

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 696

Introduced by Senator Wright

February 27, 2009

An act to add Sections 40440.12 and 40440.13 to the Health and Safety Code, relating to air quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Wright. Air quality: CEQA exemptions: emission reduction credits.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national

ambient air quality standard is required to establish, by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. Pursuant to this requirement the South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would exempt from the requirements of CEQA, except as specified, the adoption and implementation of specified district rules relating to emission credits. Because a lead agency would be required to determine whether the use of the credits qualifies for an exemption, this bill would impose a state-mandated local program.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Because of the superior court decision in *Natural Resources*
- 4 *Defense Council v. South Coast Air Quality Management District*
- 5 *(Super. Ct. Los Angeles County, 2007, No. BS 110792)* holding
- 6 the South Coast Air Quality Management District (district) violated
- 7 the requirements of the California Environmental Quality Act
- 8 (CEQA) (Division 13 (commencing with Section 21000) of the
- 9 Public Resources Code) in the promulgation of certain district

1 rules, the district is unable to issue over a thousand pending permits
2 that rely on the district's internal offset bank to offset emissions.

3 (2) The superior court decision also required the district to set
4 aside several thousand permits that were previously issued in
5 reliance on the district's internal offset bank. These permits have
6 been subject to analysis performed pursuant to CEQA that the lead
7 agency has deemed appropriate.

8 (3) Between 2003 and 2005, the federal Environmental
9 Protection Agency conducted an extensive review of the criteria
10 for, and the types of documentation used to support, the deposit
11 of credits in the district's offset bank. As a result of that review,
12 the district made a significant adjustment. ~~They~~ *The district* reduced
13 the total credits by an average of 60 percent over all pollutants and
14 by over 90 percent for PM10 credits. As a result of this review,
15 the Environmental Protection Agency issued a letter to the district
16 on April 11, 2006, confirming that the district tracking system
17 addressed the underlying historical issues, including the use of
18 pre-1990 credits and further recommended a rule codifying the
19 revised tracking system. The district in 2006 adopted Rule 1315
20 to meet this recommendation. Rule 1315 is now in part the subject
21 of the litigation described paragraph (1).

22 (4) If prompt legislative action is not taken to correct this
23 situation, projects will be stopped from going forward or frozen
24 in place, representing significant losses to the economy, as well
25 as numerous well-paying jobs. The impact of approved projects
26 not going forward will dramatically impede any economic recovery
27 in southern California and contribute to another state deficit as a
28 result of lower tax revenues.

29 (5) Affected projects include equipment replacement to reduce
30 air emissions, plus projects for essential public services such as
31 hospitals, schools, landfills, sewage treatment plants, renewable
32 energy projects, and small sources, including small businesses that
33 are unable to locate or afford credits on the open market. With
34 time, many other similar projects will have to be placed on hold,
35 or have their application withdrawn.

36 (6) The superior court decision also prohibits the district from
37 issuing air credits from its Priority Reserve to thermal powerplants
38 ~~that are needed to meet the current and future projected electricity~~
39 ~~needs of the region and to prevent blackouts during peak demand~~
40 ~~periods.~~ *that the Public Utilities Commission found were needed.*

1 *The commission's finding was made after extensive public hearings*
2 *in the commission's long-term electric procurement plan*
3 *proceedings held pursuant to Section 454.5 of the Public Utilities*
4 *Code. The commission concluded that these thermal powerplants*
5 *were needed after concluding that efforts at all cost-effective,*
6 *reliable, and feasible demand response and demand reduction*
7 *resources were exhausted and that additional supplies of electricity*
8 *from eligible renewable energy resources were insufficient to meet*
9 *the current and future projected electricity needs of the region to*
10 *prevent blackouts during peak demand periods, to maintain a*
11 *stable supply of electricity if imported supplies of electricity are*
12 *interrupted, and to integrate and backstop new, intermittent*
13 *electricity generated by eligible renewable energy resources that*
14 *will be added to the grid.*

15 (7) Without corrective legislation, the district cannot improve
16 air quality by allowing the existing older and higher emitting and
17 less efficient powerplants to be replaced with new cleaner and
18 more efficient powerplants. Fifty percent of available total power
19 in the region is generated from powerplants that are 40 years or
20 older.

21 (8) Failure to correct this problem will mean the district cannot
22 help meet the mandates set forth in the California Global Warming
23 Solutions Act of 2006 (Division 25.5 (commencing with Section
24 38500) of the Health and Safety Code) if it cannot issue permits
25 to provide necessary peaking *and load-following* power to support
26 increased reliance on ~~renewable energy~~ *intermittent electricity*
27 *generated by eligible renewable energy resources* as will be
28 required by state efforts to reduce *emissions of* greenhouse gases.

29 (b) It is therefore necessary that legislation be enacted to allow
30 the district to resume issuing permits and to abrogate the superior
31 court decision in *Natural Resources Defense Council v. South*
32 *Coast Air Quality Management District* (Super. Ct. Los Angeles
33 County, 2007, No. BS 110792).

34 SEC. 2. Section 40440.12 is added to the Health and Safety
35 Code, to read:

36 40440.12. (a) South coast district Rule 1309.1, as amended on
37 September 8, 2006, and replaced August 3, 2007, and Rule 1315,
38 as adopted September 8, 2006, and readopted August 3, 2007,
39 relating to, among other things, the creation of internal accounts
40 for essential public services, small sources, exempt sources, and

1 eligible powerplants, are hereby continued in full force and effect
2 without interruption since September 8, 2006, and August 3, 2007.

3 (b) The adoption and implementation of Rules 1309.1, 1315,
4 1304, and any amendments to these rules required by the United
5 States Environmental Protection Agency for approval, are exempt
6 from the California Environmental Quality Act (Division 13
7 (commencing with Section 21000) of the Public Resources Code),
8 except as provided in subdivision (d).

9 (c) The exemption provided in subdivision (b) applies to all
10 actions taken pursuant to the rules listed in subdivision (b)
11 occurring on and after September 8, 2006, and to the use of credits
12 pursuant to the May 3, 2002, version of Rule 1309.1, except as
13 provided in subdivision (d).

14 (d) (1) There are hereby established two accounts of offset
15 credits in the south coast district's internal bank: the operating
16 account and the set-aside account.

17 (2) The starting balances of the operating account are hereby
18 established in the following amounts:

19 (A) Volatile organic compounds: 10.98 tons/day.

20 (B) Nitrogen oxides: 14.27 tons/day.

21 (C) Sulfur oxides: 2.32 tons/day.

22 (D) Carbon monoxide: 12.72 tons/day.

23 (E) PM10: 10.63 tons/day.

24 (3) The credits in the operating account may be used for
25 implementation of Rules 1304 and 1309.1. The use of credits in
26 the operating account are exempt from the California
27 Environmental Quality Act (Division 13 (commencing with Section
28 21000) of the Public Resources Code) except that the issuance of
29 any permit using these credits is not ~~exempt from the act~~ *included*
30 *within this exemption*. Future rules authorizing the creation of
31 additional offset credits for deposit into the operating account are
32 not exempt from the California Environmental Quality Act under
33 this section. The south coast district shall account for emission
34 credits used pursuant to this section to ensure that the credits issued
35 do not exceed the allocations described in this subdivision.

36 (4) The starting balances of the set-aside account are hereby
37 established in the following amounts:

38 (A) Volatile organic compounds: 55.56 tons/day.

39 (B) Nitrogen oxides: 11.24 tons/day.

40 (C) Sulfur oxides: 0 tons/day.

1 (D) Carbon monoxide: 0 tons/day.

2 (E) PM10: 0.55 tons/day.

3 (5) The use of the credits in the set-aside account is not exempt
4 from the California Environmental Quality Act pursuant to this
5 section.

6 (e) The exemptions from the California Environmental Quality
7 Act provided in this section shall not apply unless all of the
8 following are satisfied:

9 (1) A south coast district rule requires the use of the best
10 available control technology, as defined in Section 40405, and air
11 quality modeling to ensure the source will not cause a violation,
12 or make significantly worse an existing violation, of any ambient
13 air quality standards as defined in district Rule 1303, unless
14 exempted from modeling pursuant to district Rule 1304, as
15 amended June 14, 1996, for each new, relocated, or modified
16 source with an emissions increase of one pound per day or greater
17 of any air contaminant.

18 (2) A south coast district rule prohibits the construction of any
19 new, relocated, or modified permitted unit if the emissions of any
20 toxic air contaminant, as listed by the district board, exceed a
21 cumulative increase in maximum individual cancer risk at any
22 receptor location of greater than one in one million if the permitted
23 unit is constructed without best available control technology for
24 toxic air contaminants, or greater than 10 in one million if the
25 permitted unit is constructed with best available control technology
26 for toxic air contaminants or exceeds a chronic or acute noncancer
27 health effect hazard index of 1.0.

28 (3) The south coast district accounts for the use of offset credits
29 pursuant to this subdivision as part of the district's state
30 implementation plan submissions and demonstrates that the use
31 of the offset credits will not interfere with attainment or
32 maintenance of ambient air quality standards.

33 (4) South coast district Rules 1304, 1309.1, and 1315, as
34 specified in this subdivision, have been submitted to the United
35 States Environmental Protection Agency, and have not been
36 disapproved by that agency.

37 (f) *No fee shall be charged for the use of credits by essential*
38 *public services, as defined in south coast district Rule 1302.*

39 (f)

1 (g) A powerplant may be eligible to receive offset credits under
2 this section if it meets both of the following conditions:

3 (1) The powerplant has filed its application for certification
4 before the State Energy Resources Conservation and Development
5 Commission and its certificate is approved pending release of
6 internal offset credits by the south coast district.

7 (2) The powerplant will provide electric power to customers in
8 California, and either the powerplant owner has entered into a
9 binding contract for purchase of the power by an electrical
10 corporation subject to regulation by the Public Utilities
11 Commission, and the contracts have been approved by the Public
12 Utilities Commission consistent with its authority, including, but
13 not limited to, Section 380 of the Public Utilities Code, or the plant
14 is a powerplant owned by a local publicly owned electrical utility,
15 or owned by a municipality, that is designed and constructed not
16 to exceed the municipality or utility's native demand load
17 projections.

18 ~~(g)~~

19 (h) (1) A powerplant accessing emission credits pursuant to
20 this section shall pay a mitigation fee for the Priority Reserve offset
21 credits obtained that shall be the amount set forth in south coast
22 district Rule 1309.1, as amended August 3, 2007.

23 (2) The south coast district shall, to the extent technically and
24 economically feasible, use the mitigation fees to mitigate emissions
25 of the relevant pollutants or its precursors in the area impacted by
26 emissions from the powerplant, with a minimum of one-third to
27 be used for installation of renewable or alternative sources of
28 energy. Up to 10 percent may be used by the district for
29 administration of the mitigation program.

30 ~~(h)~~

31 (i) Any credits used pursuant to this section shall not be
32 transferable except to a new owner of the same source, and shall
33 revert back to the south coast district's internal accounts upon the
34 source, or portion of a source, ceasing operation.

35 ~~(i)~~

36 (j) Except as expressly provided in subdivisions (b) and (d),
37 nothing in this section shall affect the applicability of the California
38 Environmental Quality Act to the licensing and permitting of any
39 powerplant project, or to the permitting of any project by the south
40 coast district.

1 (j)
 2 (k) The decisions of the court in Natural Resources Defense
 3 Council v. South Coast Air Quality Management District (Super.
 4 Ct. Los Angeles County, 2007, No. BS 110792) are hereby
 5 abrogated.

6 SEC. 3. Section 40440.13 is added to the Health and Safety
 7 Code, to read:

8 40440.13. (a) (1) Any amendment of the operating account to
 9 increase the amount of emission credits above the amounts
 10 established in paragraph (2) of subdivision (d) of Section 40440.12
 11 or a change in the eligibility for those credits shall be made in
 12 accordance with the requirements of this section and any applicable
 13 requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et
 14 seq.).

15 (2) The south coast district shall post its internal credit accounts,
 16 including debits, credits, and balances on its Internet Web site.

17 (b) A powerplant shall be eligible to receive offset credits from
 18 amounts added to the operating account beyond the starting
 19 balances established in paragraph (2) of subdivision (d) of Section
 20 40440.12 only if the powerplant meets both of the following
 21 conditions:

22 (1) The powerplant will provide electric power to customers in
 23 southern California, and the capacity addition is authorized by the
 24 Public Utilities Commission in its long-term power procurement
 25 decision in accordance with Section 454.5 of the Public Utilities
 26 Code, after concluding that efforts at all cost-effective, reliable,
 27 and feasible demand response and demand reduction resources
 28 were exhausted and additional supplies of renewable power were
 29 insufficient to meet the current and future projected electricity
 30 needs of the region.

31 (2) The powerplant owner has entered into a binding contract
 32 for purchase of the power by an electrical corporation subject to
 33 regulation by the Public Utilities Commission, and the contracts
 34 have been approved by the Public Utilities Commission consistent
 35 with its authority, including, but not limited to, Section 380 of the
 36 Public Utilities Code, or is a powerplant owned by a local publicly
 37 owned electrical utility that is designed and constructed not to
 38 exceed that utility’s native demand load projections within the
 39 local publicly owned electrical utility’s service area. Powerplants
 40 that meet this paragraph are deemed needed to meet electric power

1 demand, system reliability, and integration of renewable power
2 into the grid.

3 (c) Any credits used pursuant to this section shall not be
4 transferable except to a new owner of the same source, and shall
5 revert back to the south coast district upon the source, or portion
6 of a source, ceasing operation.

7 (d) The south coast district shall establish a fee paid by the
8 powerplant for the use of offset credits from the Priority Reserve
9 issued pursuant to this section.

10 (e) Nothing in this section affects the responsibilities of the
11 State Energy Resources Conservation and Development
12 Commission with respect to environmental analysis of a proposed
13 powerplant.

14 SEC. 4. The Legislature finds and declares that a special law
15 is necessary and that a general law cannot be made applicable
16 within the meaning of Section 16 of Article IV of the California
17 Constitution because of unique circumstances concerning the South
18 Coast Air Quality Management District.

19 SEC. 5. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 a local agency or school district has the authority to levy service
22 charges, fees, or assessments sufficient to pay for the program or
23 level of service mandated by this act, within the meaning of Section
24 17556 of the Government Code.

25 SEC. 6. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety within
27 the meaning of Article IV of the Constitution and shall go into
28 immediate effect. The facts constituting the necessity are:

29 Due to the court decision in Natural Resources Defense Council
30 v. South Coast Air Quality Management District (Super. Ct. Los
31 Angeles County, 2007, No. BS 110792), the South Coast Air
32 Quality Management District is unable to issue over a thousand
33 pending permits that are either exempt from offset requirements
34 or qualified to use offset credits from the district's Priority Reserve
35 and is required to set aside thousands of permits already issued;
36 therefore it is necessary for this measure to take effect immediately
37 to allow the district to issue permits in an expeditious manner and

- 1 to validate previously issued permits called into question by the
- 2 superior court's decision.

O