Discharge  
29 Elimination System permit.

30 (C) The amount for which a city or a county is eligible shall be  
31 based on the total population of the incorporated area of the city  
32 or the total unincorporated area of the county, whichever is  
33 applicable.

34 (3) (A) By the department, the remaining 10 percent of the  
35 moneys in the fund, plus any moneys reserved for grants pursuant  
36 to subparagraph (A) of paragraph (2) that have not been allocated,  
37 for grants to be issued on a competitive basis for the purpose of  
38 planning, implementing, and measuring the effectiveness of actions  
39 on a regional or statewide basis to improve water quality in surface

1 waters that receive runoff containing pollutants from vehicle brake  
2 friction materials.

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

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

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

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

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

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