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CA	SB696	Bill Text	Amended/Substituted	6/9/2009
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.				

BILL NUMBER: SB 696AMENDED

BILL TEXT

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

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 ~~—, and the creation or the use of specified relating to emission credits pursuant to district rules by a thermal powerplant when certain conditions are satisfied~~ . 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) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to adopt, on a biennial basis, an integrated energy policy report to include an assessment and a forecast of the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets.~~

~~This bill would require the Energy Commission to perform a needs assessment for a thermal powerplant proposed to be located in the district.~~

~~(3)~~

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

~~(4)~~

(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.

~~(5)~~

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

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Because of the superior court decision in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792) holding the South Coast Air Quality Management District (district) violated the requirements of the California Environmental Quality Act (CEQA) (Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#)) in the promulgation of certain district rules, the district is unable to issue over a thousand pending permits that rely on the district's internal offset bank to offset emissions.

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

(3) *Between 2003 and 2005, the federal Environmental Protection Agency conducted an extensive review of the criteria for, and the types of documentation used to support, the deposit of credits in the district's offset bank. As a result of that review, the district made a significant adjustment. They reduced the total credits by an average of 60 percent over all pollutants and by over 90 percent for PM10 credits. As a result of this review, the Environmental Protection Agency issued a letter to the district on April 11, 2006, confirming that the district tracking system addressed the underlying historical issues, including the use of pre-1990 credits and further recommended a rule codifying the revised tracking system. The district in 2006 adopted Rule 1315 to meet this recommendation. Rule*

1315 is now in part the subject of the litigation described paragraph (1).

~~(3)~~

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

~~(4)~~

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

~~(5)~~

(6) The superior court decision also prohibits the district from issuing air credits from its Priority Reserve to thermal powerplants that are needed to meet the current and future projected electricity needs of the region and to prevent blackouts during peak demand periods.

~~(6)~~

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

~~(7)~~

(8) Failure to correct this problem will mean the district cannot help meet the mandates set forth in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with [Section 38500](#)) of the Health and Safety Code) if it cannot issue permits to provide necessary peaking power to support increased reliance on renewable energy as will be required by state efforts to reduce greenhouse gases.

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

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

~~40440.12. The California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the Public Resources Code) does not apply to either of the following:~~

~~(a) (1) The adoption or implementation of rules by the south coast district establishing offset exemptions, providing Priority Reserve credits, or creating or tracking the credits used for offset exemptions or Priority Reserve projects, if the discretionary projects that use those exemptions or credits are subject to this division or are exempt from this division pursuant to a categorical or statutory exemption and all of the following are satisfied:~~

~~(A) South coast district rule requires the use of the best available control technology, as defined in Section 40405, and air quality modeling to ensure the source will not cause a violation, or make significantly worse an existing violation, of any ambient air~~

~~quality standards as defined in district rule 1303, unless exempted from modeling pursuant to district rule 1304, as amended June 14, 1996, for each new, relocated, or modified source with an emissions increase of one pound per day or greater of any air contaminant.~~

~~— (B) South coast district rule prohibits the construction of any new, relocated, or modified permitted unit if the emissions of any toxic air contaminant, as listed by the district board, exceed a cumulative increase in maximum individual cancer risk at any receptor location of greater than one in one million if the permitted unit is constructed without best available control technology for toxic air contaminants, or greater than 10 in one million if the permitted unit is constructed with best available control technology for toxic air contaminants or exceeds a chronic or acute noncancer health effect hazard index of 1.0.~~

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

~~— (D) South coast district rules 1304, 1309.1, and 1315, as specified in this subdivision, have been submitted to the United States Environmental Protection Agency, and have not been disapproved by that agency.~~

~~— (2) The exemption provided in this subdivision applies to offset exemptions pursuant to south coast district rule 1304, as amended June 14, 1996, Priority Reserve credits pursuant to south coast district rule 1309.1, as amended May 3, 2002, and the adoption and implementation of south coast district rule 1315, as adopted September 6, 2006, and readopted August 3, 2007, including any amendments to those rules required by the United States Environmental Protection Agency for approval.~~

~~— (3) Upon the satisfaction of conditions specified in paragraph (1), the exemption provided in this subdivision applies to all action taken pursuant to the south coast district rules specified in paragraph (2) on and after September 6, 2006.~~

~~— (4) The holding in Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792) is hereby abrogated.~~

~~— (5) This subdivision does not provide any exemption from the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the Public Resources Code) for the issuance of any permit.~~

~~— (b) The adoption of south coast district rule 1309.1 and the creation or use of Priority Reserve credits pursuant to south coast district rule 1309.1, as amended August 3, 2007, including any amendments to those rules required by the United States Environmental Protection Agency for approval, by a thermal powerplant that is subject to this division or to Chapter 6 (commencing with [Section 25500](#)) of Division 15 of the Public Resources Code if all of the following requirements are satisfied:~~

~~— (1) South coast district rules include the requirements and prohibitions specified in subparagraphs (A) and (B) of paragraph (1) of subdivision (a).~~

~~— (2) The thermal powerplant emissions comply with the requirements for best available control technology, air quality modeling impacts, toxic impacts, and emissions levels as specified in south coast district rule 1309.1, as amended August 3, 2007.~~

~~— (3) The thermal powerplant has entered into long term contracts with Southern California Edison Company, San Diego Gas and Electric Company, or the State of California to provide electricity in~~

~~southern California, or is a powerplant owned by a local publicly owned utility that is designed and constructed not to exceed that utility's native demand load projections, or the use of the credit is otherwise allowed by the south coast district board pursuant to south coast district rule 1309.1.~~

~~— (4) The south coast district accounts for the thermal powerplants' use of Priority Reserve credits pursuant to this subdivision as part of its state implementation plan submissions and demonstrates that the use will not interfere with attainment or maintenance of ambient air quality standards.~~

~~— (5) South coast district rule 1309.1, as amended August 3, 2007, and south coast district rule 1315, as adopted September 6, 2006, and readopted August 3, 2007, have been submitted to the United States Environmental Protection Agency and have not been disapproved by that agency.~~

~~— (6) The State Energy Resources Conservation and Development Commission has conducted a needs assessment that has determined that the thermal powerplant is necessary to meet future energy needs in southern California or the south coast district, and has determined it is necessary for the thermal powerplant to be located in the south coast district.~~

~~— (7) (A) The thermal powerplant pays a mitigation fee for the Priority Reserve offset credits obtained that shall be at a minimum the amount set forth in south coast district rule 1309.1, as amended August 3, 2007.~~

~~— (B) The south coast district board may by amendment to that rule, after a public hearing, increase the fees without affecting the applicability of this paragraph.~~

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

~~— (8) This subdivision does not provide any exemption from the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#)) or from Chapter 6 (commencing with [Section 25500](#)) of Division 15 of the Public Resources Code, for the issuance of any permit, license, or certification.~~

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

~~— 40440.13. (a) The State Energy Resources Conservation and Development Commission shall perform a needs assessment considering the issue specified in paragraph (6) of subdivision (b) of Section 40440.12 for a thermal powerplant proposed to be located in the south coast district, whether or not the thermal powerplant is subject to Chapter 6 (commencing with [Section 25500](#)) of Division 15 of the Public Resources Code.~~

~~— (b) (1) For the purposes of this section, "thermal powerplant" means any stationary or floating electrical generating facility using any source of thermal energy and any facilities appurtenant to the facility. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this section.~~

~~— (2) "Thermal powerplant" does not include any exclusively wind, hydroelectric, or solar photovoltaic electrical generating facility.~~

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

40440.12. (a) South coast district Rule 1309.1, as amended on September 8, 2006, and replaced August 3, 2007, and Rule 1315, as adopted September 8, 2006, and readopted August 3, 2007, relating to, among other things, the creation of internal accounts for essential public services, small sources, exempt sources, and eligible powerplants, are hereby continued in full force and effect without interruption since September 8, 2006, and August 3, 2007.

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

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

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

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

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

(B) Nitrogen oxides: 14.27 tons/day.

(C) Sulfur oxides: 2.32 tons/day.

(D) Carbon monoxide: 12.72 tons/day.

(E) PM10: 10.63 tons/day.

(3) The credits in the operating account may be used for implementation of Rules 1304 and 1309.1. The use of credits in the operating account are exempt from the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the Public Resources Code) except that the issuance of any permit using these credits is not exempt from the act. Future rules authorizing the creation of additional offset credits for deposit into the operating account are not exempt from the California Environmental Quality Act under this section. The south coast district shall account for emission credits used pursuant to this section to ensure that the credits issued do not exceed the allocations described in this subdivision.

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

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

(B) Nitrogen oxides: 11.24 tons/day.

(C) Sulfur oxides: 0 tons/day.

(D) Carbon monoxide: 0 tons/day.

(E) PM10: 0.55 tons/day.

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

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

(1) A south coast district rule requires the use of the best available control technology, as defined in Section 40405, and air quality modeling to ensure the source will not cause a violation, or

make significantly worse an existing violation, of any ambient air quality standards as defined in district Rule 1303, unless exempted from modeling pursuant to district Rule 1304, as amended June 14, 1996, for each new, relocated, or modified source with an emissions increase of one pound per day or greater of any air contaminant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The powerplant owner has entered into a binding contract for purchase of the power by an electrical corporation subject to regulation by the Public Utilities Commission, and the contracts have been approved by the Public Utilities Commission consistent with its authority, including, but not limited to, [Section 380 of the Public Utilities Code](#), or is a powerplant owned by a local publicly owned electrical utility that is designed and constructed not to exceed that utility's native demand load projections within the local publicly owned electrical utility's service area. Powerplants that meet this paragraph are deemed needed to meet electric power demand, system reliability, and integration of renewable power into the grid.

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

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

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

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

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

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

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