

AMENDED IN SENATE APRIL 29, 2009

**SENATE BILL**

**No. 225**

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**Introduced by Senator Florez**

February 23, 2009

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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, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 225, as amended, 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.

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

Vote: ~~majority~~<sup>2/3</sup>. 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:

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

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

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

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

17 SEC. 2. Section 41081 of the Health and Safety Code, as  
18 amended by Section 2 of Chapter 707 of the Statutes of 2004, is  
19 amended to read:

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

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

37 (c) After consulting with the Department of Motor Vehicles on  
38 the feasibility thereof, the Sacramento district board may provide,

1 in the surcharge adopted pursuant to subdivision (a), to exempt  
2 from all or part of the surcharge any category of low-emission  
3 motor vehicle.

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

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

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

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

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

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

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

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

38 (f) Except as provided in Section 40708.5, no project funded  
39 by the program shall be used for credit under any state or federal  
40 emissions averaging, banking, or trading program. Except as

1 provided in Section 40708.5, no emission reduction generated by  
2 the program shall be used as marketable emission reduction credits  
3 or to offset any emission reduction obligation of any person or  
4 entity. Except as provided in Section 40708.5, projects involving  
5 new engines that would otherwise generate marketable credits  
6 under state or federal averaging, banking, and trading programs  
7 shall include transfer of credits to the engine end user and  
8 retirement of those credits toward reducing air emissions in order  
9 to qualify for funding under the program. A purchase of a  
10 low-emission vehicle or of equipment pursuant to a corporate or  
11 a controlling board's policy, but not otherwise required by law,  
12 shall generate surplus emissions reductions and may be funded by  
13 the program.

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

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

19 41606. (a) (1) It is the intent of the Legislature to reduce air  
20 pollution from open field burning in the state and to improve air  
21 quality and protect the public health through new incentives for  
22 biomass facilities to increase their use of agricultural waste that  
23 would otherwise be burned in open fields in the state.

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

29 (b) For purposes of this section:

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

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

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

1 (2) “Facility” means any facility located in California that meets  
2 all of the following criteria:

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

5 (B) Is permitted with best available control technology to reduce  
6 emissions, has emissions control equipment in good working order,  
7 and is in compliance with its operating permit, as determined by  
8 the air pollution control district or air quality management district  
9 in which the facility operates.

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

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

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

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

39 (4) Notwithstanding any other provision of law, the receipt of  
40 incentives pursuant to this section does not make a facility

1 ineligible for any other production subsidy, rebate, buydown, or  
2 other incentive funded through electricity surcharges, except that  
3 receipt of incentives funded through electricity surcharges shall  
4 preclude receipt of biomass-to-energy incentives financed by the  
5 General Fund.

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

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

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

1 SEC. 4. Section 44229 of the Health and Safety Code, as  
2 amended by Section 4 of Chapter 707 of the Statutes of 2004, is  
3 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 44281. (a) Eligible projects include, but are not limited to, any  
36 of the following:

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

39 (2) Emission-reducing retrofit of covered engines, or  
40 replacement of old engines powering covered sources with newer

1 engines certified to more stringent emissions standards than the  
2 engine being replaced, or with electric motors or drives.

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

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

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

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

36 (c) The program may also provide funding toward installation  
37 of fueling or electrification infrastructure as provided in Section  
38 44284.

39 (d) Eligible applicants may be any individual, company, or  
40 public agency that owns one or more covered vehicles that operate

1 primarily within California or otherwise contribute substantially  
2 to the NO<sub>x</sub>, PM, or ROG emissions inventory in California.

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

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

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

12 44281. (a) Eligible projects are any of the following:

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

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

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

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

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

1 marketable credits under state or federal averaging, banking, and  
 2 trading programs shall include transfer of credits to the engine end  
 3 user and retirement of those credits toward reducing air emissions  
 4 in order to qualify for funding under the program. A purchase of  
 5 a 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 (c) The program may also provide funding toward installation  
 10 of fueling or electrification infrastructure as provided in Section  
 11 44284.

12 (d) Eligible applicants may be any individual, company, or  
 13 public agency that owns one or more covered vehicles that operate  
 14 primarily within California or otherwise contribute substantially  
 15 to the NO<sub>x</sub> emissions inventory in California.

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

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

21 *SEC. 7. This act is an urgency statute necessary for the*  
 22 *immediate preservation of the public peace, health, or safety within*  
 23 *the meaning of Article IV of the Constitution and shall go into*  
 24 *immediate effect. The facts constituting the necessity are:*

25 *In order to expand the creation of emission reduction credits at*  
 26 *the earliest possible time, it is necessary that this act take effect*  
 27 *immediately.*

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30 **CORRECTIONS:**

31 **Text—Page 2.**

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