

**Paper for the House Committee Meeting
on 30 April 2010**

**Legal Service Division Report on
Motor Vehicle Idling (Fixed Penalty) Bill**

I. SUMMARY

- 1. Objects of the Bill**
 - (a) To prohibit the idling of motor vehicles and to provide exemptions from the prohibition; and
 - (b) To impose a fixed penalty for contravention of the prohibition and to provide for recovery of the fixed penalty.

- 2. Comments**
 - (a) The Bill prohibits the driver of a motor vehicle from causing or permitting it to be idling on a road for more than three minutes in any 60-minute period.
 - (b) The Bill applies to all motor vehicles and drivers in the Hong Kong Special Administrative Region (HKSAR), including those of the Government and of the Offices set up by the Central People's Government in the HKSAR.
 - (c) A fixed penalty of \$320 is to be imposed on a person who contravenes the prohibition of idling vehicles.
 - (d) Exemptions are proposed to be given to drivers of certain vehicles including taxis, green and red minibuses and non-franchised buses under specified circumstances.

- 3. Public Consultation**

According to paragraphs 19 and 20 of the LegCo Brief, the Administration conducted a 5-month public consultation on the legislative proposal from November 2007 to March 2008. It has conducted 44 meetings with the stakeholders including the transport trades and the green groups. The public consultation revealed a broad-based community support for the proposal.

- 4. Consultation with LegCo Panel**

The Panel on Environmental Affairs (EA Panel) has been monitoring the progress of control of idling vehicles. While supporting the policy intent of the proposed statutory prohibition of idling vehicles, some members expressed grave concerns on its impact. When the subject was last discussed at EA Panel meeting on 23 February 2009, some members were of the view that further consultation with the transport trades should be held with a view to working out practicable solutions to resolve the problems arising from the prohibition. Some other members held the view the prohibition should not be further delayed for technical reasons.

- 5. Conclusion**

In light of the concerns raised by members of EA Panel and the important implications of the Bill on the general public and particular trades, members may wish to examine the policy and operational aspects of the prohibition of idling vehicles in detail.

II. REPORT

Objects of the Bill

- (a) To prohibit the idling of motor vehicles and to provide exemptions from the prohibition; and
- (b) To impose a fixed penalty for contravention of the prohibition and to provide for recovery of the fixed penalty.

LegCo Brief Reference

- 2. EP CR 9/150/27 dated 15 April 2010 issued by the Environmental Protection Department.

Date of First Reading

- 3. 28 April 2010.

Comments

- 4. To tackle the problem of environmental nuisances caused by idling motor vehicles with running engines (idling vehicles), the Chief Executive pledged in the 2007-08 Policy Address that, subject to public consultation, the Government would introduce a statutory prohibition against idling vehicles.

- 5. The Bill seeks to introduce a scheme for the control of idling vehicles after the Administration completed a 5-month public consultation from November 2007 to March 2008. The major proposals are summarized in the following paragraphs.

Prohibition of idling vehicles

- 6. The Bill provides that the driver of a motor vehicle must not cause or permit the vehicle to be idling on a road for more than 3 minutes in any 60-minute period (clause 5). For the purposes of the Bill, a motor vehicle is idling if any internal combustion engine forming part of, attached to or situated in or on the vehicle is operating while the vehicle is stationary (clause 4). A person who contravenes clause 5 does not commit an offence but is liable to pay a fixed penalty of \$320 for the contravention. The amount of the fixed penalty may be amended by resolution of the Legislative Council (clause 7).

7. The Bill applies to all motor vehicles and drivers in the Hong Kong Special Administrative Region (HKSAR), including those of the Government and of the Offices set up by the Central People's Government in the HKSAR¹ (clause 3).

8. The prohibition on idling vehicle provided in clause 5 does not apply to -

- (a) a driver referred to in Schedule 1 to the Bill; or
- (b) a driver who is exempted, or is in a class of drivers that is exempted by the Director of Environmental Protection (DEP).

Schedule 1 Exemptions

9. The exemptions given to certain drivers are provided in Schedule 1 to the Bill, which include -

- (a) a driver of a motor vehicle that is stationary because of traffic conditions;
- (b) a driver of a motor vehicle who cannot prevent the vehicle from idling because of a mechanical difficulty over which he has no control;
- (c) a driver of a motor vehicle while a passenger is boarding or alighting from the vehicle;
- (d) a driver of a taxi that is within the designated area of a taxi stand or in a queue of taxis any of which is moving into a taxi stand;
- (e) a driver of a green minibus at a green minibus stand if the minibus is the first or second minibus on a particular scheduled service at the stand;
- (f) a driver of a red minibus at a red minibus stand if the minibus is the first or second red minibus at the stand, any passenger is on board or the minibus is immediately behind another red minibus at the stand that has any passenger on board;
- (g) a driver of a non-franchised bus that has any passenger on board;

¹ "Offices set up by the Central People's Government in the Hong Kong Special Administrative Region", as defined in section 3 of the Interpretation and General Clauses Ordinances (Cap. 1), means -

- (a) the Liaison Office of the Central People's Government in the HKSAR;
- (b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR; and
- (c) the Hong Kong Garrison of the Chinese People's Liberation Army.

- (h) a driver of a medical, emergency or law enforcement vehicle if idling the vehicle is necessary for conducting an operational activity (including a training activity) for or related to medical, emergency or law enforcement purposes;
- (i) a driver of a motor vehicle who is assisting in an emergency or accident if idling the vehicle is necessary for that purpose;
- (j) a driver of a motor vehicle for a specified body (e.g. the Agriculture, Fisheries and Conservation Department) if the vehicle is carrying any live animals and the idling is necessary for conducting an operational activity or protecting public health;
- (k) a driver of a security transit vehicle if idling the vehicle is necessary for providing armoured transportation services;
- (l) a driver of a motor vehicle of the Hong Kong Garrison of the Chinese People's Liberation Army if idling the vehicle is necessary for conducting an operational activity (including a training activity) of the Garrison;
- (m) a driver of a motor driver if the vehicle is lawfully designed primarily for a purpose other than the carriage of the driver, any passengers and their personal effects and idling the vehicle is necessary for a purpose for which the vehicle is primarily designed; and
- (n) a driver of a motor vehicle if idling the vehicle is necessary for emissions testing or for carrying out on the vehicle any maintenance, repairs or other works that are necessary to enable the vehicle to be removed without undue delay.

10. Clause 32 provides that the Secretary for the Environment (the Secretary) may, by notice published in the Gazette, amend Schedule 1 (this means that the amendment will be subject to the scrutiny the Legislative Council under section 34 of Cap. 1).

Exemptions by DEP

11. The DEP may exempt a driver or a class of driver from the prohibition against idling vehicle under clause 5 subject to any conditions he thinks fit. If DEP exempts a driver, he must give the driver written notice of the exemption. If DEP exempts a class of drivers, he must publish notice of the exemption in the Gazette. Such notice of exemption is not subsidiary legislation (clause 6).

Fixed Penalty System

12. Part 3 of the Bill seeks to provide a system of fixed penalty to enforce the prohibition of idling vehicles. The fixed penalty of \$320 is same as that for illegal parking under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). According to paragraph 10 of the LegCo Brief, the enforcement procedure is largely modelled on Cap. 237, the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) and the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600).

13. Under clause 8 of the Bill, if an authorized officer has reason to believe that a person is contravening or has contravened the idling prohibition, he may give a fixed penalty notice to the driver personally or by affixing it to the motor vehicle. The list of authorized officers is provided in Schedule 2 to the Bill, which comprises Traffic Warden, Senior Traffic Warden, Environmental Protection Inspector, Senior Environmental Protection Inspector and Chief Environmental Protection Inspector. The DEP may serve a demand notice on a person if he fails to pay a fixed penalty within 21 days after being given a fixed penalty notice. The demand notice will demand payment of the fixed penalty within 10 days after the date of service of the demand notice (clause 11). If the demand notice is not acted upon, the Secretary for Justice may apply to a magistrate for an order for that person to pay the fixed penalty, an additional penalty equal to the amount of the fixed penalty and \$300 by way of costs (clause 13(2))

14. Members may refer to the operation details of the proposed fixed penalty system as provided by the Administration in Annex B to the LegCo Brief.

Commencement

15. If enacted, the Bill shall come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Public Consultation

16. According to paragraphs 19 and 20 of the LegCo Brief, the Administration conducted a 5-month public consultation on the legislative proposal from November 2007 to March 2008. The Administration conducted 44 meetings with the stakeholders, including the Advisory Council on the Environment, all the 18 Districts Councils, the transport trades, green groups, professional bodies and other relevant parties. The Administration also carried out telephone surveys and invited discussion at the Public Affairs Forum to gauge the views of the general public. According to the Administration, the public consultation revealed a broad-based community support for the proposal. The Bill has taken on board many of the suggestions received during the public consultation and seeks to strike a balance

between the operational needs of the transport trades and effective implementation of the idling prohibition.

Consultation with LegCo Panel

17. The Panel on Environmental Affairs (EA Panel) has been monitoring the progress of control of idling vehicles. Deputations, such as the affected trades, professional bodies and green groups, have been invited to express their views on a number of occasions. While supporting the policy intent of the proposed introduction of a statutory prohibition against idling vehicles, some members have expressed grave concerns on its impact on the operation of the transport trades. When the subject was last discussed at EA Panel meeting on 23 February 2009, some members were of the view that further consultation with the transport trades should be held with a view to working out practicable solutions to resolve the problems arising from the prohibition. Some other members, on the other hand, held the view that the Administration should not listen only to the views of the transport trades. They pointed out that while exemptions should be provided as appropriate to ensure the practicality of the prohibition, it should not be further delayed for technical reasons.

Conclusion

18. In light of the concerns raised by members of EA Panel and the important implications of the Bill on the general public and particular trades, members may wish to examine the policy and operational aspects of the prohibition of idling vehicles in detail.

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