

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN ASSEMBLY JUNE 13, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 724

**Introduced by Senator Dutton
(Coauthors: Senators Cannella, Correa, Huff, Rubio, and
Strickland)**

February 18, 2011

An act to amend Section 39619.7 of, and to add Sections 43103 and 43103.5 to, add Section 43103 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 724, as amended, Dutton. State Air Resources Board: ~~penalties:~~ mobile source certification.

~~(1) Existing~~

Existing law grants to the State Air Resources Board the primary authority for the control of air pollution from vehicular sources. The state board tests and certifies new motor vehicle models for compliance with air pollution emissions standards developed by the state board.

~~This bill would require an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family to be approved or disapproved pursuant to specified requirements. The bill would authorize the state board to approve an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family for any model year that has been certified by the federal Environmental Protection~~

Agency without requiring the applicant to submit to additional testing prior to certification, if specified requirements are met.

The bill would require the state board to create a separate, short form certification application template for a 2014 model year and later carryover vehicle, equipment, or engine family and for a 2014 model year and later partial carryover vehicle, equipment, or engine family. The bill would require these application forms to contain a section for the applicant to certify, under penalty of perjury, specified information. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

(2) Existing law requires a written communication from the state board alleging that an administrative or civil penalty will be, or could be, imposed either by the state board or another party, including the Attorney General, for a violation of air pollution law, to contain specified information.

This bill would require these communications from the state board to contain a clear explanation of specified information relating to potential penalties, and would require the state board to provide in writing, within 7 calendar days after specified oral communications, a clear explanation of the same information. The bill would require a final settlement agreement to contain specified information. The bill would authorize an alleged violator to request, at any time during settlement negotiations, a written explanation from the state board about its position on an alleged violation and penalty, and would require the state board to respond to the request within 7 calendar days after the request.

(3) 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.

This bill would require the state board, within 30 working days after receipt of an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family, as defined, to inform the applicant, in writing, either that the application is complete and accepted for filing, or that the application is deficient, identifying the specific information required to make the application complete.

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

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

1 ~~SECTION 1. Section 39619.7 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 ~~39619.7. (a) (1) A written communication from the state board~~
4 ~~alleging that an administrative or civil penalty will be, or could~~
5 ~~be, imposed either by the state board or another party, including~~
6 ~~the Attorney General, for a violation of air pollution law, shall~~
7 ~~contain a clear explanation of all of the following:~~

8 ~~(A) The provision of law or regulations under which the alleged~~
9 ~~violation is being assessed the administrative or civil penalty,~~
10 ~~including the reason that provision is most appropriate for that~~
11 ~~violation.~~

12 ~~(B) The minimum and maximum penalty that could be levied~~
13 ~~on the alleged violator, including on a per unit or per vehicle basis~~
14 ~~where applicable, and an explanation of the factors that could~~
15 ~~mitigate the penalty amount, including the factors described in~~
16 ~~Section 43024.~~

17 ~~(C) (i) Whether the administrative or civil penalty is being~~
18 ~~assessed under a provision of law that prohibits the emission of~~
19 ~~pollution at a specified level and, if so, a quantification of the~~
20 ~~specific amount of pollution emitted in excess of that level, where~~
21 ~~practicable. This quantification may be based on estimates or~~
22 ~~emission factors.~~

23 ~~(ii) If the state board does not calculate the pollution emitted in~~
24 ~~excess of that level, the state board shall allow the alleged violator~~
25 ~~to provide this information, and inform the alleged violator that~~
26 ~~the alleged violator may provide this information.~~

27 ~~(2) If an oral communication is made by the state board alleging~~
28 ~~that an administrative or civil penalty will be, or could be, imposed~~
29 ~~either by the state board or another party, including the Attorney~~
30 ~~General, for a violation of air pollution law, the state board shall~~
31 ~~provide in writing, within seven calendar days after the oral~~
32 ~~communication, a clear explanation of the information required~~
33 ~~by paragraph (1).~~

34 ~~(b) A final settlement agreement shall contain a clear explanation~~
35 ~~of all of the following:~~

36 ~~(1) The manner in which the administrative or civil penalty~~
37 ~~amount was determined, including the aggravating and mitigating~~
38 ~~factors the state board considered in arriving at the amount,~~

1 including a statement informing the alleged violator which of the
2 factors described in Section 43024 increased or decreased the
3 penalty amount, and, where applicable, the per unit or per vehicle
4 basis for the penalty.

5 (2) ~~The provision of law or regulations under which the alleged~~
6 ~~violator is being assessed the administrative or civil penalty,~~
7 ~~including the reason that provision is most appropriate for that~~
8 ~~violation.~~

9 (3) ~~Whether the administrative or civil penalty is being assessed~~
10 ~~under a provision of law that prohibits the emission of pollution~~
11 ~~at a specified level, and if so, a quantification of the specific~~
12 ~~amount of pollution emitted in excess of that level, where~~
13 ~~practicable. This quantification may be based on estimates or~~
14 ~~emission factors. If the quantification of emissions was not~~
15 ~~practicable, the state board shall explain how the penalty assessed~~
16 ~~correlates with the severity of the violation, including the potential~~
17 ~~harm or lack of harm to California's air quality, and how the~~
18 ~~assessed penalty is consistent with penalties imposed for similar~~
19 ~~violations.~~

20 (e) ~~The information described in this section and all final mutual~~
21 ~~settlement agreements reached between the state board and a person~~
22 ~~alleged to have violated air pollution laws shall be made available~~
23 ~~to the public.~~

24 (d) ~~An alleged violator may request, at any time during~~
25 ~~settlement negotiations, a written explanation from the state board~~
26 ~~about its position on an alleged violation and penalty. The state~~
27 ~~board shall respond to the request within seven calendar days after~~
28 ~~the request.~~

29 ~~SEC. 2.~~

30 *SECTION 1.* Section 43103 is added to the Health and Safety
31 Code, to read:

32 43103. (a) As used in this section ~~and in Section 43103.5~~, the
33 following terms have the following meanings:

34 (1) "Carryover vehicle, engine, or equipment family" means an
35 on-road or off-road vehicle, engine, or equipment family whose
36 application for certification differs from the vehicle, engine, or
37 equipment family certified in the previous model year in
38 model-year designation only.

39 (2) "Certification" has the same meaning as in Section 39018,
40 except "certification" does not include the certification of

1 aftermarket parts or onboard diagnostic systems or equipment or
2 the verification of retrofit devices for on-road or off-road
3 heavy-duty diesel vehicles.

4 (3) “Partial carryover vehicle, engine, or equipment family”
5 means an on-road or off-road vehicle, engine, or equipment family
6 that is certified to the same emission standards and the same
7 certification category as the prior certified model year, if there has
8 been no change to the applicable emission standard and
9 requirements, including, but not limited to, durability and warranty
10 requirements, and no change in emissions performance from
11 changes to emission-related components, engine configurations,
12 calibrations, or designs, as determined by the state board. The state
13 board may adopt regulations that further define “partial carryover
14 vehicle, engine, or equipment family” for different types of
15 vehicles, engines, or equipment families.

16 (4) “Working day” means any day that is not a Saturday,
17 Sunday, or state-recognized holiday as provided in Sections 6700
18 and 6701 of the Government Code.

19 (b) ~~(1)~~ Within 30 working days after receipt of an application
20 for certification of a new, a carryover, or a partial carryover on-road
21 or off-road vehicle, engine, or equipment family, the state board
22 shall inform the applicant, in writing, either: (A) that the application
23 is complete and accepted for filing, or (B) that the application is
24 deficient, identifying the specific information required to make
25 the application complete.

26 ~~(2) Within 15 working days after receipt of additional~~
27 ~~information provided in response to a determination by the state~~
28 ~~board that an application for certification of a new, a carryover,~~
29 ~~or a partial carryover on-road or off-road vehicle, engine, or~~
30 ~~equipment family, is deficient, the state board shall inform the~~
31 ~~applicant, in writing, either: (A) that the new information is~~
32 ~~sufficient to make the application complete and that the application~~
33 ~~is accepted for filing, or (B) that the application is deficient,~~
34 ~~identifying the specific information required to make the~~
35 ~~application complete.~~

36 ~~(3) (A) Within 90 calendar days after an application for~~
37 ~~certification of a new on-road or off-road vehicle, engine, or~~
38 ~~equipment family is complete and accepted for filing, the state~~
39 ~~board shall approve or disapprove the application.~~

1 ~~(B) If the application for certification is for a carryover vehicle,~~
2 ~~engine, or equipment family, the state board shall approve or~~
3 ~~disapprove the application within 30 calendar days after it deems~~
4 ~~an application is complete and accepted for filing.~~

5 ~~(C) If the application for certification is for a partial carryover~~
6 ~~vehicle, engine, or equipment family, the state board shall approve~~
7 ~~or disapprove the application within 60 calendar days after the~~
8 ~~application is complete and accepted for filing.~~

9 ~~(e) The state board may, in the course of processing the~~
10 ~~application, request the applicant to clarify, amplify, correct, or~~
11 ~~otherwise supplement the information required for the application.~~
12 ~~If the state board determines that more information is needed after~~
13 ~~the application has been deemed complete, the state board shall~~
14 ~~notify the applicant and identify the specific information required.~~
15 ~~The number of days the applicant takes to respond to the state~~
16 ~~board with the requested information shall not be included in the~~
17 ~~deadlines specified in paragraph (3) of subdivision (b).~~

18 ~~(d) (1) If an applicant believes that the state board has not met~~
19 ~~the requirements of subdivision (b), it may file, in writing, a~~
20 ~~complaint with the ombudsman of the state board describing the~~
21 ~~alleged failure of the state board to meet those requirements.~~

22 ~~(2) Within 30 days of receiving a complaint from an applicant~~
23 ~~pursuant to paragraph (1), the ombudsman shall determine whether~~
24 ~~the requirements of subdivision (b) have or have not been met. If~~
25 ~~the requirements have not been met and the application is complete~~
26 ~~and accepted for filing, the ombudsman shall notify the executive~~
27 ~~officer and the executive officer shall ensure that action to approve~~
28 ~~or disapprove the application takes place within 30 days of~~
29 ~~determining that the requirements have not been met.~~

30 ~~(e) (1) If an application for certification was filed prior to~~
31 ~~January 1, 2012, for a new, carryover, or partial carryover on-road~~
32 ~~or off-road vehicle, engine, or equipment family and the vehicle,~~
33 ~~engine, or equipment family is for the 2012 model year, the state~~
34 ~~board shall notify the applicant whether the application is complete~~
35 ~~within 30 working days of January 1, 2012, and shall approve or~~
36 ~~disapprove the application within 90 calendar days of the date the~~
37 ~~application was deemed complete and accepted for filing.~~

38 ~~(2) If an application for certification was filed prior to January~~
39 ~~1, 2012, for a new, carryover, or partial carryover on-road or~~
40 ~~off-road vehicle, engine, or equipment family and the vehicle,~~

1 engine, or equipment family was for the 2011 model year or earlier,
2 the state board may disapprove the application. If the state board
3 disapproves an application, the state board shall notify the applicant
4 in writing of that fact.

5 (f) (1) By July 1, 2012, the state board shall create a separate,
6 short form certification application template for a 2014 model year
7 and later carryover vehicle, equipment, or engine family that shall
8 include, but is not limited to, both of the following:

9 (A) A conspicuously located section for the applicant to indicate
10 that the application is being submitted for a carryover vehicle,
11 equipment, or engine family.

12 (B) A conspicuously located section for the applicant to certify,
13 under penalty of perjury, that there are no changes in the vehicle,
14 equipment, or engine family from the prior certified model year.

15 (2) The state board may request the applicant to provide
16 additional information as needed to complete its review of an
17 application.

18 (g) (1) By July 1, 2012, the state board shall create a separate,
19 short form certification application template for a 2014 model year
20 and later partial carryover vehicle, equipment, or engine family
21 that shall include, but is not limited to, all of the following:

22 (A) A conspicuously located section for the applicant to indicate
23 that the application is being submitted for a partial carryover
24 vehicle, equipment, or engine family.

25 (B) A conspicuously located section for the applicant to certify,
26 under penalty of perjury, that any change in an emissions-related
27 component part has not resulted in an increase in emissions from
28 the prior certified model year.

29 (C) A conspicuously located section for the applicant to indicate
30 and provide information for any nonmaterial or minor changes
31 from the prior certified model year, such as minor changes to
32 emissions-related component parts that do not adversely affect
33 emissions compliance or performance or otherwise result in
34 increased emissions, including, but not limited to, revised labels
35 or warranty statements, and a short statement explaining the
36 engineering judgment or rationale relied upon by the applicant in
37 making this determination.

38 (2) The state board may request the applicant to provide
39 additional information as needed to complete its review of an
40 application.

1 ~~SEC. 3. Section 43103.5 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~43103.5. (a) The state board may, at its discretion, approve~~
4 ~~an application for certification of a new, a carryover, or a partial~~
5 ~~carryover on-road or off-road vehicle, engine, or equipment family~~
6 ~~for any model year that has been certified by the federal~~
7 ~~Environmental Protection Agency without requiring the applicant~~
8 ~~to submit to additional testing prior to certification, if both of the~~
9 ~~following requirements are met:~~

10 ~~(1) The submitted test data and related information on which~~
11 ~~federal Environmental Protection Agency certification was based~~
12 ~~demonstrate compliance with state emission standards and~~
13 ~~requirements, including, but not limited to, durability and warranty~~
14 ~~requirements.~~

15 ~~(2) The federal standards are as stringent as the state standards.~~

16 ~~(b) The state board may, in the course of processing the~~
17 ~~application, request the applicant to clarify, amplify, correct, or~~
18 ~~otherwise supplement the information required for the application.~~

19 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
20 ~~Section 6 of Article XIII B of the California Constitution because~~
21 ~~the only costs that may be incurred by a local agency or school~~
22 ~~district will be incurred because this act creates a new crime or~~
23 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
24 ~~for a crime or infraction, within the meaning of Section 17556 of~~
25 ~~the Government Code, or changes the definition of a crime within~~
26 ~~the meaning of Section 6 of Article XIII B of the California~~
27 ~~Constitution.~~