

ASSEMBLY BILL

No. 818

Introduced by Assembly Member Blumenfield

February 21, 2013

An act to amend Sections 42403, 42403.5, and 42405 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 818, as introduced, Blumenfield. Air pollution control: penalties.

Existing law designates the State Air Resources Board as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards. Existing law also designates the state board as the state agency with the primary responsibility for the control of vehicular air pollution and air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law requires specified civil penalties be assessed and recovered in a civil action for specified violations to be brought by the Attorney General, by any district attorney, or by the attorney for any air pollution control or air quality management district in which the violation occurs. Existing law requires, if the action for civil penalties resulting from specified violations is brought by a district attorney or by an attorney for a district, the entire amount of the penalty collected be paid to the treasurer of the district on whose behalf judgment was entered.

This bill would require any city attorney of a city having a population in excess of 750,000, any city attorney of a city and county, or a city prosecutor in any city with a full-time city prosecutor, with the consent of the district attorney, to recover specified civil penalties in a civil action for specified violations. The bill would require, if the action for

civil penalties resulting from specified violations is brought by a district attorney, an attorney for a district, a city attorney of a city having a population in excess of 750,000, a city attorney of a city and county, or a city prosecutor in any city with a full-time city prosecutor, with the consent of the district attorney, the entire amount of the penalty collected be paid to the treasurer of the city, county, or city and county in addition to the district on whose behalf judgment was entered.

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

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

1 SECTION 1. Section 42403 of the Health and Safety Code is
2 amended to read:

3 42403. (a) The civil penalties prescribed in Sections 39674,
4 42401, 42402, 42402.1, 42402.2, ~~and 42402.3, and 42402.4~~ shall
5 be assessed and recovered in a civil action brought in the name of
6 the people of the State of California by the Attorney-~~General,~~
7 *General; by any district-~~attorney,~~ attorney; by any city attorney*
8 *of a city having a population in excess of 750,000; by any city*
9 *attorney of a city and county; by a city prosecutor in any city with*
10 *a full-time city prosecutor, with the consent of the district attorney;*
11 *or by the attorney for any district in which the violation occurs in*
12 *any court of competent jurisdiction.*

13 (b) In determining the amount assessed, the court, or in reaching
14 any settlement, the district, shall take into consideration all relevant
15 circumstances, including, but not limited to, the following:

- 16 (1) The extent of harm caused by the violation.
- 17 (2) The nature and persistence of the violation.
- 18 (3) The length of time over which the violation occurs.
- 19 (4) The frequency of past violations.
- 20 (5) The record of maintenance.
- 21 (6) The unproven or innovative nature of the control equipment.
- 22 (7) Any action taken by the defendant, including the nature,
23 extent, and time of response of the cleanup and construction
24 undertaken, to mitigate the violation.
- 25 (8) The financial burden to the defendant.

26 SEC. 2. Section 42403.5 of the Health and Safety Code is
27 amended to read:

1 42403.5. (a) Notwithstanding Section 42407, any violation of
2 Section 41700 resulting from the engine of any diesel-powered
3 bus while idling shall subject the owner to civil penalties assessed
4 under this article, which may be recovered pursuant to Section
5 42403 by the ~~Attorney General~~, *General*; by any district ~~attorney~~,
6 *attorney*; *by any city attorney of a city having a population in*
7 *excess of 750,000; by any city attorney of a city and county; by a*
8 *city prosecutor in any city with a full-time city prosecutor, with*
9 *the consent of the district attorney*; or by the attorney for any
10 district in which the violation occurs in any court of competent
11 jurisdiction.

12 (b) There is no liability under subdivision (a) if the person
13 accused of the violation establishes by affirmative defense that the
14 extent of the harm caused does not exceed the benefit accrued to
15 bus passengers as a result of idling the engine.

16 SEC. 3. Section 42405 of the Health and Safety Code is
17 amended to read:

18 42405. In an action brought pursuant to Section 42403 by the
19 Attorney General on behalf of a district, one-half of the penalty
20 collected shall be paid to the treasurer of the district on whose
21 behalf judgment was entered, and one-half of the penalty collected
22 shall be paid to the ~~State~~ Treasurer for deposit in the General Fund.

23 If the action is brought by the Attorney General on behalf of the
24 state board, the entire penalty collected shall be paid to the ~~State~~
25 Treasurer for deposit in the General Fund.

26 If the action is brought by a district attorney; *by any city attorney*
27 *of a city having a population in excess of 750,000; by any city*
28 *attorney of a city and county; by a city prosecutor in any city with*
29 *a full-time city prosecutor, with the consent of the district attorney*;
30 or by an attorney for a district, the entire amount of the penalty
31 collected shall be paid to the treasurer of the *city, county, city and*
32 *county, or* district on whose behalf judgment was entered.