

Introduced by Senator Florez

February 23, 2009

An act to amend Sections 41081, 41606, 44229, and 44281 of, and to add Section 40708.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 225, as introduced, Florez. Emission reduction credits.

Existing law prohibits the creation of an emission reduction credit from air pollution reductions funded by certain public programs. Existing law creates air quality management districts and air pollution control districts and requires these districts, except as otherwise provided, to establish a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are to be banked prior to use to offset future increases in emissions.

This bill would authorize a district to create an emission reduction credit from the emission reductions resulting from a project that is funded from both public and private moneys if specified requirements are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 40708.5 is added to the Health and Safety
- 2 Code, to read:

1 40708.5. (a) A district may authorize the creation of an
2 emission reduction credit from the emission reductions resulting
3 from a project that is funded from both public and private moneys.

4 (b) For emission reduction credits authorized pursuant to
5 subdivision (a), the total amount of credits may not exceed 90
6 percent of the amount of the total emission reductions achieved
7 by the project. Any emission reductions credits resulting from the
8 project in excess of 90 percent shall be retired by the district.

9 (c) If an emission reduction credit authorized pursuant to this
10 section is sold or otherwise transferred, the credit shall be
11 discounted by 10 percent.

12 (d) This section shall be implemented in a manner consistent
13 with the federal Clean Air Act (42 U.S.C. Sec. 4901 et seq.).

14 SEC. 2. Section 41081 of the Health and Safety Code, as
15 amended by Section 2 of Chapter 707 of the Statutes of 2004, is
16 amended to read:

17 41081. (a) Subject to Article 3.7 (commencing with Section
18 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the
19 Government Code, or with the approval of the board of supervisors
20 of each county included, in whole or in part, within the Sacramento
21 district, the Sacramento district board may adopt a surcharge on
22 the motor vehicle registration fees applicable to all motor vehicles
23 registered in those counties within the Sacramento district whose
24 boards of supervisors have adopted a resolution approving the
25 surcharge. The surcharge shall be collected by the Department of
26 Motor Vehicles and, after deducting the department's
27 administrative costs, the remaining funds shall be transferred to
28 the Sacramento district. Prior to the adoption of any surcharge
29 pursuant to this subdivision, the district board shall make a finding
30 that any funds allocated to the district as a result of the adoption
31 of a county transportation sales and use tax are insufficient to carry
32 out the purposes of this chapter.

33 (b) The surcharge shall not exceed six dollars (\$6).

34 (c) After consulting with the Department of Motor Vehicles on
35 the feasibility thereof, the Sacramento district board may provide,
36 in the surcharge adopted pursuant to subdivision (a), to exempt
37 from all or part of the surcharge any category of low-emission
38 motor vehicle.

39 (d) Funds received by the Sacramento district pursuant to this
40 section shall be used by that district as follows:

1 (1) The revenues resulting from the first four dollars (\$4) of
2 each surcharge shall be used to implement reductions in emissions
3 from vehicular sources, including, but not limited to, a clean fuels
4 program and motor vehicle use reduction measures.

5 (2) The revenues resulting from the next two dollars (\$2) of
6 each surcharge shall be used to implement the following programs
7 that achieve emission reductions from vehicular sources and
8 off-road engines, to the extent that the district determines the
9 program remediates air pollution harms created by motor vehicles
10 on which the surcharge is imposed:

11 (i) Projects eligible for grants under the Carl Moyer Memorial
12 Air Quality Standards Attainment Program (Chapter 9
13 (commencing with Section 44275) of Part 5).

14 (ii) The new purchase, retrofit, repower, or add-on of equipment
15 for previously unregulated agricultural sources of air pollution, as
16 defined in Section 39011.5, within the Sacramento district, for a
17 minimum of three years from the date of adoption of an applicable
18 rule or standard, or until the compliance date of that rule or
19 standard, whichever is later, if the state board has determined that
20 the rule or standard complies with Sections 40913, 40914, and
21 41503.1, after which period of time, a new purchase, retrofit,
22 repower, or add-on of equipment shall not be funded pursuant to
23 this chapter. The district shall follow any guidelines developed
24 under subdivision (a) of Section 44287 for awarding grants under
25 this program.

26 (iii) The new purchase of schoolbuses pursuant to the
27 Lower-Emission School Bus Program adopted by the state board.

28 (iv) An accelerated vehicle retirement or repair program that is
29 adopted by the state board pursuant to authority granted hereafter
30 by the Legislature by statute.

31 (e) Not more than 5 percent of the funds collected pursuant to
32 this section shall be used by the district for administrative expenses.

33 (f) ~~No~~ Except as provided in Section 40708.5, no project funded
34 by the program shall be used for credit under any state or federal
35 emissions averaging, banking, or trading program. ~~No~~ Except as
36 provided in Section 40708.5, no emission reduction generated by
37 the program shall be used as marketable emission reduction credits
38 or to offset any emission reduction obligation of any person or
39 entity. ~~Projects~~ Except as provided in Section 40708.5, projects
40 involving new engines that would otherwise generate marketable

1 credits under state or federal averaging, banking, and trading
2 programs shall include transfer of credits to the engine end user
3 and retirement of those credits toward reducing air emissions in
4 order to qualify for funding under the program. A purchase of a
5 low-emission vehicle or of equipment pursuant to a corporate or
6 a controlling board's policy, but not otherwise required by law,
7 shall generate surplus emissions reductions and may be funded by
8 the program.

9 (g) This section shall remain in effect only until January 1, 2015,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2015, deletes or extends that date.

12 SEC. 3. Section 41606 of the Health and Safety Code is
13 amended to read:

14 41606. (a) (1) It is the intent of the Legislature to reduce air
15 pollution from open field burning in the state and to improve air
16 quality and protect the public health through new incentives for
17 biomass facilities to increase their use of agricultural waste that
18 would otherwise be burned in open fields in the state.

19 (2) It is the further intent of the Legislature that the initial
20 incentives paid pursuant to this section provide an effective
21 incentive for the use of qualified agricultural biomass purchased
22 from July 1, 2003, through December 31, 2003, inclusive, in order
23 to maximize air quality benefits during the 2003–04 fiscal year.

24 (b) For purposes of this section:

25 (1) "Qualified agricultural biomass" means agricultural residues
26 that are purchased after July 1, 2003, that historically have been
27 open-field burned in the jurisdiction of the air district from which
28 the agricultural residues are derived, as determined by the air
29 district, excluding urban and forest wood products, that include
30 either of the following:

31 (A) Field and seed crop residues, including, but not limited to,
32 straws from rice and wheat.

33 (B) Fruit and nut crop residues, including, but not limited to,
34 orchard and vineyard pruning and removals.

35 (2) "Facility" means any facility located in California that meets
36 all of the following criteria:

37 (A) As of July 1, 2003, converted and continues to convert
38 qualified agricultural biomass to energy.

39 (B) Is permitted with best available control technology to reduce
40 emissions, has emissions control equipment in good working order,

1 and is in compliance with its operating permit, as determined by
2 the air pollution control district or air quality management district
3 in which the facility operates.

4 (C) Demonstrates a significant net increase in utilization of
5 qualified agricultural biomass as compared to usage without grant
6 moneys pursuant to this section. A “significant net increase” means
7 an increase of at least 10 percent in purchases of qualified
8 agricultural biomass above the average annual tonnage purchased
9 by the facility in the previous five years of operation prior to the
10 implementation of the Agricultural Biomass-to-Energy Incentive
11 Grant Program pursuant to former Part 3 (commencing with
12 Section 1101) of Division 1 of the Food and Agricultural Code,
13 as repealed by the act adding this section.

14 (c) (1) The State Energy Resources Conservation and
15 Development Commission shall, upon determining that a facility
16 is eligible for funding, provide incentives to the facility, consistent
17 with this section.

18 (2) The State Energy Resources Conservation and Development
19 Commission shall complete the issuance of incentive payments
20 for qualified agricultural biomass purchased from July 1, 2003,
21 through December 31, 2003, inclusive, within 90 days of the
22 effective date of this section.

23 (3) In providing incentives pursuant to this section, the State
24 Energy Resources Conservation and Development Commission
25 shall provide incentive payments in the amount of ten dollars (\$10)
26 for each ton of qualified agricultural biomass received by a facility
27 and converted into energy. The State Energy Resources
28 Conservation and Development Commission may increase the
29 incentive payment for types or sources of qualified agricultural
30 biomass that require greater incentives to achieve meaningful
31 increases in usage by facilities, as determined by the State Energy
32 Resources Conservation and Development Commission.

33 (4) Notwithstanding any other provision of law, the receipt of
34 incentives pursuant to this section does not make a facility
35 ineligible for any other production subsidy, rebate, buydown, or
36 other incentive funded through electricity surcharges, except that
37 receipt of incentives funded through electricity surcharges shall
38 preclude receipt of biomass-to-energy incentives financed by the
39 General Fund.

1 (5) The State Energy Resources Conservation and Development
2 Commission, in consultation with the California Environmental
3 Protection Agency, may adopt guidelines governing the incentives
4 authorized under this section at a publicly noticed meeting offering
5 all interested parties an opportunity to comment. Substantive
6 changes to the guidelines may not be adopted without at least 10
7 days' written notice to the public. The public notice of meetings
8 required by this paragraph may not be less than 30 days.
9 Notwithstanding any other provision of law, any guidelines adopted
10 pursuant to this section shall be exempt from the requirements of
11 Chapter 3.5 (commencing with Section 11340) of Division 3 of
12 Title 2 of the Government Code. Adoption of guidelines shall not
13 delay the timing of the payment of incentives that are required by
14 paragraph (2).

15 (6) Awards made pursuant to this section are grants, subject to
16 appeal to the State Energy Resources Conservation and
17 Development Commission upon a showing that factors other than
18 those contained in this section, and any guidelines adopted pursuant
19 to this section, were a substantial factor in making the award. Any
20 actions taken by an applicant to apply for, become, or remain
21 eligible for an award, shall not be the rendering of goods, services,
22 or a direct benefit to the State Energy Resources Conservation and
23 Development Commission.

24 (d) ~~Facilities~~ *Except as provided in Section 40708.5, facilities*
25 receiving incentive payments pursuant to this section are not
26 eligible to receive emission reduction credits for any qualified
27 agricultural biomass for which a facility has received an incentive
28 payment. ~~Generators~~ *Except as provided in Section 40708.5,*
29 *generators* or suppliers of qualified agricultural biomass may not
30 receive emission reduction credits for any qualified agricultural
31 biomass for which a facility has received an incentive payment.
32 For purposes of this section, "emission reduction credits" means
33 a credit for a reduction in the emission of an air contaminant that
34 is banked and is available to offset increases in emissions pursuant
35 to Section 40709, and the regulations adopted pursuant to that
36 section.

37 SEC. 4. Section 44229 of the Health and Safety Code, as
38 amended by Section 4 of Chapter 707 of the Statutes of 2004, is
39 amended to read:

1 44229. (a) After deducting all administrative costs it incurs
2 through collection of fees pursuant to Section 44227, the
3 Department of Motor Vehicles shall distribute the revenues to
4 districts, which shall use the revenues resulting from the first four
5 dollars (\$4) of each fee imposed to reduce air pollution from motor
6 vehicles and to carry out related planning, monitoring, enforcement,
7 and technical studies necessary for implementation of the California
8 Clean Air Act of 1988. Fees collected by the Department of Motor
9 Vehicles pursuant to this chapter shall be distributed to districts
10 based upon the amount of fees collected from motor vehicles
11 registered within each district.

12 (b) Notwithstanding the provisions of Section 44241 and Section
13 44243, a district shall use the revenues resulting from the next two
14 dollars (\$2) of each fee imposed pursuant to Section 44227 to
15 implement the following programs that the district determines
16 remediate air pollution harms created by motor vehicles on which
17 the surcharge is imposed:

18 (1) Projects eligible for grants under the Carl Moyer Memorial
19 Air Quality Standards Attainment Program (Chapter 9
20 (commencing with Section 44275) of Part 5).

21 (2) The new purchase, retrofit, repower, or add-on equipment
22 for previously unregulated agricultural sources of air pollution, as
23 defined in Section 39011.5, for a minimum of three years from
24 the date of adoption of an applicable rule or standard, or until the
25 compliance date of that rule or standard, whichever is later, if the
26 state board has determined that the rule or standard complies with
27 Sections 40913, 40914, and 41503.1, after which period of time,
28 a new purchase, retrofit, repower, or add-on of equipment shall
29 not be funded pursuant to this chapter. The districts shall follow
30 any guidelines developed under subdivision (a) of Section 44287
31 for awarding grants under this program.

32 (3) The new purchase of schoolbuses pursuant to the
33 Lower-Emission School Bus Program adopted by the state board.

34 (4) An accelerated vehicle retirement or repair program that is
35 adopted by the state board pursuant to authority granted hereafter
36 by the Legislature by statute.

37 (c) The Department of Motor Vehicles may annually expend
38 not more than the following percentages of the fees collected
39 pursuant to Section 44227 on administrative costs:

1 (1) During the first year after the operative date of this chapter,
2 not more than 5 percent of the fees collected may be used for
3 administrative costs.

4 (2) During the second year after the operative date of this
5 chapter, not more than 3 percent of the fees collected may be used
6 for administrative costs.

7 (3) During any year subsequent to the second year after the
8 operative date of this chapter, not more than 1 percent of the fees
9 collected may be used for administrative costs.

10 (d) ~~No~~ *Except as provided in Section 40708.5, no project funded*
11 *by the program shall be used for credit under any state or federal*
12 *emissions averaging, banking, or trading program.* ~~No~~ *Except as*
13 *provided in Section 40708.5, no emission reduction generated by*
14 *the program shall be used as marketable emission reduction credits*
15 *or to offset any emission reduction obligation of any person or*
16 *entity.* ~~Projects~~ *Except as provided in Section 40708.5, projects*
17 *involving new engines that would otherwise generate marketable*
18 *credits under state or federal averaging, banking, and trading*
19 *programs shall include transfer of credits to the engine end user*
20 *and retirement of those credits toward reducing air emissions in*
21 *order to qualify for funding under the program. A purchase of a*
22 ~~low-emission~~ *low-emission vehicle or of equipment pursuant to a*
23 *corporate or a controlling board's policy, but not otherwise required*
24 *by law, shall generate surplus emissions reductions and may be*
25 *funded by the program.*

26 (e) This section shall remain in effect only until January 1, 2015,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2015, deletes or extends that date.

29 SEC. 5. Section 44281 of the Health and Safety Code, as
30 amended by Section 7 of Chapter 707 of the Statutes of 2004, is
31 amended to read:

32 44281. (a) Eligible projects include, but are not limited to, any
33 of the following:

34 (1) Purchase of new very low or zero-emission covered vehicles
35 or covered heavy-duty engines.

36 (2) Emission-reducing retrofit of covered engines, or
37 replacement of old engines powering covered sources with newer
38 engines certified to more stringent emissions standards than the
39 engine being replaced, or with electric motors or drives.

1 (3) Purchase and use of emission-reducing add-on equipment
2 that has been verified by the state board for covered vehicles.

3 (4) Development and demonstration of practical, low-emission
4 retrofit technologies, repower options, and advanced technologies
5 for covered engines and vehicles with very low emissions of oxides
6 of nitrogen.

7 (5) Light- and medium-duty vehicle projects in compliance with
8 guidelines adopted by the state board pursuant to Title 13 of the
9 California Code of Regulations.

10 (b) No project shall be funded under this chapter after the
11 compliance date required by any local, state, or federal statute,
12 rule, regulation, memoranda of agreement or understanding, or
13 other legally binding document, except that an otherwise qualified
14 project may be funded even if the State Implementation Plan
15 assumes that the change in equipment, vehicles, or operations will
16 occur, if the change is not required by the compliance date of a
17 statute, regulation, or other legally binding document in effect as
18 of the date the grant is awarded. ~~No~~ *Except as provided in Section*
19 *40708.5, no project funded by the program shall be used for credit*
20 *under any state or federal emissions averaging, banking, or trading*
21 *program.* ~~No~~ *Except as provided in Section 40708.5, no emission*
22 *reduction generated by the program shall be used as marketable*
23 *emission reduction credits or to offset any emission reduction*
24 *obligation of any person or entity.* ~~Projects~~ *Except as provided in*
25 *Section 40708.5, projects involving new engines that would*
26 *otherwise generate marketable credits under state or federal*
27 *averaging, banking, and trading programs shall include transfer*
28 *of credits to the engine end user and retirement of those credits*
29 *toward reducing air emissions in order to qualify for funding under*
30 *the program. A purchase of a low-emission vehicle or of equipment*
31 *pursuant to a corporate or a controlling board's policy, but not*
32 *otherwise required by law, shall generate surplus emissions*
33 *reductions and may be funded by the program.*

34 (c) The program may also provide funding toward installation
35 of fueling or electrification infrastructure as provided in Section
36 44284.

37 (d) Eligible applicants may be any individual, company, or
38 public agency that owns one or more covered vehicles that operate
39 primarily within California or otherwise contribute substantially
40 to the NO_x, PM, or ROG emissions inventory in California.

1 (e) It is the intent of the Legislature that all emission reductions
2 generated by this chapter shall contribute to public health by
3 reducing, for the life of the vehicle being funded, the total amount
4 of emissions in California.

5 (f) This section shall remain in effect only until January 1, 2015,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2015, deletes or extends that date.

8 SEC. 6. Section 44281 of the Health and Safety Code, as added
9 by Chapter 707 of the Statutes of 2004, is amended to read:

10 44281. (a) Eligible projects are any of the following:

11 (1) Purchase of new very low or zero-emission covered vehicles
12 or covered engines.

13 (2) Emission-reducing retrofit of covered engines, or
14 replacement of old engines powering covered sources with newer
15 engines certified to more stringent emissions standards than the
16 engine being replaced, or with electric motors or drives.

17 (3) Purchase and use of emission-reducing add-on equipment
18 for covered vehicles.

19 (4) Development and demonstration of practical, low-emission
20 retrofit technologies, repower options, and advanced technologies
21 for covered engines and vehicles with very low emissions of oxides
22 of nitrogen.

23 (b) No new purchase, retrofit, repower, or add-on equipment
24 shall be funded under this chapter if it is required by any local,
25 state, or federal statute, rule, regulation, memoranda of agreement
26 or understanding, or other legally binding document, except that
27 an otherwise qualified project may be funded even if the State
28 Implementation Plan assumes that the change in equipment,
29 vehicles, or operations will occur, if the change is not required by
30 a statute, regulation, or other legally binding document in effect
31 as of the date the grant is awarded. ~~No~~ *Except as provided in*
32 *Section 40708.5, no* project funded by the program shall be used
33 for credit under any state or federal emissions averaging, banking,
34 or trading program. ~~No~~ *Except as provided in Section 40708.5, no*
35 emission reduction generated by the program shall be used as
36 marketable emission reduction credits or to offset any emission
37 reduction obligation of any entity. ~~Projects~~ *Except as provided in*
38 *Section 40708.5, projects* involving new engines that would
39 otherwise generate marketable credits under state or federal
40 averaging, banking, and trading programs shall include transfer

1 of credits to the engine end user and retirement of those credits
2 toward reducing air emissions in order to qualify for funding under
3 the program. A purchase of a low-emission vehicle or of equipment
4 pursuant to a corporate or a controlling board's policy, but not
5 otherwise required by law, shall generate surplus emissions
6 reductions and may be funded by the program.

7 (c) The program may also provide funding toward installation
8 of fueling or electrification infrastructure as provided in Section
9 44284.

10 (d) Eligible applicants may be any individual, company, or
11 public agency that owns one or more covered vehicles that operate
12 primarily within California or otherwise contribute substantially
13 to the NO_x emissions inventory in California.

14 (e) It is the intent of the Legislature that all emission reductions
15 generated by this chapter shall contribute to public health by
16 reducing, for the life of the vehicle being funded, the total amount
17 of emissions in California.

18 (f) This section shall become operative on January 1, 2015.