

**ASSEMBLY BILL**

**No. 335**

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**Introduced by Assembly Member Patterson**  
**(Coauthors: Assembly Members Brough, Chávez, Lackey, Steinorth,**  
**and Waldron)**  
(Coauthor: Senator Anderson)

February 13, 2015

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An act to add Chapter 3 (commencing with Section 39150) to Part 1 of Division 26 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 335, as introduced, Patterson. Air quality: minor violations.

(1) Existing law authorizes the State Air Resources Board and air pollution control and air quality management districts to enforce air quality laws.

This bill would require the State Air Resources Board and air pollution control and air quality management districts to adopt regulations classifying minor violations. The bill would define the term “notice to comply” and would require a representative of those agencies, who in the course of conducting an inspection detects a minor violation, to issue a notice to comply, as specified.

The bill would require the State Air Resources Board to report to the Legislature by January 1, 2020, regarding implementation of the bill.

Because the bill would make a false statement of compliance submitted under those procedures a crime pursuant to specified provisions, the bill would impose a state-mandated local program by creating a new crime. In addition, the bill would impose a state-mandated local program by imposing new requirements on air pollution control and air quality management districts.

(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. Chapter 3 (commencing with Section 39150) is  
2 added to Part 1 of Division 26 of the Health and Safety Code, to  
3 read:

4  
5 CHAPTER 3. MINOR VIOLATIONS  
6

7 39150. (a) The Legislature hereby finds and declares that the  
8 purpose of this chapter is to establish an enforcement policy for  
9 violations of this division that the enforcement agency finds are  
10 minor when the danger they pose to, or the potential that they have  
11 for endangering, human health, safety, or welfare or the  
12 environment is taken into account.

13 (b) It is the intent of the Legislature in enacting this chapter to  
14 provide a more resource-efficient enforcement mechanism, faster  
15 compliance times, and the creation of a productive and cooperative  
16 working relationship between the state board, the districts, and the  
17 regulated community while maintaining protection of human health  
18 and safety and the environment.

19 (c) The state board and each district shall, for their respective  
20 jurisdictions, implement this chapter by adopting a regulation or  
21 a rule that classifies the types of violations of this division, or of  
22 the regulations, rules, standards, orders, permit conditions, or other  
23 requirements adopted pursuant to this division, that the state board  
24 or the district finds are minor violations in accordance with  
25 subdivision (d).

26 (d) In classifying the types of violations that are minor  
27 violations, the state board or the district shall consider all of the  
28 following factors:

- 29 (1) The magnitude of the violation.
- 30 (2) The scope of the violation.

1 (3) The severity of the violation.

2 (4) The degree to which a violation puts human health, safety,  
3 or welfare or the environment into jeopardy.

4 (5) The degree to which a violation could contribute to the  
5 failure to accomplish an important goal or program objective as  
6 established by this division.

7 (6) The degree to which a violation may make it difficult to  
8 determine if the violator is in compliance with other requirements  
9 of this division.

10 (e) For purposes of this chapter, a minor violation of this division  
11 shall not include any of the following:

12 (1) Any knowing, willful, or intentional violation of this  
13 division.

14 (2) Any violation of this division that enables the violator to  
15 benefit economically from noncompliance, either by realizing  
16 reduced costs or by gaining a competitive advantage.

17 (3) Any violation that is a chronic violation or that is committed  
18 by a recalcitrant violator.

19 (f) In determining whether a violation is chronic or a violator  
20 is recalcitrant, for purposes of paragraph (3) of subdivision (e),  
21 the state board or district or an authorized or designated officer  
22 shall consider whether there is evidence indicating that the violator  
23 has engaged in a pattern of neglect or disregard with respect to the  
24 requirements of this division or the requirements adopted pursuant  
25 to this division.

26 39151. For purposes of this chapter, “notice to comply” means  
27 a written method of alleging a minor violation that is in compliance  
28 with all of the following requirements:

29 (a) The notice to comply is written in the course of conducting  
30 an inspection by an authorized representative of the state board or  
31 district or an authorized or designated officer. If testing is required  
32 by the state board or district or an authorized or designated officer  
33 to determine compliance, and the testing cannot be conducted  
34 during the course of the inspection, the representative of the state  
35 board or the district or an authorized or designated officer shall  
36 have a reasonable period of time to conduct the required testing.  
37 If, after the test results are available, the representative of the state  
38 board or district or an authorized or designated officer determines  
39 that the issuance of a notice to comply is warranted, the

1 representative or officer shall immediately notify the facility owner  
2 or operator in writing.

3 (b) A copy of the notice to comply is presented to a person who  
4 is an owner, operator, employee, or representative of the facility  
5 being inspected at the time that the notice to comply is written. If  
6 offsite testing is required pursuant to subdivision (a), a copy of the  
7 notice to comply may be mailed to the owner or operator of the  
8 facility.

9 (c) The notice to comply clearly states the nature of the alleged  
10 minor violation, a means by which compliance with the  
11 requirement cited by the state board's or district's representative  
12 or an authorized or designated officer may be achieved, and a time  
13 limit in which to comply, which shall not exceed 30 days.

14 (d) The notice to comply shall contain the information specified  
15 in subdivision (h) of Section 39152 with regard to the possible  
16 reinspection of the facility.

17 39152. (a) An authorized representative of the state board or  
18 district or an authorized or designated officer, who, in the course  
19 of conducting an inspection, detects a minor violation shall issue  
20 a notice to comply before leaving the site at which the minor  
21 violation is alleged to have occurred if the authorized representative  
22 finds that a notice to comply is warranted.

23 (b) A person who receives a notice to comply pursuant to  
24 subdivision (a) shall have the period specified in the notice to  
25 comply from the date of receipt of the notice to comply in which  
26 to achieve compliance with the requirement cited on the notice to  
27 comply. Within five working days of achieving compliance, the  
28 person who received the notice to comply shall sign the notice to  
29 comply and return it to the state board's or district's representative  
30 or an authorized or designated officer, stating that the person has  
31 complied with the notice to comply. A false statement that  
32 compliance has been achieved is a violation of this division  
33 pursuant to Section 42400.2 or 42402.2.

34 (c) A single notice to comply shall be issued for all minor  
35 violations cited during the same inspection and the notice to comply  
36 shall separately list each cited minor violation and the manner in  
37 which each minor violation may be brought into compliance.

38 (d) A notice to comply shall not be issued for any minor  
39 violation that is corrected immediately in the presence of the  
40 inspector. Immediate compliance in that manner may be noted in

1 the inspection report, but the person shall not be subject to any  
2 further action by the state board's or district's representative or an  
3 authorized or designated officer.

4 (e) Except as otherwise provided in subdivision (g), a notice to  
5 comply shall be the only means by which the state board's or  
6 district's representative or an authorized or designated officer shall  
7 cite a minor violation. The state board's or district's representative  
8 or an authorized or designated officer shall not take any other  
9 enforcement action specified in this division to enforce the minor  
10 violation against a person who has received a notice to comply if  
11 the person is in compliance with this section.

12 (f) If a person who receives a notice to comply pursuant to  
13 subdivision (a) disagrees with one or more of the alleged violations  
14 cited in the notice to comply, the person shall give written notice  
15 of appeal to the state board or district, which shall develop a  
16 process for reviewing and determining the disposition of the appeal.

17 (g) Notwithstanding any other provision of this section, if a  
18 person fails to comply with a notice to comply within the  
19 prescribed period, or if the state board or district or an authorized  
20 or designated officer determines that the circumstances surrounding  
21 a particular minor violation are such that immediate enforcement  
22 is warranted to prevent harm to the public health or safety or to  
23 the environment, the state board or district or an authorized or  
24 designated officer may take any needed enforcement action  
25 authorized by this division.

26 (h) A notice to comply issued to a person pursuant to this section  
27 shall contain a statement that the inspected facility may be subject  
28 to reinspection at any time. Nothing in this section shall be  
29 construed as preventing the reinspection of a facility to ensure  
30 compliance or to ensure that minor violations cited in a notice to  
31 comply have been corrected.

32 (i) Nothing in this section shall be construed as preventing the  
33 state board or district or an authorized or designated officer, on a  
34 case-by-case basis, from requiring a person subject to a notice to  
35 comply to submit reasonable and necessary documentation to  
36 support a claim of compliance by the person.

37 (j) Nothing in this section restricts the power of a city attorney,  
38 district attorney, county counsel, or the Attorney General to bring,  
39 in the name of the people of California, any criminal proceeding  
40 otherwise authorized by law. Furthermore, nothing in this section

1 prevents the state board or district, or any representative of the  
2 state board or district, from cooperating with, or participating in,  
3 such a proceeding.

4 (k) Notwithstanding any other provision of this section, if the  
5 state board or district or an authorized or designated officer  
6 determines that the circumstances surrounding a particular minor  
7 violation are such that the assessment of a civil penalty pursuant  
8 to this division is warranted or required by federal law, in addition  
9 to issuance of a notice to comply, the state board or district or an  
10 authorized or designated officer shall assess a civil penalty in  
11 accordance with this division, if the state board or district or an  
12 authorized or designated officer makes written findings that set  
13 forth the basis for the determination of the state board or district.

14 39153. On or before January 1, 2020, the state board shall  
15 report to the Legislature on actions taken by the state board and  
16 the districts to implement this chapter and the results of that  
17 implementation. Each district shall provide the state board with  
18 the information that the state board requests to determine the degree  
19 to which the purposes described in subdivision (a) of Section 39150  
20 have been achieved. The report shall be submitted consistent with  
21 Section 9795 of the Government Code.

22 SEC. 2. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 a local agency or school district has the authority to levy service  
25 charges, fees, or assessments sufficient to pay for the program or  
26 level of service mandated by this act or because costs that may be  
27 incurred by a local agency or school district will be incurred  
28 because this act creates a new crime or infraction, eliminates a  
29 crime or infraction, or changes the penalty for a crime or infraction,  
30 within the meaning of Section 17556 of the Government Code, or  
31 changes the definition of a crime within the meaning of Section 6  
32 of Article XIII B of the California Constitution.