

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 1994

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Constantine

SUBJECT: Relating to Motor Vehicle Emission Standards

DATE: March 24, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	Fav/CS
2.			CM	
3.			TR	
4.			GO	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This Committee Substitute (CS) amends s. 316.2937, F.S., to provide legislative ratification of rule 62-285.400, F.A.C., the Florida Clean Car Emission rule, as adopted by the Department of Environmental Protection (department). Further, it provides that any changes made to emissions standards or individual vehicle standards will not be enforceable unless and until they are ratified by the Florida Legislature. Lastly, the CS directs the department and the Department of Highway Safety and Motor Vehicles to develop a proposal to implement the rule.

This bill provides an effective date of July 1, 2009.

This bill substantially amends s. 316.2937, Florida Statutes.

II. Present Situation:

History of the California Air Resources Board and the federal Clean Air Act:

The California Air Resources Board (CARB) was established in 1967 when California's Legislature passed the Mulford-Carrell Act, which combined two Department of Health bureaus

into the CARB. This was necessary because the California Legislature realized that it needed to address a burgeoning problem, air quality degradation from vehicle emissions. In fact, California passed the earliest vehicle emissions and control standard in the nation. Because of this, California received an exemption from the federal Clean Air Act, codified in 42 U.S.C § 7543(b)(1).¹ This exemption allows California, and only California, to create standards that are more stringent than the national standards for regulating its air quality from vehicle emissions. In order to implement the stricter standards, California must request and be granted a waiver from the United States Environmental Protection Agency (EPA). Other states may then choose to implement the California standard or the federal standard, but may not create a third standard. In total, 21 states have adopted the California Standard or are in the process of adopting the standard.² Including California, they represent over half of the U.S. population.

California Clean Cars Legislation:

In 2002, the California Assembly passed AB 1493, also known as the “Pavley” standards, because the legislation was sponsored by State Representative Fran Pavley. AB 1493 directed the CARB to establish measures and regulations that address and reduce greenhouse gas emissions from vehicles. To determine the grams per mile standard, the CARB examined available technologies, manufacturing costs, consumer costs, and jobs. The CARB concluded that automakers could achieve a 30 percent reduction of global warming pollution between 2009 and 2016 and that these reductions would "result in operating cost savings that exceed the capital cost, resulting in a net savings to the consumer over the lifecycle of the vehicle."³

Legal Proceedings for California’s Legislation:

On April 2, 2007, the U.S. Supreme Court voted 5-4 finding that the EPA has the authority to regulate greenhouse gas emissions, including carbon dioxide, and that such emissions are classified as pollutants under the Clean Air Act. The Court also found that the EPA's regulation of vehicle emissions does not conflict with the Department of Transportation's authority to set national Corporate Average Fuel Economy (CAFE) standards for cars and light trucks, which is within the sole purview of the federal government.

The auto industry then brought suit against the state of Vermont in U.S. District Court, District of Vermont, claiming that the California carbon dioxide standard translated into a fuel economy standard of 43.7 miles per gallon (mpg) for cars and 26.9 mpg for light trucks by 2016. They contended that compliance with the standard would be so costly as to put them out of business and require a full fleet of hybrids. During the trial, they presented their cost estimates, technology outlook and experts. In a decision issued on September 12, 2007, the court found that the auto industry presented inflated costs for compliance with the California standards, and that the industry could economically and technologically comply with the tailpipe emissions standards. Further attempts by the auto industry to overturn the California standards in other courts were also rejected.

¹ 20 Mar. 2009 <http://www.arb.ca.gov/html/brochure/history_text_only.htm>

²These states are Arizona, Connecticut, Colorado, District of Columbia, Florida, Iowa, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and Washington.

³ The Sierra Club. 20 Mar. 2009 < <http://www.sierraclub.org/energy/cleancars/>>.

The EPA's Rejection of the California Clean Car Waiver:

In a December 21, 2005 letter, the CARB submitted a request that the EPA grant a waiver for the California standards. On December 19, 2007, the EPA announced its denial of California's waiver application. The EPA cited the fuel economy standards signed into law by then President Bush, as one of the reasons for its rejection of California's waiver request. The EPA found that the new fuel economy standards would achieve the same greenhouse gas savings as the California standards and that the EPA wanted to avoid a "confusing patchwork of state standards." The rejection went against the unanimous advice of the agency's legal and technical staff, who recommended approval of the waiver without conditions or approval of the standards for a three-year trial period before reassessment.⁴

The EPA believes that there are significant issues regarding the agency's denial of the waiver. The denial was a substantial departure from EPA's longstanding interpretation of the Clean Air Act's waiver provisions and the history of granting waivers to California for its new motor vehicle emission program. In fact, the denial represents the first time the EPA has ever denied a California waiver request under the Clean Air Act. Many different parties, including California, states that have adopted or are interested in adopting California's standards, members of Congress, scientists, and other stakeholders, have expressed similar concerns about the denial of the waiver.⁵ On January 21, 2009, the CARB requested that the EPA reconsider its previous waiver denial, and President Obama signed a Presidential Memorandum directing the EPA to assess whether denial of the waiver was appropriate pursuant to the exemption granted to California in the Clean Air Act. The EPA held a public hearing on March 5, 2009 and will accept public comment until April 6. The various lawsuits filed based on the previous EPA rejection of the California waiver request will likely be stayed until the reevaluation process is completed and a decision rendered.

Florida's Adoption of the California Standards:

On July 13, 2007, Governor Crist issued Executive Order 07-127, "Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida." Among other actions, it directed the Secretary of the Department of Environmental Protection (department) to develop rules to adopt the California motor vehicle emission standards found in Title 13 of the California Code of Regulations.

HB 7135, as passed by the 2008 Florida Legislature, gave the department the authority to adopt California's motor vehicle emissions standards. The department held public hearings and received comments regarding the standards, and subsequently adopted rule 62-285.400, F.A.C., which adopted the California standards by reference. However, the legislation expressly states that the rule must be ratified by the Legislature before taking effect.

⁴ The Washington Post. Juliet Eilperin. 20 Mar. 2009

<<http://www.washingtonpost.com/wp-dyn/content/article/2007/12/19/AR2007121902012.html?hpid=topnews>>

⁵ The EPA. 20 Mar. 2009 < <http://www.epa.gov/fedrgstr/EPA-AIR/2009/February/Day-12/a2913.htm>>.

The Legislature's Joint Administrative Procedures Committee reviewed the department's rule and issued a report in February 2009.⁶ The report concluded that rule 62-285.400, F.A.C., violated the Administrative Procedures Act (APA), specifically paragraph 120.52(8)(d), F.S. The committee found that the rule violates the APA because it adopts the California standards by reference. In so doing, the rule is an invalid exercise of delegated legislative authority because the references to the California standards are vague, fail to establish adequate standards for agency decisions, or vest unbridled discretion in the agency. Further, the committee found that the department rule violated the nondelegation doctrine of Article II, section 3, of the Florida Constitution (see "Other Constitutional Issues" section of the analysis).

The Florida Legislature may ratify rule 62-285.400, F.A.C., at any time; however, the rule will not become enforceable in Florida until the EPA grants a waiver to California for its vehicle emissions and control standards, and then only until two model years after the waiver is granted.

III. Effect of Proposed Changes:

Section 1 amends s. 316.2937, F.S., to provide legislative ratification of rule 62-285.400, F.A.C., as adopted by the Department of Environmental Protection and filed with the Secretary of State on January 26, 2009.

The CS requires that any and all changes made by the California Air Resources board, its Executive Director, or any non-Florida official to emissions standards or individual vehicle make and model emissions values must be ratified by the Florida Legislature to be applicable and enforceable in Florida. In making the determination to ratify any changes, the Florida Legislature is required to consider how desirable the change is and the consequences of deviation from the federal Clean Air Act, but shall only ratify those changes that are consistent with the purposes and standards of chapter 403, F.S.

The CS also directs the department and the Department of Highway Safety and Motor Vehicles to develop a proposal to implement the rule and deliver the proposal to the President of the Senate and the Speaker of the House of Representatives by January 2, 2010. The proposal must address methods for monitoring compliance with the rule.

Section 2 provides for an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁶ Joint Administrative Procedures Committee's Report on DEP Rule 62-285.400, F.A.C., February 2009.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, section 3 of the Florida constitution is known as the nondelegation doctrine. It provides:

“The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

The Joint Administrative Procedures Committee found that department rule 62-285.400, F.A.C., violates the nondelegation doctrine. The federal government allows only it and California, with an EPA waiver, to set air quality standards for vehicle emissions. In its rule, the department adopted the California standards by reference. The California rule allows certain officers within California to change and update rules relating to the California emissions standards. Because Florida adopted the California standards by reference, the decisions by a California entity would be adopted by Florida automatically, which is a violation of the nondelegation doctrine. The department claims that any changes by the California governing entity for vehicle emissions would have to be ratified by the Florida Legislature in order to be implemented. Therefore, the adoption of the California standards by reference does not violate the nondelegation doctrine of the Florida Constitution because the Florida Legislature has the authority to ratify or reject any changes to the California emissions standards.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The actual costs to both industry and consumers is indeterminate.

The department recognizes that there will be an increased cost per vehicle to achieve the California standards. The CARB⁷ estimated cost of compliance for model year 2013 passenger vehicles and light trucks is \$504 per vehicle, increasing to \$1,064 for model year 2016. The CARB estimated cost of compliance for model year 2013 large trucks is \$534 per vehicle, increasing to \$1,029 for model year 2016. The department estimates that the average increase in cost to new vehicles compared to the average increase in fuel savings will result in net savings to the consumer over 1-6 years depending on fuel prices

⁷ California Air Resources Board. 20 Mar. 2009 < http://www.arb.ca.gov/cc/ccms/factsheets/cc_newfs.pdf>.

and the individual technologies. Since Florida cannot require compliance with the rule until two model years after an EPA waiver is given to California, the 2013 model year is the earliest model year that must be compliant with the department rule.

Additionally, Sierra Research, commissioned by the Alliance of Automobile Manufacturers (alliance), found that the average increase to vehicles for costs related to compliance with the California standards was approximately \$3,000. However, it should be noted that the U.S. District Court for Vermont found these costs were not supported by the evidence presented.

The alliance is also concerned with the specific distribution mix of vehicles to states adopting the California standards, provided the EPA approves California's waiver request. Because California's standards are based on fleet sales in California and contain certain definitions based on those sales, the alliance is concerned that the California fleet standards may be inappropriately applied to other states that do not have the same distribution patterns and sales volumes as California. The cost to industry for potential distribution limitations is indeterminable.

C. Government Sector Impact:

It is unknown how much it will cost the department and the Department of Transportation to develop a proposal to implement the Florida Clean Car Emission rule. However, these costs will likely be absorbed by existing resources and programs. The costs of ensuring compliance with the rule to the department and the Department of Transportation are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 24, 2009:

The CS requires that any and all changes made by the California Air Resources board, its Executive Director, or any non-Florida official to emissions standards or individual vehicle make and model emissions values must be ratified by the Florida Legislature to be applicable and enforceable in Florida. In making the determination to ratify any changes, the Florida Legislature is required to consider how desirable the change is and the consequences of deviation from the federal Clean Air Act, but shall only ratify those changes that are consistent with the purposes and standards of chapter 403, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
