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Memorandum

TO: Legislation Committee

DATE: June 5, 2009

FR: Executive Director

RE: AB 1186 (Blumenfield)/SB 728 (Lowenthal): Parking Cash-Out

Description
The state's parking cash-out law requires certain employers who provide subsidized parking for their employees to offer a cash allowance in lieu of a parking space as a way to level the playing field between driving and alternate modes. The law applies to a very limited number of employers that meet all of the following conditions: 1) they have 50 or more employees; 2) their work site is in an air basin designated as non-attainment for any air quality standard; 3) they subsidize employee parking that they do not own; 4) they can calculate the out-of-pocket expense of the parking subsidy they provide; and 5) they can reduce the number of parking spaces in their lease without penalty.

While current law allows the Air Resources Board to impose a civil penalty of $500 per vehicle, it has not issued any citations since the law's enactment in 1992. SB 728 (Lowenthal) seeks to improve enforcement of the law by allowing cities, counties and local air districts to establish, by ordinance or resolution, a penalty or other mechanism to ensure compliance with the law. AB 1186 (Blumenfield) seeks to broaden the law's applicability by requiring that the lessor of a nonresidential property that enters into a lease for space with an occupancy of 50 or more to list parking costs associated with the lease as a separate line item in all lease agreements entered into or renewed after January 1, 2011.

Recommendation: Support

Discussion
Research has firmly established the linkage between the availability of free parking at work sites and the decision to drive to work. A survey of Bay Area commuters conducted in 2000 by RIDES for Bay Area Commuters, Inc. found that while 77 percent of commuters drive alone when free parking is available, only 39 percent drive alone when they had to pay for parking. Case studies have also demonstrated a significant shift in travel behavior when employees are offered cash in lieu of a parking space. For instance, a study of the impact of parking cash-out at eight Southern California firms conducted in 1997 found that, on average, solo driving dropped 17 percent, vehicle miles traveled dropped 12 percent, transit use rose 50 percent and carpooling rose 64 percent. Because of these substantial benefits, several local entities, including the City of Los Angeles and the Bay Area Air Quality Management District, have expressed interest in enforcing the state's parking cash-out law, but lack the authority to do so under current law. SB 728 would remedy this.

It is widely acknowledged that one of the shortcomings of the state's parking cash-out law is that it applies to such a limited number of the free parking spaces made available to California workers

each day. According to a study conducted by the Legislative Analyst's Office in 2002, only about 3 percent of an estimated 11 million free parking spaces provided by employers are in fact subject to the law. This is largely due to the fact that the vast majority of free parking spaces are owned, rather than leased; and therefore, they are exempt from the law. AB 1186 would incrementally expand the law's reach by increasing the number of employers that are able to calculate their out-of-pocket parking expenses separately from their cost of the building lease – one of the five conditions to determine whether an employer is subject to the law. In addition, AB 1186 could lead more employers to forego or reduce the number of parking spaces they rent – to the extent that such an option is available to them – resulting in fewer free or subsidized parking spaces made available to employees in the first place.

In summary, because SB 728 and AB 1186 would reform parking policies statewide, resulting in significant mobility and environmental benefits, we recommend a "support" position on both bills.

Known Positions

SB 728 (Lowenthal)

Support

Environmental Defense Fund (co-sponsor)
Natural Resources Defense Council (co-sponsor)
Bay Area Air Quality Management District

Oppose

California Council for Environmental and Economic Balance

AB 1186 (Blumenfield)

Support

City of Los Angeles
Breathe California
Coalition for Clean Air
Environmental Defense Fund
Natural Resources Defense Council
Planning and Conservation League

Oppose

None on file

Steve Heminger

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AMENDED IN SENATE JUNE 24, 2009

AMENDED IN ASSEMBLY MAY 28, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1186

Introduced by Assembly Member Blumenfield

February 27, 2009

An act to ~~add Section 43846 to~~ *amend Section 43845 of* the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1186, as amended, Blumenfield. Employee parking.

Existing law requires, in any air basin designated as nonattainment for certain air quality standards, an employer of 50 persons or more that provides a parking subsidy to employees, to also offer a parking cash-out program, as provided.

This bill would require a lessor ~~of a nonresidential building, located within such an air basin, that offers parking to tenants of the building to list the parking costs as a separate line item in all lease agreements that are entered into, or renewed, on or after January 1, 2011. The bill would make this requirement applicable only to the lessor of a nonresidential building that enters into, or renews, a lease agreement that provides occupancy for 50 or more persons~~ *that enters into or renews a lease with an employer subject to the requirement above, on or before January 1, 2011, to list the amount of parking costs as a separate line item in the lease or provide a list of parking costs to the lessee within 30 days after the lease is entered into or renewed.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 43845 of the Health and Safety Code is amended to read:

43845. (a) In any air basin designated as a nonattainment area pursuant to Section 39608, each employer ~~of 50 persons or more who provides a parking subsidy to employees,~~ shall offer a parking cash-out program. ~~"Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.~~

(b) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(c) A lessor shall do either of the following for any lease, entered into or renewed on or after January 1, 2011, with a lessee who is an employer subject to subdivision (a), that offers parking to the employer:

(1) List the amount of parking costs as a separate line item in the lease.

(2) Provide a list of parking costs to the lessee within 30 days after the lease is entered into or renewed.

~~(c)~~

(d) As used in this section, the following terms have the following meanings:

(1) "Employee" means an employee of an employer subject to this section.

(2) "Employer" means an employer of 50 persons or more who provides a parking subsidy to employees.

(3) "Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

~~(2)~~

(4) "Parking subsidy" means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

~~(d)~~

(e) Subdivision (a) does not apply to any employer who, on or before January 1, 1993, has leased employee parking, until the expiration of that lease or unless the lease permits the employer to reduce, without penalty, the number of parking spaces subject to the lease.

~~(e)~~

(f) It is the intent of the Legislature, in enacting this section, that the cash-out requirements apply only to employers who can reduce, without penalty, the number of paid parking spaces they maintain for the use of their employees and instead provide their employees the cash-out option described in this section.

~~SECTION 1. Section 43846 is added to the Health and Safety Code, to read:~~

~~43846. (a) The lessor of a nonresidential building, located within an air basin designated as a nonattainment area pursuant to Section 39608, that offers parking to tenants of the building shall list the parking costs as a separate line item in all lease agreements that are entered into, or renewed, on or after January 1, 2011.~~

~~(b) This section applies only to the lessor of a nonresidential building that enters into, or renews, a lease agreement that provides occupancy for 50 or more persons.~~

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AMENDED IN SENATE APRIL 27, 2009

SENATE BILL No. 728

Introduced by Senator Lowenthal

February 27, 2009

An act to amend Section 43845 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 728, as amended, Lowenthal. Air pollution: parking cash-out program.

Existing law requires an employer of 50 persons or more who provides a parking subsidy to employees and who is in an air basin that is designated as a nonattainment area in terms of air quality to offer a parking cash-out program, defined as an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

This bill would authorize the State Air Resources Board to impose a civil penalty for a violation of this requirement~~, and~~. *The bill* would *also* authorize a city, county, and air pollution control district or air quality management district to adopt ~~additional penalties and compliance mechanisms~~ *a penalty or other mechanism to ensure compliance. The bill would authorize the imposition of a penalty by the state board or the local agency, but not both.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 43845 of the Health and Safety Code is
2 amended to read:
3 43845. (a) In any air basin designated as a nonattainment area
4 pursuant to Section 39608, each employer of 50 persons or more
5 who provides a parking subsidy to employees, shall offer a parking
6 cash-out program. "Parking cash-out program" means an
7 employer-funded program under which an employer offers to
8 provide a cash allowance to an employee equivalent to the parking
9 subsidy that the employer would otherwise pay to provide the
10 employee with a parking space.
11 (b) A parking cash-out program may include a requirement that
12 employee participants certify that they will comply with guidelines
13 established by the employer designed to avoid neighborhood
14 parking problems, with a provision that employees not complying
15 with the guidelines will no longer be eligible for the parking
16 cash-out program.
17 (c) As used in this section, the following terms have the
18 following meanings:
19 (1) "Employee" means an employee of an employer subject to
20 this section.
21 (2) "Parking subsidy" means the difference between the
22 out-of-pocket amount paid by an employer on a regular basis in
23 order to secure the availability of an employee parking space not
24 owned by the employer and the price, if any, charged to an
25 employee for use of that space.
26 (d) Subdivision (a) does not apply to any employer who, on or
27 before January 1, 1993, has leased employee parking, until the
28 expiration of that lease or unless the lease permits the employer
29 to reduce, without penalty, the number of parking spaces subject
30 to the lease.
31 (e) It is the intent of the Legislature, in enacting this section,
32 that the cash-out requirements apply only to employers who can
33 reduce, without penalty, the number of paid parking spaces they
34 maintain for the use of their employees and instead provide their
35 employees the cash-out option described in this section.
36 ~~(f) The state board may impose the civil penalty described in~~
37 ~~Section 43016 for a violation of this section. In addition, a city,~~
38 ~~county, and air district may adopt additional penalties and~~

1 ~~compliance mechanisms for a violation of this section for any~~
2 ~~employer within that city, county, or air district's jurisdiction.~~
3 *(f) (1) The state board may impose the civil penalty described*
4 *in Section 43016 for a violation of this section.*
5 *(2) (A) A city, county, or air district may also adopt, by*
6 *ordinance or resolution, a penalty or other mechanism to ensure*
7 *that an employer within the jurisdiction of that city, county, or air*
8 *district is in compliance with this section.*
9 *(B) If a city, county, or air district establishes a penalty, the*
10 *governing body shall also establish procedures for providing notice*
11 *to employers that are in violation of this section and for appeal*
12 *by the employer of any penalty imposed.*
13 *(C) If a city, county, or air district establishes a penalty pursuant*
14 *to this paragraph, a penalty may be imposed on an employer*
15 *pursuant to paragraph (1) or this paragraph, but not both. If a*
16 *penalty is imposed on an employer pursuant to both paragraph*
17 *(1) and this paragraph, only the penalty imposed by the state board*
18 *shall apply.*

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