

AMENDED IN ASSEMBLY JUNE 14, 2005

**SENATE BILL**

**No. 109**

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**Introduced by Senator Ortiz**

January 20, 2005

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An act to amend ~~Section 39153 of, and to repeal Section~~ *Sections 39153, 42400.4, and 42400.7* of, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, as amended, Ortiz. Air pollution: minor violations: stationary sources: prosecution of violations.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources, subject to the powers and duties of the State Air Resources Board. Existing law subjects any person that violates any rule, regulation, permit, or order of the state board or a district pertaining to emissions of air contaminants or toxic air contaminants to fines, imprisonment, and civil penalties. Existing law, until January 1, 2006, requires the state board and each district to adopt a regulation or a rule that classifies certain violations as minor. Existing law provides that the recovery of a civil penalty for an air quality violation precludes criminal prosecution. Existing law also provides that the filing of a criminal complaint requires the dismissal of any civil action for the same offense, but exempts from that requirement any portion of a civil action requesting injunctive relief.

This bill would extend that minor violation classification requirement until January 1, 2012. The bill would ~~repeal the provision precluding criminal prosecution following the recovery of civil penalties for the same offense, and would repeal the requirement that~~

~~a civil action be dismissed upon the filing of a criminal complaint for the same offense~~ *allow a criminal prosecution for any of certain offenses, despite the recovery of civil penalties for the same offenses, and would allow a civil action for any of certain offenses to proceed, despite the filing of a criminal complaint for the same offenses.* To the extent that this bill would increase the number of criminal or civil cases that would be prosecuted, it would impose 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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. Section 39153 of the Health and Safety Code is  
2 amended to read:

3 39153. This chapter shall remain in effect only until January  
4 1, 2012, and as of that date is repealed, unless a later enacted  
5 statute, that is enacted on or before January 1, 2012, deletes or  
6 extends that date.

7 *SEC. 2 Section 42400.4 of the Health and Safety Code is*  
8 *amended to read:*

9 42400.4. (a) In any district where a Title V permit program  
10 has been fully approved by the federal Environmental Protection  
11 Agency, any person who knowingly violates any federally  
12 enforceable permit condition or any fee or filing requirement  
13 applicable to a Title V source is guilty of a misdemeanor and is  
14 subject to a fine of not more than ten thousand dollars (\$10,000).

15 (b) In any district in which a Title V permit program has been  
16 fully approved by the federal Environmental Protection Agency,  
17 any person who knowingly makes any false material statement,

1 representation, or certification in any form or in any notice or  
2 report required of a Title V source of a federally enforceable  
3 permit requirement, or who knowingly renders inaccurate any  
4 monitoring device or method required of a Title V source, is  
5 guilty of a misdemeanor and is subject to a fine of not more than  
6 ten thousand dollars (\$10,000).

7 ~~(e) The recovery of civil penalties pursuant to Section 42402,~~  
8 ~~42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to~~  
9 ~~this section for the same offense. When a district refers a~~  
10 ~~violation to a prosecuting agency, the filing of a criminal~~  
11 ~~complaint is grounds requiring the dismissal of any civil action~~  
12 ~~brought pursuant to this article for the same offense.~~

13 ~~(d)~~

14 (c) Each day during any portion of which a violation of  
15 subdivision (a) or (b) occurs is a separate offense.

16 ~~(e)~~

17 (d) This section shall not become operative in a district until  
18 the federal Environmental Protection Agency fully approves that  
19 district's Title V permit program.

20 ~~(f)~~

21 (e) This section applies only to violations described in  
22 subdivisions (a) and (b) that are not otherwise subject to a fine of  
23 ten thousand dollars (\$10,000) or more pursuant to Section  
24 42400.1, 42400.2, or 42400.3.

25 ~~SEC. 2. Section 42400.7 of the Health and Safety Code is~~  
26 ~~repealed.~~

27 *SEC. 3. Section 42400.7 of the Health and Safety Code is*  
28 *amended to read:*

29 42400.7. (a) The recovery of civil penalties pursuant to  
30 Section 39674, 42401, 42402, 42402.1, 42402.2, 42402.3, or  
31 42402.4 precludes prosecution under Section 42400, 42400.1,  
32 42400.2, *subdivision (a) of Section 42400.3, subdivision (a) of*  
33 *Section 42400.3.5, or 42400.4* for the same offense. When a  
34 district refers a violation to a prosecuting agency, the filing of a  
35 criminal complaint *seeking penalties pursuant to Section 42400,*  
36 *42400.1, 42400.2, subdivision (a) of Section 42400.3, subdivision*  
37 *(a) of Section 42400.3.5, or Section 42400.4* is grounds requiring  
38 the dismissal of any civil action brought pursuant to this article  
39 for the same offense.

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

5 ~~SEC. 3.—~~

6 *SEC. 4.* No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution for  
8 certain costs that may be incurred by a local agency or school  
9 district because, in that regard, this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the  
11 penalty for a crime or infraction, within the meaning of Section  
12 17556 of the Government Code, or changes the definition of a  
13 crime within the meaning of Section 6 of Article XIII B of the  
14 California Constitution.

15 However, if the Commission on State Mandates determines  
16 that this act contains other costs mandated by the state,  
17 reimbursement to local agencies and school districts for those  
18 costs shall be made pursuant to Part 7 (commencing with Section  
19 17500) of Division 4 of Title 2 of the Government Code.