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CONSERVATION AND NATURAL RESOURCES

Prevention and Control of Air Pollution: Provide DNR with Power to Respond to EPA Regulations for Vehicle Emissions

CODE SECTIONS:	O.C.G.A. §§ 12-9-40 to -57, 36-1-16, 36-32-8 (amended), 40-8-150 to -163 (repealed)
BILL NUMBER:	HB 1440
ACT NUMBER:	768
SUMMARY:	The Act provides the Board of Natural Resources with authority to modify the vehicle emissions program in Georgia as required to conform to changes in federal regulations. The Act gives the Board power to increase the number of counties affected, change the emission inspection fee, require a certain amount to be spent for repairs, and set standards for emissions testing.
EFFECTIVE DATE:	July 1, 1992

History

Legislation for vehicle emissions testing was first introduced in Georgia in 1979.[1] The emission inspection program was required in order to deal with pollution in urban areas caused by automobile exhaust.[2] Emissions from vehicles have increased in spite of the inspection program primarily because of the tremendous growth in the Atlanta area since the original legislation.[3] Currently, four counties are required to participate in the program.[4] The federal 1990 Clean Air Act Amendments[5] tightened air quality control requirements in urban

1. 1979 Ga. Laws 1213 (formerly found at O.C.G.A. §§ 40-8-150 to -59, -160 to -62 (1991)). The emission testing program was originally placed in the motor vehicles section of the Code along with the then existing vehicle safety inspection program. Telephone Interview with Bob Collom, Chief of Air Protection Branch, Environmental Protection Division, Department of Natural Resources (Apr. 9, 1992) [hereinafter Collom Interview].

2. Telephone Interview with Rep. Robert Patten, House District No. 149 (Mar. 31, 1992) [hereinafter Patten Interview].

3. *Id.* The United States Environmental Protection Agency requires states to reduce these pollutants or face the loss of federal funding for transportation projects, sewage treatment plants, and other programs. *See* O.C.G.A. § 12-9-41(5) (1992).

4. David Pendered, *Emissions-Test Fee Increase to $40 Sought*, ATLANTA J. & CONST., Jan. 24, 1992, at E1. Those counties are Cobb, DeKalb, Fulton, and Gwinnett. *Id.*

5. 104 Stat. 2399 (codified at 42 U.S.C. §§ 7401 to 7671q (Supp. II 1992)).

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areas with the result that Atlanta's problems with ozone levels could only be dealt with by changing the current vehicle emission inspection program.[6]

HB 1440

HB 1440 was introduced[7] at the request of the Governor and the Department of Natural Resources (DNR) to allow the State to respond to federal air quality regulations to be promulgated in response to the 1990 amendments to the Clean Air Act.[8] The Act provides the DNR added flexibility to meet the regulations.[9] The Act amends chapter 8 of title 40, entitled "Motor Vehicles and Traffic," by repealing prior Code sections known as the Georgia Motor Vehicle Emission Inspection and Maintenance Act.[10] Title 12 of the Code, entitled "Conservation and Natural Resources," was amended to incorporate those repealed

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6. Collom Interview, *supra* note 1.

7. HB 1440, as introduced, 1992 Ga. Gen. Assem. As introduced, HB 1440 would have amended only O.C.G.A. §§ 40-8-150 to -163. *Id.* The bill as passed by the House removed the emissions testing program from this section and placed it in O.C.G.A. §§ 12-9-40 to -57. HB 1440 (HCSFA), 1992 Ga. Gen. Assem. Some members felt this change from the motor vehicle section to the air pollution section was appropriate for the vehicle emission program. Collom Interview, *supra* note 1. The Act removes control of the program from the Department of Public Safety and places it with the Department of Natural Resources (DNR). *Compare* 1979 Ga. Laws 1213, 1217 (formerly found at O.C.G.A. § 40-8-154 (1991)) *with* O.C.G.A. §§ 12-9-46 to -47 (1992). The Department of Public Safety still has involvement with the emissions testing stations via a memorandum of agreement with the DNR to assist in inspection and investigation to ensure that the stations are operated properly. Collom Interview, *supra* note 1.

8. Patten Interview, *supra* note 2. The EPA published a Notice of Proposed Rulemaking concerning these regulations on July 13, 1992. Vehicle Inspection and Maintenance Requirements for State Implementation Plans, 57 Fed. Reg. 31,058 (1992) (to be codified at 40 C.F.R. pt. 51) (proposed July 13, 1992). For the full text of the proposed rules see *id.* at 33,287.

9. As one legislator commented: " 'We can either make the law broad enough to cover whatever the federal government does, or wait and come back in a special session to handle it,' said Rep. Dean Alford (D-Conyers), a member of the House Natural Resources and Environment Committee. 'I don't think the Legislature wants to come back to deal with this one issue.' " *Pendered, supra* note 4.

10. 1989 Ga. Laws 14 (formerly found at O.C.G.A. § 40-8-154 (1991)); 1989 Ga. Laws 149 (formerly found at O.C.G.A. § 40-8-151 (1991)); 1989 Ga. Laws 1404 (formerly found at O.C.G.A. § 40-8-158 (1991)); 1987 Ga. Laws 14 (formerly found at O.C.G.A. § 40-8-159 (1991)); 1986 Ga. Laws 1061 (formerly found at O.C.G.A. §§ 40-8-155, -156, -158, -159 (1991)); 1986 Ga. Laws 10 (formerly found at O.C.G.A. § 40-8-159.1 (1991)); 1985 Ga. Laws 1092 (formerly found at O.C.G.A. §§ 40-8-153, -156, -159, -159.1, -161 (1991)); 1983 Ga. Laws 3 (formerly found at O.C.G.A. § 40-8-163 (1991)); 1982 Ga. Laws 165 (formerly found at O.C.G.A. §§ 40-8-159, -163 (1991)); 1981 Ga. Laws 1441 (formerly found at O.C.G.A. §§ 40-8-153, -158 (1991)); 1979 Ga. Laws 1213 (formerly found at O.C.G.A. §§ 40-8-150 to -159, -160 to -162 (1991)).

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provisions into chapter 9, which relates to the preservation of air quality and control of air pollution.[11]

Code section 12-9-46 provides the Board of Natural Resources with authority to make changes in the inspection program.[12] This section allows the Board to increase the number of counties required to participate in the emissions testing program.[13] Such action would be taken if the counties were determined to be in a nonattainment area[14] by the Environmental Protection Agency (EPA).[15] However, when counties are removed from the nonattainment list by the EPA, such counties shall be removed from the inspection program.[16] The Act also provides that the inspection term covered by an emission sticker may be either one or two years.[17]

Word of a potential increase in the emissions test fee brought public reaction prior to the introduction of the bill in the General Assembly.[18] The Act provides for the inspection fee to be set by the Board.[19]

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11. O.C.G.A. §§ 12-9-40 to -57 (1992). The Act also amends title 36 to correct references to former Code sections 40-8-150 to -163. *Id.* §§ 36-1-16, 36-32-8 (Supp. 1992).

12. O.C.G.A. § 12-9-46 (1992).

13. *Id.* § 12-9-46(a)(1)-(2) (1992) provides that:

> (a) The board shall have the following powers and duties under this article:
>
> (1) To adopt criteria to establish whether emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles in each county or area within a nonattainment area are directly related to excess levels of ozone or carbon monoxide or both in such county or area; provided, however, that such criteria shall in no event be more stringent than the criteria established by the USEPA pursuant to the federal Clean Air Act;
>
> (2) To designate each county or area within a nonattainment area which meets the criteria established pursuant to paragraph (1) of this subsection.

Id. Under the Act, nine more counties (Cherokee, Clayton, Coweta, Douglas, Fayette, Forsyth, Henry, Paulding, and Rockdale) may be required to participate in the testing program. Charles Seabrook, *Bill Scales Back Proposed Hike in Emission Fee*, ATLANTA J. & CONST., Feb. 5, 1992, at C1.

14. A nonattainment area is defined as "a geographic area designated by the USEPA in the Code of Federal Regulations as an area which has not attained or maintained the NAAQS for ozone or carbon monoxide or both in accordance with the federal Clean Air Act, as amended." O.C.G.A. § 12-9-43(20) (1992).

15. *Id.* § 12-9-44 (1992).

16. *Id.* § 12-9-45(f) (1992).

17. *Id.* § 12-9-46(a)(10) (1992).

18. *Pendered, supra* note 4. The DNR had considered an increase to $40. *Id.* HB 1440, as introduced, provided for a maximum fee of $25. HB 1440, as introduced, 1992 Ga. Gen. Assem.

19. O.C.G.A. § 12-9-46(a)(9) (1992). This section provides the Board with the following power:

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Previously, the emission inspection stations were allowed to set a fee from $7.50 to $10.00.[20] The Act also changes the dollar amount that a motorist must spend in order to repair a vehicle's exhaust and emission control systems should the motorist's vehicle fail to pass both the inspection and a reinspection.[21] A motorist can obtain an inspection sticker should the vehicle fail to pass a reinspection provided that the motorist can prove the emission control systems were replaced if necessary, $450 in repair and maintenance was spent, and such repairs have produced a decrease in emissions.[22] The $450 expenditure requirement is in contrast to the former $50 limit[23] but was required by the federal 1990 Clean Air Act Amendments.[24]

An interesting battle over emissions testing developed as out-of-state firms lobbied to have the emissions testing done by a single contractor.[25] As introduced, HB 1440 would have allowed the number and location of inspection stations to be limited if it was determined this action was needed to ensure compliance with the Clean Air Act.[26] The response to this lobbying activity was to remove the Board's authority to limit inspection stations.[27]

Finally, the Act increased the maximum fine for violation of any provision of the Act from $100 to $1000.[28]

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> To prescribe by rule or regulation a fee to be charged by emission inspection stations for the performance of emission inspections; provided, however, that such fee shall be no less than $10.00 and no more than $25.00 per inspection and shall be based on the cost of performing such inspection in an adequate and proper manner including, without limitation, the cost of equipment, testing, labor, training, record keeping, reporting, and other overhead expenses.

Id.

20. 1987 Ga. Laws 626, 629 (formerly found at O.C.G.A. § 40-8-159(d)(3) (1991)).
21. *Id.* § 12-9-48(d)(2) (1992).
22. *Id.* § 12-9-48(d) (1992).
23. 1981 Ga. Laws 1441 (formerly found at O.C.G.A. § 40-8-158 (1991)).
24. 42 U.S.C. § 7511a(c)(3)(C)(iii) (Supp. II 1992).
25. David Pendered, *Drive for a Piece of the Pie,* ATLANTA J. & CONST., Feb. 14, 1992, at E1.
26. HB 1440, as introduced, 1992 Ga. Gen. Assem. These limits included allowing the State to operate the stations or contract with a limited number of persons to operate the stations. *Id.*
27. O.C.G.A. § 12-9-49(c) (1992); HB 1440 (HCSFA), 1992 Ga. Gen. Assem. The Act removed the Board's discretion in this matter by providing that "[t]he board shall not in any manner limit the number, location, and types of authorized inspection stations certified to operate in any nonattainment area, county, or any portion of a county or area." O.C.G.A. § 12-9-49(c) (1992).
28. O.C.G.A. § 12-9-55(f) (1992).

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