

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 30, 2006

SENATE BILL

No. 1205

Introduced by Senator Escutia

*(Coauthors: Assembly Members Goldberg, Laird, Oropeza, and
Pavley)*

January 25, 2006

An act to amend Sections 39674, 42400, 42400.1, 42400.2, 42400.3.5, 42400.7, 42401, 42402, 42402.1, 42402.2, ~~and 42402.4~~ 42402.4, ~~and 42403~~ of, to add Sections 39604.3 ~~and 42409.5,~~ 42409.5, ~~and 42415~~ to, and to repeal Section 42400.4 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as amended, Escutia. Air pollution: Children's Breathing Rights Act: penalties.

(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources. Existing law defines a Title V source as a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act.

This bill would ~~create~~ *enact* the Children's Breathing Rights Act, which would increase the maximum penalties for specified violations of air pollution laws from nonvehicular sources to \$10,000, and to \$50,000 in the case of Title V sources, as provided. The bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious violator, *as defined*, of *specified* nonvehicular air pollution laws, ~~as defined~~. The bill would require that at least 10% of all penalties and settlements collected by ~~the state board and the air districts from violators pursuant to violations of specified air pollution laws regulating air pollution~~ be deposited into the Children's Breathing Rights Fund, which would be created by the bill, to be used, upon appropriation, for specified purposes *relating to children's health*.

Because this bill would add new crimes this bill would create a state-mandated local program.

(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. This act shall be known, and may be cited, as
2 the Children's Breathing Rights Act.

3 SEC. 2. (a) The Legislature finds and declares all of the
4 following:

5 (1) Breathing clean and healthy air is a right of all
6 Californians, especially our children, whose health suffers
7 disproportionately when our air is polluted.

8 (2) Reduced lung growth and function, new asthma cases,
9 respiratory complications for asthmatics, and increased school
10 absences from respiratory illnesses are just some of the
11 consequences our children face if we fail to protect that right.

12 (3) The most recent available state and federal data reveal that
13 more than 245 million pounds of industrial air pollution were
14 emitted near California schools in 1995. Statewide, more than 2.8

1 million children were enrolled in schools located near reported
2 air emissions of carcinogens, reproductive toxins, heavy metals,
3 nitrogen oxides, sulfur dioxide, or particulate matter.

4 ~~(4) Because air quality management districts and air pollution~~
5 ~~control districts settle most violations in administrative hearings,~~
6 ~~records of violations are not always kept at the local district level~~
7 ~~and the districts thus have incomplete compliance histories.~~
8 Moreover, the

9 (4) The state board is currently statutorily required to post, on
10 its Internet Web site, only summary information every two years.
11 Publicly accessible information regarding air pollution is
12 therefore inadequate.

13 (5) If we improve the enforcement of our air quality laws and
14 ensure that penalties are not so low as to be a minor
15 inconvenience to a serious air polluter, our children's right to
16 clean and healthy air can be better protected, as can the right to
17 environmental justice provided in Section 65040.12 of the
18 Government Code, that is, the fair treatment of people of all
19 races, cultures, and income with respect to the enforcement of
20 environmental laws, regulations, and policies. If we improve the
21 enforcement of our air quality laws, we will avoid future
22 economic and social costs of air pollution.

23 (b) It is the intent of the Legislature to increase penalties for
24 serious violators of air pollution laws and to use enhanced
25 penalties to improve air pollution enforcement activities, to
26 create a statewide database that would provide transparency
27 regarding violations, including serious violations, to help fund
28 local children's health initiatives, and to help fund asthma
29 prevention activities in schools and local communities.

30 SEC. 3. Section 39604.3 is added to the Health and Safety
31 Code, to read:

32 39604.3. ~~(a) Notwithstanding Section 39604, the state board~~
33 ~~shall post on its Internet Web site, at a minimum by January 1 of~~
34 ~~each year, information on air quality violations in each district~~
35 ~~that have occurred since the last annual report.~~

36 ~~(b) The data shall include, but not be limited to, all of the~~
37 ~~following:~~

38 ~~(1) The district where the violation occurred.~~

39 ~~(2) The name of the source, owner, or operator against whom~~
40 ~~or which a penalty was assessed.~~

~~(3) The section of law or regulation found to have been violated.~~

~~(4) The number of days the violation occurred.~~

~~(5) The total dollar amount of the civil penalty assessed.~~

~~(6) The amount of any fine and the length of any imprisonment imposed as a criminal penalty.~~

~~(7) Whether any air district hearing board granted the violating facility a variance, the duration of any variance, and whether final compliance has been achieved.~~

~~(8) The issuance of orders for abatement, hearing board findings, settlement agreements, consent decrees, and consent agreements. the same information on air quality violations that the districts provide to the United States Environmental Protection Agency. To protect confidentiality, the state board may require a password for certain areas of this Internet Web site.~~

SEC. 4. Section 39674 of the Health and Safety Code is amended to read:

39674. (a) Except as otherwise provided in subdivision (b) or, any person who violates any rule or regulation, emission limitation, permit condition, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the *federal* Clean Air Act (42 U.S.C.—~~Section~~ Sec. 7412(l)) or the regulations adopted pursuant thereto, adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(b) Any person who violates any rule or requirement, emission limitation, permit condition, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision ~~(f)~~ (l) of Section 112 of the federal Clean Air Act ~~(42 U.S.C. Section 7412(1))~~ or the regulations adopted pursuant thereto, adopted pursuant to Section 39659 or Article 4

(commencing with Section 39665), or which is implemented and enforced as authorized by subdivision (b) of Section 39658 at a Title V source is strictly liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each day in which the violation occurs.

(c) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation is sought, there is no liability under subdivision (a) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act that was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this subdivision shall not apply to a violation of federally enforceable requirements that occurs at a Title V source.

SEC. 5. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) (1) Except as otherwise provided in paragraph (2), or Section 42400.1, 42400.2, 42400.3, or 42400.3.5, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(2) Notwithstanding paragraph (1) and except where a greater penalty is authorized by law, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000), Part 2 (commencing with Section 39500), Part 3 (commencing with Section 40000), or Part 4 (commencing with Section 41500) at a Title V source is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the county jail for not more than one year, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent

1 contractor, as the case may be, causing the violation is guilty of a
2 misdemeanor and is punishable as provided in subdivision (a).
3 That liability shall not extend to the person employing the
4 employee or retaining the independent contractor, unless that
5 person is separately guilty of an action that violates this part.

6 *(c) Except as otherwise provided in paragraph (2) of*
7 *subdivision (a), any person who owns or operates any source of*
8 *air contaminants in violation of Section 41700 that diminishes*
9 *air quality and causes a substantial risk of actual injury, whether*
10 *the risk of injury is immediate or in the future, is guilty of a*
11 *misdemeanor and is subject to a fine of not more than twenty-five*
12 *thousand dollars (\$25,000) or imprisonment in the county jail for*
13 *not more than nine months or both.*

14 ~~(e)~~

15 *(d) Except as provided in paragraph (2) of subdivision (a), any*
16 *person who owns or operates any source of air contaminants in*
17 *violation of Section 41700 that causes actual injury, as defined in*
18 *subdivision (d), to the health or safety of a considerable number*
19 *of persons or the public is guilty of a misdemeanor and is subject*
20 *to a fine of not more than fifty thousand dollars (\$50,000) or*
21 *imprisonment in the county jail for not more than nine months, or*
22 *both.*

23 ~~(d)~~

24 *(e) As used in this section, “actual injury” means any physical*
25 *injury that, in the opinion of a licensed physician and surgeon,*
26 *requires medical treatment involving more than a physical*
27 *examination.*

28 ~~(e)~~

29 *(f) Each day during any portion of which a violation of*
30 *subdivision (a) or (c) occurs is a separate offense.*

31 SEC. 6. Section 42400.1 of the Health and Safety Code is
32 amended to read:

33 42400.1. (a) Except as otherwise provided in paragraph (2)
34 of subdivision (a) of Section 42400, any person who negligently
35 emits an air contaminant in violation of this part or any rule,
36 regulation, permit, or order of the state board or of a district
37 pertaining to emission regulations or limitations is guilty of a
38 misdemeanor and is punishable by a fine of not more than
39 twenty-five thousand dollars (\$25,000), or imprisonment in the
40 county jail for not more than nine months, or both.

1 (b) Any person who negligently emits an air contaminant in
2 violation of Section 41700 that causes great bodily injury, as
3 defined by Section 12022.7 of the Penal Code, to, or death of,
4 any person, is guilty of a misdemeanor and is punishable by a
5 fine of not more than one hundred thousand dollars (\$100,000),
6 or imprisonment in the county jail for not more than one year, or
7 both.

8 (c) Each day during any portion of which a violation occurs is
9 a separate offense.

10 SEC. 7. Section 42400.2 of the Health and Safety Code is
11 amended to read:

12 42400.2. (a) Except as otherwise provided in paragraph (2)
13 of subdivision (a) of Section 42400, any person who emits an air
14 contaminant in violation of any provision of this part, or any
15 order, rule, regulation, or permit of the state board or of a district
16 pertaining to emission regulations or limitations, and who knew
17 of the emission and failed to take corrective action within a
18 reasonable period of time under the circumstances, is guilty of a
19 misdemeanor and is subject to a fine of not more than forty
20 thousand dollars (\$40,000), or imprisonment in the county jail for
21 not more than one year, or both.

22 (b) For purposes of this section, “corrective action” means the
23 termination of the emission violation or the grant of a variance
24 from the applicable order, rule, regulation, or permit pursuant to
25 Article 2 (commencing with Section 42350). If a district
26 regulation regarding process upsets or equipment breakdowns
27 would allow continued operation of equipment which is emitting
28 air contaminants in excess of allowable limits, compliance with
29 that regulation is deemed to be corrective action.

30 (c) Any person who owns or operates any source of air
31 contaminants in violation of Section 41700 that causes great
32 bodily injury, as defined by Section 12022.7 of the Penal Code,
33 to, or death of, any person, and who knew of the emission and
34 failed to take corrective action within a reasonable period of time
35 under the circumstances, is guilty of a misdemeanor and is
36 subject to a fine of not more than two hundred fifty thousand
37 dollars (\$250,000), or imprisonment in the county jail for not
38 more than one year, or both.

39 (d) Each day during any portion of which a violation occurs
40 constitutes a separate offense.

SEC. 8. Section 42400.3.5 of the Health and Safety Code is amended to read:

42400.3.5. (a) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who knowingly violates any rule, regulation, permit, order, fee requirement, or filing requirement of the state board or of a district, including a district hearing board, that is adopted for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the federal Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(b) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required by a rule or regulation adopted or permit issued for the control of toxic air contaminants pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the *federal* Clean Air Act (~~42 U.S.C. Sec. 7412(l)~~), or the regulations adopted pursuant thereto, or who knowingly renders inaccurate any monitoring device required by that toxic air contaminant rule, regulation, or permit is subject to a fine of not more than thirty-five thousand dollars (\$35,000) or imprisonment in the county jail for not more than nine months, or both.

(c) Except as otherwise provided in paragraph (2) of subdivision (a) of Section 42400, any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, permit, notice to comply, or order of the state board or of a district, is punishable as provided in subdivision (b).

SEC. 9. Section 42400.4 of the Health and Safety Code is repealed.

1 SEC. 10. Section 42400.7 of the Health and Safety Code is
2 amended to read:

3 42400.7. (a) The recovery of civil penalties pursuant to
4 Section 39674, 42401, 42402, 42402.1, 42402.2, or 42402.3
5 precludes prosecution under Section 42400, 42400.1, 42400.2,
6 42400.3, 42400.3.5, or 42400.4 for the same offense. When a
7 district refers a violation to a prosecuting agency, the filing of a
8 criminal complaint is grounds requiring the dismissal of any civil
9 action brought pursuant to this article for the same offense.

10 (b) If the pending civil action described in subdivision (a)
11 includes a request for injunctive relief, that portion of the civil
12 action shall not be dismissed upon the filing of a criminal
13 complaint for the same offense.

14 SEC. 11. Section 42401 of the Health and Safety Code is
15 amended to read:

16 42401. Except as otherwise provided in subdivision (b) of
17 Section 42402, any person who intentionally or negligently
18 violates any order of abatement issued by a district pursuant to
19 Section 42450, by a hearing board pursuant to Section 42451, or
20 by the state board pursuant to Section 41505, is liable for a civil
21 penalty of not more than twenty-five thousand dollars (\$25,000)
22 for each day in which the violation occurs.

23 SEC. 12. Section 42402 of the Health and Safety Code is
24 amended to read:

25 42402. (a) Except as provided in Sections 42402.1, 42402.2,
26 42402.3, and 42402.4, any person who violates this part, any
27 order issued pursuant to Section 42316, or any rule, regulation,
28 permit, or order of a district, including a district hearing board, or
29 of the state board issued pursuant to Part 1 (commencing with
30 Section 39000) to Part 4 (commencing with Section 41500),
31 inclusive, is strictly liable for a civil penalty of not more than ten
32 thousand dollars (\$10,000).

33 (b) Notwithstanding subdivision (a) and except where a
34 greater penalty is authorized by law, any person who violates this
35 part, any order issued pursuant to Section 42316, or any rule,
36 regulation, permit, or order of a district, including a district
37 hearing board, or of the state board issued pursuant to Part 1
38 (commencing with Section 39000), Part 2 (commencing with
39 Section 39500), Part 3 (commencing with Section 40000), or Part
40 4 (commencing with Section 41500) at a Title V source is strictly

1 liable for a civil penalty in an amount not more than fifty
2 thousand dollars (\$50,000).

3 (c) (1) Except as specified in paragraphs (2) and (3), if a civil
4 penalty in excess of one thousand dollars (\$1,000) for each day
5 in which a violation occurs is sought, there is no liability under
6 subdivision (a) if the person accused of the violation alleges by
7 affirmative defense and establishes that the violation was caused
8 by an act that was not the result of intentional nor negligent
9 conduct.

10 (2) This subdivision does not apply to a violation of federally
11 enforceable requirements that occur at a Title V source in a
12 district in which a Title V permit program has been fully
13 approved.

14 (3) This subdivision does not apply to a person who is
15 determined to have violated an annual facility emissions cap
16 established pursuant to a market-based incentive program
17 adopted by a district pursuant to subdivision (b) of Section
18 39616.

19 *(d) Except as provided in subdivision (b), any person who*
20 *owns or operates any source of air contaminants in violation of*
21 *Section 41700 that diminishes air quality and causes a*
22 *substantial risk of actual injury, whether the risk of injury is*
23 *immediate or in the future, is liable for a civil penalty of not*
24 *more than twenty-five thousand dollars (\$25,000).*

25 ~~(d)~~

26 (e) Any person who owns or operates any source of air
27 contaminants in violation of Section 41700 that causes actual
28 injury, as defined in subdivision (d) of Section 42400, to the
29 health and safety of a considerable number of persons or the
30 public, is liable for a civil penalty of not more than fifty thousand
31 dollars (\$50,000).

32 ~~(e)~~

33 (f) Each day during any portion of which a violation occurs is
34 a separate offense.

35 SEC. 13. Section 42402.1 of the Health and Safety Code is
36 amended to read:

37 42402.1. (a) Except as otherwise provided in subdivision (b)
38 of Section 42402, any person who negligently emits an air
39 contaminant in violation of this part or any rule, regulation,
40 permit, or order of the state board or of a district, including a

1 district hearing board, pertaining to emission regulations or
2 limitations is liable for a civil penalty of not more than
3 twenty-five thousand dollars (\$25,000).

4 (b) Any person who negligently emits an air contaminant in
5 violation of Section 41700 that causes great bodily injury, as
6 defined by Section 12022.7 of the Penal Code, to any person or
7 that causes the death of any person, is liable for a civil penalty of
8 not more than one hundred thousand dollars (\$100,000).

9 (c) Each day during any portion of which a violation occurs is
10 a separate offense.

11 SEC. 14. Section 42402.2 of the Health and Safety Code is
12 amended to read:

13 42402.2. (a) (1) Except as otherwise provided in subdivision
14 (b) of Section 42402, any person who emits an air contaminant in
15 violation of any provision of this part, or any order, rule,
16 regulation, or permit of the state board or of a district, including
17 a district hearing board, pertaining to emission regulations or
18 limitations, and who knew of the emission and failed to take
19 corrective action, as defined in subdivision (b) of Section
20 42400.2, within a reasonable period of time under the
21 circumstances, is liable for a civil penalty of not more than forty
22 thousand dollars (\$40,000).

23 (b) Any person who owns or operates any source of air
24 contaminants in violation of Section 41700 that causes great
25 bodily injury, as defined by Section 12022.7 of the Penal Code,
26 to any person or that causes the death of any person, and who
27 knew of the emission and failed to take corrective action, as
28 defined in subdivision (b) of Section 42400.2, within a
29 reasonable period of time under the circumstances, is liable for a
30 civil penalty not to exceed two hundred fifty thousand dollars
31 (\$250,000).

32 (c) Each day during any portion of which a violation occurs is
33 a separate offense.

34 SEC. 15. Section 42402.4 of the Health and Safety Code is
35 amended to read:

36 42402.4. Except as otherwise provided in subdivision (b) of
37 Section 42402, any person who knowingly and with intent to
38 deceive, falsifies any document required to be kept pursuant to
39 any provision of this part, or any rule, regulation, permit, or order
40 of the state board or of a district, including a district hearing

1 board, is liable for a civil penalty of not more than thirty-five
2 thousand dollars (\$35,000).

3 *SEC. 16. Section 42403 of the Health and Safety Code is*
4 *amended to read:*

5 42403. (a) The civil penalties prescribed in Sections 39674,
6 42401, 42402, 42402.1, 42402.2, ~~and 42402.3,~~ and 42409.5 shall
7 be assessed and recovered in a civil action brought in the name of
8 the people of the State of California by the Attorney General, by
9 any district attorney, or by the attorney for any district in which
10 the violation occurs in any court of competent jurisdiction.

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

- 15 (1) The extent of harm caused by the violation.
- 16 (2) The nature and persistence of the violation.
- 17 (3) The length of time over which the violation occurs.
- 18 (4) The frequency of past violations.
- 19 (5) The record of maintenance.
- 20 (6) The unproven or innovative nature of the control
21 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. 16:~~

27 *SEC. 17. Section 42409.5 is added to the Health and Safety*
28 *Code, to read:*

29 42409.5. (a) On and after June 1, 2007, any serious violator
30 shall be liable for a civil penalty of not more than one hundred
31 thousand dollars \$(100,000) per day for each violation described
32 by this article, *subject to consideration of the criteria set forth in*
33 *subdivision (b) of Section 42403*, in addition to any other penalty
34 prescribed by this article.

35 (b) For the purposes of this section, “serious violator”
36 includes, but is not necessarily limited to, any person who does
37 any of the following:

- 38 (1) Purposely or knowingly disconnects or disables any
39 monitoring device or method required by an operating permit.

1 (2) Purposely or knowingly makes any false material
2 statement, representation, or certification in any form, notice,
3 statement, or report required in connection with a permit.

4 (3) Commits one or more high priority violations pursuant to
5 the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.). For
6 purposes of this paragraph, “high priority violation” means an act
7 that is a high priority violation under the high priority violation
8 policy of the United States Environmental Protection Agency, as
9 set forth in “THE TIMELY AND APPROPRIATE (T&A)
10 ENFORCEMENT RESPONSE TO HIGH PRIORITY
11 VIOLATIONS (HPVs)” issued in December of 1998, and the
12 EPA Office of Enforcement and Compliance Assurance
13 “WORKBOOK: The Timely and Appropriate (T&A)
14 Enforcement Response to High Priority Violations (HPVs),”
15 issued June 23, 1999.

16 *SEC. 18. Section 42415 is added to the Health and Safety*
17 *Code, to read:*

18 *42415. At least 10 percent of all penalties and settlements*
19 *collected by the districts pursuant to violations of this division,*
20 *after the prosecuting parties have recovered their reasonable*
21 *attorney fees and other costs, shall be deposited into the*
22 *Children’s Breathing Rights Fund, which is hereby created in the*
23 *State Treasury. Moneys in the fund shall be available, upon*
24 *appropriation by the Legislature, for local children’s health*
25 *initiatives in the district where the penalty was assessed to*
26 *ensure basic health coverage, including asthma services in*
27 *schools and communities. If there is no local children’s health*
28 *initiative in the district where the penalty was assessed, the*
29 *allocation shall be made to the California Healthy Kids*
30 *Insurance Program, established by Senate Bill No. 437 of the*
31 *2005–06 Regular Session.*

32 ~~(c) At least 10 percent of all penalties and settlements~~
33 ~~collected by the state board and the air districts from violators of~~
34 ~~any provision of this division shall be deposited into the~~
35 ~~Children’s Breathing Rights Fund, which is hereby created in the~~
36 ~~State Treasury. Moneys in the fund shall be available, upon~~
37 ~~appropriation by the Legislature, for all of the following~~
38 ~~purposes:~~

39 ~~(1) Twenty-five percent shall be allocated to the state board or~~
40 ~~district where the penalty was assessed for enhanced enforcement~~

1 activities in the district within close proximity to where those
2 violations occurred, including monitoring and reporting the
3 development of pollution control technology, providing
4 assistance to serious air polluters, and developing and
5 maintaining on the state board's Internet Web site a searchable
6 database containing, at a minimum, the information specified in
7 Section 39604.3.

8 (2) Fifty percent shall be allocated to local children's health
9 initiatives in the district where the penalty was assessed to ensure
10 basic health coverage, including asthma services in schools and
11 communities. If there is no local children's health initiative in the
12 district where the penalty was assessed, the allocation shall be
13 made to the California Healthy Kids Insurance Program,
14 established by Senate Bill 437 of the 2005-2006 Regular Session
15 of the Legislature.

16 (3) Twenty-five percent shall be allocated to the appropriate
17 local, city, or county agencies to ensure that the most egregious
18 violators of this division are prosecuted for their violations.

19 (d) On or before January 1, 2008, and annually thereafter, the
20 state board shall submit a report to the Legislature summarizing
21 the enforcement of this article, including auditing by the state
22 board of enforcement activities by district.

23 SEC. 17.

24 SEC. 19. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the
29 penalty for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition of a
31 crime within the meaning of Section 6 of Article XIII B of the
32 California Constitution.

33
34
35 CORRECTIONS:

36 Text — Page 12.