

ASSEMBLY BILL

No. 1702

**Introduced by Assembly Members McClintock, Baldwin,
and Oller**

(Principal coauthors: Senators Johannessen and Mountjoy)

**(Coauthors: Assembly Members Aanestad, Ackerman,
Ashburn, Bates, Battin, Baugh, Brewer, Briggs, Campbell,
Cox, Cunneen, Dickerson, Frusetta, Granlund, House,
Kaloogian, Leach, Leonard, Maddox, Maldonado, Margett,
Olberg, Robert Pacheco, Pescetti, Runner, Strickland,
Thompson, and Zettel)**

(Coauthors: Senators Haynes, Lewis, Monteith, and
Morrow)

January 3, 2000

An act to repeal Chapter 3.3 (commencing with Section 6261) of Part 1 of Division 2 of the Revenue and Taxation Code, and to add Section 1673 to the Vehicle Code, relating to vehicles, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1702, as introduced, McClintock. Vehicles: Smog Impact Fee: refunds.

Existing law imposes a smog impact fee of \$300 on a person making application to register a motor vehicle in this state that was previously registered outside this state, with certain exceptions.

This bill would repeal the provisions imposing the smog impact fee.

The bill would require the Department of Motor Vehicles to search its records to identify all persons who paid the smog impact fee on or after October 1, 1990, and, using funds appropriated to the department for this purpose, to provide a payment to each person identified, consisting of the amount of smog impact fee, any penalty paid to the department for late payment of the fee, and interest on the total amount. The bill would require the interest to be calculated as specified.

The bill would create the Smog Impact Fee Refund Escrow Account, a continuously appropriated account in the State Transportation Fund and would transfer \$767,000,000 from the General Fund to the account to fund the specified refunds.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

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

3 (a) Before the Smog Impact Fee (Chapter 3.3
4 (commencing with Section 6261) of Part 1 of Division 2
5 of the Revenue and Taxation Code) was enacted, the
6 Legislature was aware of legal opinions that suggested
7 that there was a possibility that the fee could be held
8 unconstitutional by a court.

9 (b) Although the Department of Motor Vehicles has
10 been litigating the constitutionality of the fee since 1995,
11 on November 10, 1999, Governor Davis rightfully decided
12 not to appeal the recent court decision in *Jordan v.*
13 *D.M.V.* (1999) _____ Cal.App.4th _____; 1999 Daily
14 Journal D.A.R. 10369, which held that imposition of the
15 fee is unconstitutional.

16 (c) Citing the three-year statute of limitations for
17 filing a tax refund, some propose to limit refunds of the
18 unconstitutional fee to those who paid the fee within
19 three years or less. Acquiescence to this proposal would
20 reward the state for collecting hundreds of millions of



1 dollars in illegal fees from those blameless persons who
2 happened to pay the fee more than three years ago.

3 (d) The records of the department contain sufficient
4 information to locate all persons who have paid the
5 illegally imposed fee. Thus, it is within the capability of
6 the department to mail a refund immediately to each and
7 every one of those persons.

8 (e) The state charges interest on late payments of fees
9 and taxes. Therefore, it is right and proper that the
10 department pay interest on each refund of the three
11 hundred dollar (\$300) fee and also on refunds of any
12 penalty imposed for late payment of the fee.

13 SEC. 2. Chapter 3.3 (commencing with Section 6261)
14 of Part 1 of Division 2 of the Revenue and Taxation Code
15 is repealed.

16 SEC. 3. Section 1673 is added to the Vehicle Code, to
17 read:

18 1673. (a) The department shall do all of the
19 following:

20 (1) Search its records to identify all persons who paid
21 the smog impact fee on or after October 1, 1990.

22 (2) Using funds appropriated to the department for
23 this purpose, provide a payment in the form of a check
24 delivered by registered mail to each person identified
25 under paragraph (1), consisting of all of the following
26 amounts:

27 (A) Three hundred dollars (\$300), the amount of the
28 smog impact fee, plus the amount of any penalty fee
29 collected from that person for late payment of the smog
30 impact fee.

31 (B) An amount equal to the interest that would have
32 been charged by the State Board of Equalization on a
33 delinquent sales and use tax of the amount refunded
34 under subparagraph (A), calculated for a period
35 commencing with the date the smog impact fee and any
36 late penalty fee was paid to the department and ending
37 on the date the department makes the payment required
38 under this section.

39 (b) The Smog Impact Fee Refund Escrow Account is
40 hereby created in the State Transportation Fund.



1 Notwithstanding Section 13340 of the Government Code,
2 funds in the account are hereby continuously
3 appropriated without regard to fiscal years for
4 expenditure by the department only for the purposes of
5 making the refunds required under this section.

6 (c) Any refund made under this section that is
7 returned to the department because the recipient's
8 mailing address is incorrect shall be redeposited in the
9 Smog Impact Fee Refund Escrow Account and retained
10 in that account until the department is able to locate the
11 recipient.

12 SEC. 4. The sum of seven hundred sixty-seven million
13 dollars (\$767,000,000) is hereby transferred from the
14 General Fund to the Smog Impact Fee Refund Escrow
15 Account in the State Transportation Fund. Funds
16 appropriated to the account under this section shall be
17 expended by the department only for the purposes of
18 making the refunds required under Section 1673 of the
19 Vehicle Code.

20 SEC. 5. This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or
22 safety within the meaning of Article IV of the
23 Constitution and shall go into immediate effect. The facts
24 constituting the necessity are:

25 In order to provide, at the earliest possible time, a
26 refund to the public of the unconstitutionally imposed
27 smog impact fee, it is necessary that this act take effect
28 immediately.

