



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

**DRAFT**

Date Amended:	<b>04/06/06</b>	Bill No:	<b>AB 2996</b>
Tax:	<b>Brake Pad Mitigation Fee</b>	Author:	<b>Levine</b>
Related Bills:			

***This analysis will only address the bill's provisions that impact the Board.***

**BILL SUMMARY**

This bill would require each retailer to collect a one dollar (\$1) fee from the purchase of a set of new automobile brake pads from that retailer.

**ANALYSIS**

**Current Law**

Under existing law, there is no excise tax or fee on the purchase of brake pads; however, sales of such products are subject to the sales and use tax.

**Proposed Law**

This bill would add Chapter 25 (commencing with Section 14960) to Division 7 of the Water Code to establish the Automobile Brake Pad Mitigation Program (Program).

Among other things, this bill would require each retailer to collect a one dollar (\$1) fee from the purchase of a set of new automobile brake pads from that retailer. Revenues collected by the retailer would be transmitted to the Board of Equalization (Board) for deposit into the Automobile Brake Pad Mitigation Fund (Fund), which this bill would establish in the State Treasury.

This bill would define the following terms as follows:

- "Automobile" means a motor vehicle as defined in Section 415 of the Vehicle Code.
- "Brake pads" means service brakes as that term is used in Article 1 (commencing with Section 26301) of Chapter 3 of Division 12 of the Vehicle Code.
- "Set of automobile brake pads" means the two brakes that are required for each wheel on an automobile.

The moneys in the Fund, upon appropriation by the Legislature, could be expended by the State Water Resources Control Board (SWRCB) to fund projects that prevent, reduce, remediate, or mitigate the adverse environmental impacts of automobile brake pads, including, but not limited to, the purchase and installation of technological devices that remove copper and the cleanup of streams, creeks, marshlands, diked lands, ponds, coastal areas, estuaries, wetlands, watersheds, agricultural open space, and roads. In addition, SWRCB would be authorized to (1) allocate available moneys in the Fund to local agencies for the purposes of the Program and (2) expend not more than three percent of any moneys in the Fund for administrative purposes.

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The Program would remain in effect until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

This bill would become effective January 1, 2007.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the City of Los Angeles and is intended to provide sufficient funding to address the impact of automobile brake pads on water quality.
2. **The bill needs administrative and collection provisions.** This bill requires an amendment to specify that the Board is authorized to collect the brake pad mitigation fee pursuant to the Fee Collection Procedures Law. The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions.

Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law. To provide consistency with other Board-administered fees, it is suggested that proposed Section 14961 be amended to provide the following:

14961. (c)(3) The State Board of Equalization shall administer and collect the fee imposed pursuant to this section under the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The State Board of Equalization may adopt regulations to carry out this section, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

Also, the bill should be amended to specify a due date for the fee and return, authorize the payment of refunds on overpayments of the fee and reimbursement for the Board's costs of administration. Board staff is willing to work with the author's office in drafting appropriate amendments.

3. **Would the fee apply to brake pads used in both drum and disc brakes?** Automobiles use either drum brakes, disc brakes or a combination of the two. In drum brakes, two semicircular brake pads (also called brake shoes) are located inside a drum. When the brakes are applied, the brake shoes are forced outward and press against the drum. Disc brakes consist of two brake pads located on either side of a rotor. When the brakes are applied, the two pads squeeze against the rotor.

Is the fee proposed by this measure intended to apply to brake pads used in both drum and disc brakes, or only to brake pads used in disc brakes?

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4. **Suggested technical amendments.** This bill would define a “set of automobile pads” to mean “the two brakes that are required for each wheel on an automobile.” This definition does not appear to be complete. For example, is the definition intended to state “the two brake pads that are required . . .”?

In addition, the language imposing the fee provides that “each retailer shall collect a one dollar (\$1) fee from the purchase of a set of new automobile brake pads from that retailer.” This language is not entirely clear. Is it intended to read “each retailer ... from the ~~purchase~~ purchaser of a new set of ~~new~~ automobile brake pads from that retailer”?

Also, the definition of “brake pads” appears to describe a type of brake (service brake versus an emergency brake or parking brake) instead of the product (the pad) that applies friction to the brake surface to slow the motor vehicle.

As noted above, Board staff is available to assist the author’s office in drafting amended language with respect to these suggestions.

5. **Additional terms need defining.** This bill does not contain definitions for the terms “retailer” and “purchaser.” In order to avoid any ambiguity in administering the proposed fee, it is recommended that precise definitions for these terms be incorporated into the bill.
6. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2007, which is in the middle of the state’s fiscal year. In order to begin to develop the fee payer base and reporting forms and to hire appropriate staff, an adequate appropriation would be required to cover the Board’s administrative start-up costs that would not be identified in the Board’s 2006-07 budget.
7. **Would the fee be imposed upon all brake pads?** This measure would impose a fee upon brake pads required for each wheel on an automobile. An automobile would be defined to mean a vehicle that is self-propelled. As such, brake pads for vehicles such as trailers and 5<sup>th</sup> wheels that are not self-propelled would not be subject to the fee. However, brake pads for motor vehicles such as golf carts would be subject to the fee.
8. **The brake pad mitigation fee would be subject to sales and use tax.** The proposed fee would be imposed upon the retailer. Sales and use tax is due based on the gross receipts from or sales price of tangible personal property in this state. The proposed brake pad mitigation fee would not be specifically excluded from the retailer’s gross receipts or the sales price, so it would be included in the amount on which sales or use tax is computed.
9. **Legal challenges of any new fee program might be made on the grounds that the fee is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and

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others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

Although this measure has been keyed by the Legislative Counsel as a majority vote bill, opponents of this measure might question whether the fees imposed are in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature.

**COST ESTIMATE**

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

**REVENUE ESTIMATE**

**Background, Methodology, and Assumptions**

The Program established by this bill would be in effect until January 1, 2015, and would require the SWRCB to carry out the program. The fee collected by the retailer from the consumer would be transmitted to the Board.

The data used for this estimate is from a study conducted by the Brake Pad Partnership, a multi-stakeholder effort to understand the impacts on the environment that may arise from brake pad wear debris generated in the use of passenger vehicles. The study, titled *Copper Released by Brake Lining Wear in the San Francisco Bay Area*, cited the average distance traveled before brake lining replacement was estimated to be 35,000 miles. The study also found that, for the Bay Area, the number of miles driven per year for the average vehicle was 11,234 miles. According to a report published by the Department of Motor Vehicles, registered passenger vehicles amounted to 21.9 million and registered light truck vehicles amounted to 7.9 million in California in 2004. There are 4 sets of brake pads on each vehicle. Based on this information we estimate brake pad consumption, for cars and light trucks, to be 38.3 million pad sets per year, as follows:

	Number of Vehicles
Cars	21,900,000
Trucks	7,900,000
Total Vehicles	29,800,000
Brake pad life (miles)	35,000
Average vehicles miles per year (Bay Area)	11,234
Number of pad sets replaced each year	38,300,000

[(29,800,000 x 4) x (11,234 / 35,000) = 38,300,000]

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