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# Transportation

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# Transportation

## Transportation and Motor Vehicles; vehicle inspection and maintenance

Health and Safety Code §§ 44000, 44001, 44081 (repealed and new); §§ 44003.1, 44003.5, 44022, 44031, 44081, 44083 (repealed); §§ 39032.5, 44014.5, 44014.7, 44024, 44025, 44036.1, 44037.1, 44041, 44045.5, 44045.6, 44062.1, 44062.2, 44063, 44070.5, 44072.10, 44072.11, 44081.6 (new); §§ 43012, 44001.5, 44003, 44005, 44010, 44011, 44012, 44013, 44014, 44015, 44017, 44017.3, 44020, 44021, 44031.5, 44032, 44033, 44034, 44034.1, 44035, 44036, 44036.8, 44037, 44038, 44040, 44050, 44051, 44056, 44060; (amended); Vehicle Code §§ 9250.18, 40517 (new); §§ 4000.3, 5204, 27156 (amended).

AB 2018 (Katz); 1994 STAT. Ch. 27  
(Effective March 30, 1994)

Civil Code § 2982.2 (new); Health and Safety Code §§ 44090, 44092, 44093, 44094, 44095 (new); Vehicle Code § 4000.6 (new).

SB 198 (Kopp); 1994 STAT. Ch. 28  
(Effective March 30, 1994)

Health and Safety Code § 44010.5 (new).

SB 521 (Presley); 1994 STAT. Ch. 29  
(Effective March 30, 1994)

Existing federal law requires that motor vehicle<sup>1</sup> exhaust emissions<sup>2</sup> in California be reduced by specific percentages and that vehicles obtain biennial emissions inspections in designated nonattainment<sup>3</sup> areas.<sup>4</sup> The Federal Clean Air

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1. See CAL. VEH. CODE § 415 (West Supp. 1994) (defining motor vehicle); see also CAL. HEALTH & SAFETY CODE § 39039 (West 1986) (providing that motor vehicle has the same meaning as that found in the California Vehicle Code).

2. See CAL. HEALTH & SAFETY CODE § 39029 (West 1986) (defining exhaust emissions as substances emitted into the atmosphere from motor vehicle engines).

3. See 42 U.S.C.A. 7407(d) (West Supp. 1994) (defining a nonattainment area as any area that does not meet, or that affects air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for a pollutant); see also *id.* § 7409(b)(1)-(2) (West 1983) (defining national primary and secondary ambient air quality standards).

4. *Id.* § 7410 (West Supp. 1994); see *id.* (establishing national standards for air quality); CAL. HEALTH & SAFETY CODE § 44011 (West Supp. 1994) (establishing the biennial inspection and certification requirement in areas designated for program coverage); see also *id.* § 44003(a)(1) (amended by Chapter 27) (providing for enhanced vehicle inspection and maintenance programs for urban areas of the state or areas classified by the Environmental Protection Agency (EPA) as serious, severe, or extreme nonattainment areas for ozone or moderate to serious nonattainment areas for carbon monoxide as well as for other areas designated by Chapter 5 (commencing with § 4400) of the California Health and Safety Code).

Act of 1990<sup>5</sup> additionally requires states to implement enhanced smog check programs in areas with the most severe air pollution and requires that revised State Implementation Plans<sup>6</sup> be submitted to the Federal Environmental Protection Agency (EPA)<sup>7</sup> describing how states will modify their current inspection and maintenance programs to meet more stringent federal clean-air standards.<sup>8</sup> Chapters 27, 28 and 29 enhance the current inspection and maintenance program in California to enable the state to comply with the standards set by the Federal Clean Air Act.<sup>9</sup>

#### INSPECTION AND MAINTENANCE PROGRAM

Chapter 27 eliminates findings and declarations found in the California Health and Safety Code pertaining to the need for, and effectiveness of, motor vehicle inspection and maintenance programs.<sup>10</sup> Chapter 27 replaces this section with a declaration of legislative intent to meet or exceed air quality standards set by amendments to the Clean Air Act of 1990 and EPA regulations as well as to monitor the state's progress toward those goals.<sup>11</sup> Chapter 27 states the intention to improve the state's decentralized inspection and maintenance program to facilitate reaching the goals set forth in the chapter governing the Motor Vehicle Inspection and Maintenance Program.<sup>12</sup>

The existing biennial inspection and maintenance program administered by the Bureau of Automotive Repair<sup>13</sup> provides for combined inspection and repair at privately operated facilities.<sup>14</sup> Chapters 27 and 29 enhance the current decen-

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5. See 42 U.S.C.A. §§ 7401-7642 (West 1983 & Supp. 1994) (establishing the Clean Air Act and setting forth the 1990 amendments calling for the submission of state implementation plans).

6. See *id.* § 7410(a)(1) (West Supp. 1994) (requiring each state to adopt and submit a plan providing for the implementation, maintenance, and enforcement of federally promulgated air-quality standards within that state).

7. See *id.* § 4321 (West 1977) (describing the purposes of the federal EPA).

8. *Id.* § 7407(a) (West 1983); see *id.* (providing that each state has the primary responsibility for the air quality within its geographic area by submitting an implementation plan that specifies the manner in which national primary and secondary ambient air quality standards will be met and maintained within air quality control regions in the state); see also CAL. HEALTH & SAFETY CODE § 39014 (West 1986) (defining ambient air quality standards as specified concentrations and durations of air pollutants reflecting the relationship between air pollution to undesirable effects designated by the State Air Resources Board or by the federal government); *id.* § 39606(b) (West Supp. 1994) (providing for the adoption of ambient air quality standards for each air basin in the state).

9. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 629, at 2 (Jan. 14, 1994).

10. CAL. HEALTH & SAFETY CODE § 44000 (repealed and enacted by Chapter 27).

11. *Id.* §§ 44000-44000.5 (enacted by Chapter 27).

12. *Id.* § 44000 (repealed and enacted by Chapter 27).

13. See CAL. BUS. & PROF. CODE §§ 9882-9882.13 (West 1975) (establishing the California Bureau of Automotive Repair and defining its composition, powers, and duties).

14. CAL. HEALTH & SAFETY CODE § 44010 (amended by Chapter 27); see *id.* (establishing a system of privately operated test and repair facilities); see also *id.* § 44014 (West Supp. 1994) (defining the requirements for smog check stations and mechanics).

tralized system of independently operated facilities while establishing centralized test-only facilities.<sup>15</sup>

Chapter 29 requires the California Department of Consumer Affairs<sup>16</sup> to effect a program to test a portion of vehicles registered in enhanced program areas at privately operated, test-only facilities.<sup>17</sup> Chapter 29 provides for the expansion of this system of test facilities by January 1, 1996 as required to comply with the Clean Air Act.<sup>18</sup> All vehicles tested at test-only stations must be evaluated using loaded-mode dynamometers<sup>19</sup> while those not required to be certified<sup>20</sup> at these facilities in enhanced program districts may still be evaluated at test-and-repair stations.<sup>21</sup>

Chapter 29 additionally provides for the awarding of test station contracts and allows the Department of Consumer Affairs to operate test-only stations in the interim while contractors are being sought.<sup>22</sup> Chapter 29 further allows the Department of General Services<sup>23</sup> to exempt contractors from the requirements of the section as deemed necessary by the Department of Consumer Affairs to avoid delays in program implementation.<sup>24</sup>

Chapter 27 establishes more rigorous requirements for the licensure of smog check technicians and establishes requirements for training facilities.<sup>25</sup> Chapter 27 prohibits the practice by some smog check stations of charging inspection fees

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15. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 629, at 2 (Jan. 14, 1994); *see* CAL. HEALTH & SAFETY CODE § 44010.5 (enacted by Chapter 29) (requiring the California Department of Consumer Affairs to implement a program consisting of privately operated test-only facilities).

16. *See* CAL. BUS. & PROF. CODE §§ 100-101.6 (West 1990 & Supp. 1994) (establishing the Department of Consumer Affairs and defining its composition, purpose, duties, and powers).

17. CAL. HEALTH & SAFETY CODE § 44010.5(a) (enacted by Chapter 29); *see id.* (requiring the testing of 15% of those vehicles participating in the biennial program established by California Health and Safety Code §§ 44011 and 44003).

18. *Id.* § 44010.5(b) (enacted by Chapter 29); *see id.* (providing for expansion as determined to be necessary by the pilot demonstration program established by § 44081.6 of the California Health and Safety Code as enacted by Chapter 27).

19. *See* Gregory P. Nowell, *California Commentary; Regressing to Stone Age on Smog; Death of Bill to Reform Smog Checks Would Trigger Federal Sanctions and Deny Highway Funds, Putting More Jobs at Risk*, L.A. TIMES, Apr. 12, 1993, at B7 (describing a loaded mode dynamometer as a device to measure emissions that spins the wheels of the vehicle simulating the resistance encountered on the road).

20. *See* CAL. HEALTH & SAFETY CODE § 39018 (West 1986) (defining certification as the finding by the California Air Resources Board that a motor vehicle, engine, or pollution control device has satisfied Board standards for the control of specified air contaminants).

21. *Id.* § 44010.5(d) (enacted by Chapter 29).

22. *Id.* § 44010.5(f)-(g) (enacted by Chapter 29).

23. *See* CAL. GOV'T CODE § 14601 (West 1992) (establishing the Department of General Services); *see also id.* §§ 14650-14651 (West 1992) (defining the powers, duties, and responsibilities of the Department of General Services).

24. CAL. HEALTH & SAFETY CODE § 44010.5(n) (enacted by Chapter 29).

25. *Id.* §§ 44045.5-44045.6 (enacted by Chapter 27).

only if the vehicle passes the emissions test.<sup>26</sup> Sanctions are provided for inspection and repair stations, technicians, motorists, car dealers,<sup>27</sup> and fleet owners who fail to comply with pollution requirements.<sup>28</sup> Chapter 27 additionally provides for on-site inspections of new or used car dealers to inspect vehicles for compliance with emissions standards by a representative of the Department of Health Services.<sup>29</sup>

Chapter 27 raises the maximum repair cost for vehicles failing a smog test, eliminates the cost limit for gross polluters, and mandates stricter requirements for high-mileage and for-hire fleets.<sup>30</sup> Chapter 27 additionally establishes a repair cost limit of \$450 beginning January 1, 1995 or upon implementation of the repair subsidy program<sup>31</sup> also implemented by Chapter 27, whichever occurs first.<sup>32</sup>

Chapter 27 changes the composition of the Inspection and Maintenance Program Review Committee<sup>33</sup> to include experts in air quality, economists, social scientists, representatives of the inspection and maintenance industry, and representatives of stationary source emissions organizations.<sup>34</sup>

#### PILOT INSPECTION PROGRAM

Chapter 27 requires the Inspection and Maintenance Program Review Committee and the Bureau of Automotive Repair, in cooperation with the Department

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26. *Id.* § 44060 (amended by Chapter 27); *see id.* (prescribing the use of equipment to prevent electronic entry of certificates of compliance that have not actually been issued or that have not been validated through the prepayment of fees mandated by Chapter 27).

27. *See* CAL. VEH. CODE §§ 285-286, 426 (West 1987 & Supp. 1994) (defining car dealer and describing categories of persons included within the definition).

28. CAL. HEALTH & SAFETY CODE § 44056 (amended by Chapter 27); *see id.* (prescribing sanctions for violations of Chapter 27); *see also* CAL. VEH. CODE § 27156(a) (amended by Chapter 27) (providing that it is a crime to operate or leave standing on the highway any gross polluter as defined in California Health and Safety Code § 39032.5); *id.* § 39032.5 (enacted by Chapter 27) (defining a gross polluter as a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions as determined by the Department of Consumer Affairs and Air Resources Board).

29. CAL. HEALTH & SAFETY CODE § 43012(a) (amended by Chapter 27).

30. *Id.* § 44017 (amended by Chapter 27); *see also id.* § 44020 (amended by Chapter 27) (prohibiting self-testing of fleets that fail to conform to all rules and regulations adopted by the Department of Consumer Affairs or of fleets for hire or that accumulate high mileage).

31. *See id.* § 44062.1 (enacted by Chapter 27) (requiring the Department of Consumer Affairs to develop and implement a repair subsidy program not later than January 1, 1996).

32. *Id.* § 44017(a) (amended by Chapter 27); *see id.* (establishing the minimum cost limit at \$450, but allowing for higher limits in certain areas).

33. *See* 1992 Cal. Legis. Serv. ch. 677, sec. 1, at 2542-43 (amending CAL. HEALTH & SAFETY CODE § 44021) (establishing a review committee comprising representatives from the State Air Resources Board and from each of the districts where the inspection program was implemented for the purpose of assessing the effectiveness of the state's program).

34. CAL. HEALTH & SAFETY CODE § 44021(a)(3)(B) (amended by Chapter 27).

of Consumer Affairs, the State Air Resources Board,<sup>35</sup> and the California EPA,<sup>36</sup> to design and conduct a pilot program to project the statewide effects of Chapter 27.<sup>37</sup> Chapter 27 requires the owners of vehicles selected to participate in the program to allow the Bureau of Automotive Repair to test and, if necessary, repair their vehicles.<sup>38</sup>

Chapter 27 establishes a system of smog check stations in enhanced areas<sup>39</sup> dedicated to the testing of gross polluters,<sup>40</sup> tampered vehicles, high-mileage fleet vehicles, a two percent random sample of vehicles, and certain other vehicles designated by the Bureau of Automotive Repair.<sup>41</sup> Identified gross polluters and tampered vehicles may be required by the Bureau of Automotive Repair to be tested annually for between two and five consecutive years instead of the normal biennial requirement.<sup>42</sup> Chapter 27 also contains other provisions designed to further ensure the competence of smog check stations.<sup>43</sup>

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35. See *id.* §§ 39500-39510, 39600 (West 1986 & Supp. 1994) (establishing the Air Resources Board and defining its composition, purpose, duties, and powers).

36. See CAL. PUB. RES. CODE § 21190 (West Supp. 1994) (establishing the California Environmental Protection Program in the State EPA and defining its purpose).

37. CAL. HEALTH & SAFETY CODE § 44081.6(a) (enacted by Chapter 27); see *id.* § 44081.6(a)(1)-(5) (defining the purpose of the pilot program as to determine the effectiveness of emissions detection equipment, to quantify emissions reductions resulting from the remote sensing system established by California Health & Safety Code § 44081 (enacted by Chapter 27), to determine whether gross polluters can be identified by methods other than remote sensing, and to determine the expansion of the test-only station network established by California Health and Safety Code § 44010.5 (enacted by Chapter 29) necessary to meet federal EPA standards).

38. *Id.* § 44081.6(g) (enacted by Chapter 27); see *id.* § 44081.6(g)(3) (enacted by Chapter 27) (requiring owners of excessively emitting vehicles to pay for the cost of repairs unless the owner has already paid for equivalent repairs within the last two years); see also *id.* § 44081.6(g)(4) (enacted by Chapter 27) (providing penalties for noncompliance with this section).

39. See *id.* § 44003(a) (amended by Chapter 27) (providing for enhanced vehicle inspection and maintenance programs for urban areas of the state or areas classified by the EPA as serious, severe, or extreme nonattainment areas for ozone or moderate to serious nonattainment areas for carbon monoxide as well as for other areas designated by Chapter 27).

40. See *id.* § 39032.5 (enacted by Chapter 27) (defining a gross polluter as a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions as determined by the Department of Consumer Affairs and Air Resources Board).

41. *Id.* § 44015(a)(1)-(5) (amended by Chapter 27).

42. *Id.* § 44014.5(h)(3)(i)(2) (enacted by Chapter 27).

43. *Id.* § 44031.5(f) (amended by Chapter 27); see *id.* (requiring licensed smog check technicians to obtain photo identification cards from the Bureau of Automotive Repair by regulation of the Department of Consumer Affairs); see also *id.* § 44014.5(c) (enacted by Chapter 27) (requiring the Department of Consumer Affairs to provide, for the distribution to consumers by test-only stations, a regional list of smog check stations licensed to repair vehicular emission control systems and prohibiting test-only stations from referring vehicle owners to any particular vehicle repair station); *id.* § 44035(b) (amended by Chapter 27) (granting the Bureau of Automotive Repair quality assurance inspectors access to inspection station property, equipment, repair orders, and records); *id.* § 44036.1 (enacted by Chapter 27) (authorizing the Bureau of Automotive Repair to require smog check equipment manufacturers to submit proof of financial security); *id.* § 44060(c)(4) (amended by Chapter 27) (authorizing the deposit of fees collected by the Department of Consumer Affairs pursuant to Chapter 27 in the Vehicle Inspection and Repair Fund where they will be available for vehicle repair assistance and removal programs).

Chapter 27 appropriates \$12.012 million from the Vehicle Inspection and Repair Fund<sup>44</sup> to the Department of Consumer Affairs and the Air Resources Board for implementation of the enhanced smog check system.<sup>45</sup>

#### EMISSIONS TEST EQUIPMENT

Chapter 27 enhances the current smog check system by implementing a centralized statewide computer system to monitor the performance of inspection and maintenance stations and technicians.<sup>46</sup> Chapter 27 also requires loaded mode dynamometer testing for the purpose of detecting automotive pollutants emitted from sources other than the exhaust system.<sup>47</sup> To detect emissions released by moving vehicles, Chapter 27 implements a remote sensing program to audit the emissions of vehicles as they are being driven.<sup>48</sup> In concert with Chapter 29, Chapter 27 creates an expanded system of referee facilities<sup>49</sup> to test gross polluters and other vehicles required to receive special certification.<sup>50</sup>

#### VEHICLE REPAIR ASSISTANCE AND BUY-BACK PROGRAM

Chapter 28 creates a program administered by the Bureau of Automotive Repair to assist qualified low-income owners of high polluters<sup>51</sup> to comply with the requirements of the inspection and maintenance program established by

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44. See CAL. BUS. & PROF. CODE § 9886 (West 1975) (establishing the Automotive Repair Fund).

45. 1994 Cal. Legis. Serv. ch. 27, sec. 65, at 245-46.

46. CAL. HEALTH & SAFETY CODE § 44037.1 (enacted by Chapter 27); see *id.* § 44037.1(a) (enacted by Chapter 27) (requiring the development of a computer capable of administering a centralized data base and network accessible to all licensed inspection and maintenance facilities and technicians); see also *id.* § 44036(b)(3)-(11) (amended by Chapter 27) (prescribing the enhanced capabilities required of test equipment to be used at inspection and maintenance stations); *id.* § 44037.1(b) (enacted by Chapter 27) (providing specifications for the centralized computer system).

47. *Id.* § 44036(b)(11) (amended by Chapter 27).

48. *Id.* § 44081 (repealed and enacted by Chapter 27); see *id.* (requiring the California Department of Consumer Affairs and State Air Resources Board to establish procedures for auditing emissions of vehicles actually being driven for the primary purpose of detecting gross polluters).

49. See *id.* § 44014.5 (enacted by Chapter 27) (defining referee facilities as stations performing only testing and that are privately operated under contract to the Department of Consumer Affairs unless interim operation by the department is required).

50. *Id.*; see *id.* (providing for a sufficient number of referee facilities to allow for testing of vehicles required to report to referee stations because they were found to be gross polluters or because they were tested by an inspection and maintenance facility and did not meet applicable emission standards).

51. See *id.* § 44090(b) (enacted by Chapter 28) (defining a high polluter as a high-emission motor vehicle such as a gross polluter).

Chapters 27 and 29.<sup>52</sup> Participation in the program is authorized based on an estimate of future revenues available for its administration.<sup>53</sup>

Chapter 28 provides that the certificate of compliance required by Chapter 27 need not be obtained at the first registration of a newly acquired vehicle, but must be obtained at the second or subsequent renewals or by the new owner upon transfer of ownership.<sup>54</sup> Chapter 28 requires contracts for the sale of new motor vehicles to include a notification that these certificates of exemption are available to new car buyers.<sup>55</sup>

Chapter 28 establishes the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund for the deposit of funds to be used for administration of the high polluter repair or removal program.<sup>56</sup>

#### INTERPRETIVE COMMENT

Chapters 27, 28, and 29 were enacted to enable California to meet federal pollution standards while protecting the smog-check industry from a centralized system that would obviate the need for independent test stations.<sup>57</sup> These chapters represent a compromise between state and federal authorities to enable California to avoid federal sanctions for failing to comply with prescribed pollution standards.<sup>58</sup> They were also enacted as an alternative to the implementation plan

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52. *Id.* §§ 44091-44095 (enacted by Chapter 28); *see id.* § 44094(a) (enacted by Chapter 28) (providing for financial assistance to low-income motor vehicle owners for the purpose of repairing or removing high polluters provided the vehicle has been registered to the owner for at least two years and is presently operational); *see also id.* § 44094 (enacted by Chapter 28) (providing for assistance in the form of a contribution of up to 80% of the total repair cost of the high polluter so long as the payment is less than \$450 and providing for payment of up to \$800 for the removal of the high polluter).

53. *Id.* § 44094(d) (enacted by Chapter 28).

54. CAL. VEH. CODE § 4000.6 (enacted by Chapter 28); *see id.* (providing for the issuance of a certificate of exemption in place of a certificate of compliance and providing for payment of a fee equal to that charged for certificates of compliance); *see also id.* § 4000.6(b) (enacted by Chapter 28) (providing for the optional payment by registrants of a donation not to exceed \$50 to assist in the administration of the high polluter repair or removal program).

55. CAL. CIV. CODE § 2982.2 (enacted by Chapter 28).

56. CAL. HEALTH & SAFETY CODE § 44091 (enacted by Chapter 28); *see id.* § 44091(c) (enacted by Chapter 28) (providing for the determination of High Polluter Repair or Removal Account funds available to any particular area based on the percentage of vehicles registered in that area subject to inspection and maintenance programs).

57. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 629, at 4 (Jan. 14, 1994); *see id.* (citing fears by ARCO which maintains 140 Smog Pro inspection franchises in California that a pure central system would adversely affect its operators); *see also* Brad Hayward, *Wilson Signs Bills Toughening Smog Checks*, SACRAMENTO BEE, Apr. 1, 1994, at A3 (quoting California Governor Pete Wilson's statement that AB 2018 will allow the state to target high polluting vehicles while saving jobs in the smog check industry).

58. *Charter Meeting of I/M Review Committee Hears Details of Remote Sensing Project*, BNA CAL. ENV'T DAILY, June 17, 1994, at 3 [hereinafter *Charter Meeting*]; *see id.* (stating that AB 2018 incorporated a compromise between state and federal officials that avoided an expected withholding of \$800 million in federal highway funds and other sanctions); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 521, at 3 (Mar. 17, 1994) (stating that the compromise agreement represented the EPA's recognition of California's

suggested by the federal EPA which provided for a system of separate test and repair facilities.<sup>59</sup> Thus, Chapters 27, 28, and 29 are expected to avoid a negative fiscal impact on the state which would result from the elimination of combined test and repair facilities in California.<sup>60</sup>

The pilot program enacted by Chapter 27 was intended to enable California to comply with the ambient air quality standards<sup>61</sup> set by the Federal Clean Air Act as amended in 1990 by ensuring the success of California's enhanced inspection and maintenance program.<sup>62</sup> By evaluating the performance of remote sensing stations as well as that of the BAR 90<sup>63</sup> diagnostic equipment currently used in the state, Chapter 27 was intended to demonstrate that California's plan will meet federal standards while maintaining a partially decentralized network of independently owned smog check stations.<sup>64</sup>

The high polluter repair or removal program established by Chapter 28 was enacted to assist those most adversely affected by California's new implemen-

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unique efforts to reduce air pollution); *State, Federal Regulators to Sign Memorandum to End Threat of I/M Sanctions*, BNA CAL. ENV'T DAILY, Mar. 11, 1994, at 1 (citing an agreement resulting from six months of negotiations between state and federal officials as the precursor to AB 2018). *But see* Mary Beth Barber, *Earthquake Buries EPA Smog-Check Sanctions*, CAL. J. WKLY., Jan. 31, 1994, at 5-6 (stating that the EPA cancelled plans to impose sanctions on California due to hardships resulting from the January 17 earthquake in Los Angeles); *Wilson Signs California I/M Bill as Negotiations with U.S. EPA Continue*, 4 BNA CAL. ENV'T REP. 123, 124 (1994) (quoting EPA Administrator Carol Browner's statement in a letter to Governor Pete Wilson that accelerated deadlines for sanctions against the state would be cancelled as a result of the earthquake and accompanying damage to the highway system and economy).

59. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 521, at 2 (Mar. 17, 1994); *see also* Dana Wilkie, *Wilson Sent Smog-check Plan Certain to Cause Row with EPA*, SAN DIEGO UNION-TRIB., Jan. 21, 1994, at A6 (stating that the Clinton administration advocated a system of separate testing and repairing due to the EPA's belief that combined systems result in fraudulent tests and substandard repairs).

60. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 629, at 4 (Jan. 14, 1994). *But see* SRI International, *The Economic Impact of an Enhanced Test-Only Automotive Inspection and Maintenance Program in California*, at 16 (Feb. 1994) (copy on file with the *Pacific Law Journal*) (projecting a net increase in the number of jobs as well as a positive cumulative economic impact from the implementation of a centralized test-only smog check program).

61. *See* CAL. HEALTH & SAFETY CODE § 39014 (West 1986) (defining ambient air quality standards as specified concentrations and durations of air pollutants reflecting the relationship between air pollution to undesirable effects designated by the California State Air Resources Board or by the federal government); *see also* 42 U.S.C.A. § 7410(b)(5)(B)(i) (West Supp. 1994) (requiring implementation of all reasonably available control measures as expeditiously as practicable); CAL. HEALTH & SAFETY CODE § 39606(b) (West 1986) (providing the ambient air quality standards for each air basin in the state); *Connecticut Fund for Env't, Inc. v. EPA*, 672 F.2d 998, 1001 (2d Cir. 1982) (holding that the implementation plan must provide for the adoption of all reasonably available control measures as expeditiously as practicable), *cert. denied sub nom. Manchester Env'tl. Coalition v. EPA*, 459 U.S. 1035 (1982).

62. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2018, at 3-4 (Mar. 17, 1994).

63. *See* John Wildermuth, *Fewer Smog Test Sites as New Rules Take Hold*, S.F. CHRON., Aug. 18, 1990, at A1 (describing the BAR 90 as an auto emissions test analyzer replacing the BAR 84 which had previously been used in the state).

64. *Charter Meeting*, *supra* note 58, at 1; *see id.* (stating that the pilot study was intended to show that federal mandates could be met by focusing on the dirtiest vehicles); *see also id.* (stating that a purpose of AB 2018 was to compare the BAR 90 equipment with IM240 equipment required by the federal EPA).

tation plan and is specifically intended to provide financial assistance to counteract the effect of increased repair cost limits mandated by Chapter 27.<sup>65</sup>

The combination of testing and repair functions has been cited as a source of fraud with facilities generating false tests and inadequate repairs.<sup>66</sup> Implementation plans in other states that provide for separate inspection and repair facilities have been cited as examples that should be followed by California.<sup>67</sup>

Chapters 27, 28 and 29 have been criticized as inadequate to meet federal standards and may ultimately result in federal sanctions.<sup>68</sup> However, proponents and industry representatives believe these smog control provisions compose an adequate program with which to meet federal standards.<sup>69</sup>

California's implementation plan embodied in Chapters 27, 28 and 29 may face legal challenges following a recent decision<sup>70</sup> requiring specific substantive plans to meet national air quality standards.<sup>71</sup> The federal Clean Air Act allows

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65. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 198, at 2 (Mar. 17, 1994).

66. Hayward, *supra* note 57, at A3; *see id.* (citing complaints by the federal EPA that a separate two-step process of inspection and repair should be used to avoid fraud); *see also* Wilkie, *supra* note 59, at A6 (stating that the current system frequently results in fraudulent repairs and inspections).

67. Letter from Ben Abate, President, American Lung Association of California, to Members of the California State Senate (Jan. 19, 1994) (copy on file with the *Pacific Law Journal*); *see id.* (citing smog check programs with separate inspection and repair functions that work well in other states as examples that should be followed by California). *But cf.* AZ. REV. STAT. ANN. § 49-522 (1988) (establishing separate inspection and repair facilities in Maricopa county); Telephone Interview with Gladys Meade, Director, Environmental Health, American Lung Association of California (June 21, 1994) (notes on file with the *Pacific Law Journal*) (citing a prototype inspection facility in Maricopa county, Arizona as the only example of a successful combined program).

68. Wilkie, *supra* note 59, at A6; *see id.* (citing environmentalists' fears that Chapter 27 will ultimately result in even stricter EPA sanctions); *see also* Open letter from Gladys Meade, Vice President Environmental Health, American Lung Association of California (Dec. 2, 1993) (copy on file with the *Pacific Law Journal*) (stating that California's program has, for 10 years, been inadequate and that the inspection and maintenance system proposed by AB 2018 is largely the same as the state's old program); Abate, *supra* note 67 (stating that the state's experience with a combined inspection and maintenance program has shown that the system cannot meet projected emissions reductions).

69. Letter from Judy Robirson, Legislative Coordinator, and Jan Speelman, Executive Director, Automotive Trade Organizations of California, to Ben Abate, Executive Director, American Lung Association of California (Feb. 8, 1994) (copy on file with the *Pacific Law Journal*); *see id.* (stating that AB 2018 contains additional measures not present in the state's previous plan that will ensure compliance with EPA standards).

70. *See* Natural Resources Defense Council v. EPA, 22 F.3d 1125, 1140 (D.C. Cir. 1994) (holding that the EPA cannot issue conditional approval of state implementation plans merely to delay implementation deadlines).

71. *Federal Court Decision Raises Questions About Acceptability of Federal Air Plans*, 4 BNA CAL. ENV'T REP. 283, 283 (1994).

states the flexibility to design and implement whatever plans they believe will meet national standards, but the federal EPA's authority to approve or disapprove state implementation plans is well established and the 1990 amendments also contain strengthened enforcement provisions to ensure compliance.<sup>72</sup>

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72. 42 U.S.C.A. § 7410 (West 1983); *see also* Theodore L. Garrett & Sonya D. Winner, *A Clean Air Act Primer; Part I*, 22 ENVTL. L. REP. 10159, 10167 (1992) (asserting that states have the freedom to design their own State Implementation Plans but that the EPA may approve or disapprove each plan); *see also* Seabrook v. United States EPA, 659 F.2d 1349, 1360 (5th Cir. 1980) (holding that the applicable standard of review for EPA determinations regarding state implementation plans is whether the agency action was arbitrary and capricious), *cert. denied sub nom.* Varva v. United States EPA, 459 U.S. 822 (1982); Garrett & Winner, *supra* at 10159 (stating that the 1990 amendments give the EPA authority to assess up to \$25,000 per day in penalties for each violation of the Act, allow the issuing of field citations of up to \$5000, upgrade certain criminal penalties resulting in the promotion of some misdemeanors to felonies, and allow citizens to bring suit and obtain penalties and attorney's fees).