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**AB-2206 Nonattainment basins: employee parking: parking cash-out program.** (2021-2022)

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Date Published: 10/03/2022 02:00 PM

**Assembly Bill No. 2206**

**CHAPTER 866**

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

[ Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2206, Lee. Nonattainment basins: employee parking: parking cash-out program.

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

This bill would revise the definitions of "employer," "parking cash-out program," and "parking subsidy." The bill would require an employer to maintain a record of communication with each employee who receives a parking subsidy that those employees have been informed of their right to receive the cash equivalent of the parking subsidy. The bill would also impose specified duties upon the State Air Resources Board.

Vote: majority Appropriation: no Fiscal Committee: yes 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) 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 in the state who provides a parking subsidy to employees.
- (3) (A) "Market rate cost of parking" means the following:
  - (i) (I) An amount that is no less than if the parking were to be obtained by an individual unaffiliated with the property on which parking is provided or by the employer through a transaction with no special rate due to a property lease for the closest publicly available parking within one-quarter mile of the employee's workplace. The employer shall maintain

appropriate evidence of its effort to establish the market rate cost of parking pursuant to this subclause for at least four years.

(II) If the amount cannot be established pursuant to subclause (I), an amount that is the monthly or daily price for use of a parking space located within one-quarter mile of the place of employment, as evidenced by a public offer, such as through a printed or otherwise publicly displayed advertisement, or a listing including price, such as on a publicly accessible parking smartphone application, available for acceptance by a member of the public, for use of that parking space from within the previous six months. If the employer uses this subclause as the basis for calculating the market rate cost of parking, the employer shall maintain appropriate evidence of the offer it relied upon, such as a physical copy or photograph of an advertisement or a screenshot showing availability and price within a parking smartphone application, for at least four years from the time of any cash allowance payment made based upon that offer.

(ii) Notwithstanding clause (i), "market rate cost of parking" means either of the following under the specified circumstances:

(I) If the amount determined pursuant to clause (i) is valued at over three hundred fifty dollars (\$350) per month, "market rate cost of parking" means three hundred fifty dollars (\$350) per month.

(II) If the amount cannot be established pursuant to clause (i), "market rate cost of parking" means the monthly price of the lowest priced transit serving within one-quarter mile of the site or fifty dollars (\$50) per month, whichever is higher.

(B) Beginning January 1, 2024, the state board shall annually adjust the amounts specified in clause (ii) of subparagraph (A) for inflation based on the changes in the California Consumer Price Index.

(C) For purposes of this paragraph, free parking shall not be considered when determining the market rate cost of parking.

(4) "Parking cash-out program" means an employer-funded program pursuant to which an employer offers to provide a cash allowance to employees where the cash allowance provided to each eligible employee is equal to or greater than the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

(5) "Parking subsidy" means the difference between the price, if any, charged to an employee for the use of a parking space not owned by the employer and made available by the employer to that employee and the market rate cost of parking.

(b) (1) In any air basin designated as a nonattainment area pursuant to Section 39608, each employer shall offer a parking cash-out program.

(2) If an employee receives a parking subsidy, the employer shall maintain a record of communication with the employee that they have been informed of the right to receive the cash equivalent of the parking subsidy.

(c) A parking cash-out program may include a requirement that an employee participant certifies that the employee participant will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that an employee participant that is not in compliance with the guidelines will no longer be eligible for the parking cash-out program.

(d) Subdivision (b) 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) It is the intent of the Legislature, in enacting this section, that the cash-out requirements apply only to an employer that can reduce, without penalty, the number of paid parking spaces it maintains for the use of its employees and instead provide its employees with the cash-out option described in this section.

(f) (1) The state board may impose the civil penalty described in Section 43016 for a violation of this section.

(2) (A) A city, county, or air district may also adopt, by ordinance or resolution, a penalty or other mechanism to ensure that an employer within the jurisdiction of that city, county, or air district is in compliance with this section.

(B) If a city, county, or air district establishes a penalty, the governing body shall also establish procedures for providing notice to an employer that is in violation of this section and for appeal by the employer of any penalty imposed.

(C) If a city, county, or air district establishes a penalty pursuant to this paragraph, a penalty may be imposed on an employer pursuant to paragraph (1) or this paragraph, but not both. If a penalty is imposed on an employer pursuant to both paragraph (1) and this paragraph, only the penalty imposed by the state board shall apply.