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Bill Orton

Turmoil, tempers at 11th hour as LA smog-credits bill neared victory

By John Howard,
Anthony York | 09/17/09

Nobody thought the fight over Rod Wright's SB 827 would be easy. They were right.

"There was carnage," said Sen. Wright, D-Inglewood, of the fight over the highest-stakes environmental-regulatory bill of the year, with a potential, \$4 billion economic hit and 65,000 jobs at stake in the L.A. basin. The bill allows air regulators to distribute valuable emissions credits in the way they did before the courts blocked them. The bill now is before Republican Gov. Arnold Schwarzenegger.

But the story of the bill's path through the Legislature illustrates the backroom deals and last-minute maneuvering that have become emblematic of the end of a legislative year. Charges of deceit, manipulation and out-right lying were all flying around committee rooms and the Assembly and Senate floors as the sun began to rise Saturday morning and the Legislature was still in session.

The bill began life under another name, and was born in a hijacking. It was rewritten, then rewritten again, then rewritten again. It was bounced from committee to committee and back again as tempers flared and suspicions deepened in the middle of the night. "There were two or three occasions when things got pretty testy," Wright said. Wright, a seasoned veteran of the Capitol's political wars, knows when things get testy.

The measure was left for dead in the inactive file, then reemerged as if by magic, then went back down, then went back up.

Another bill, initially identical in contents and intended to accompany SB 827 as part of a package, was more narrowly drafted to reflect environmentalists' concerns. It then disappeared down a rabbit hole and never returned, and the angry author of that bill, Sen. Alan Lowenthal, D-Long Beach, demanded that his colleagues vote against SB 827.

"It was a direct assault on CEQA (the California Environmental Quality Act)," Lowenthal said later.

Each step of the way, SB 827 was accompanied by Wright and a phalanx of lobbyists who pushed the legislation from one house to the other and back. A crucial change in the bill sought by the South Coast Air Quality Management District was made in the middle of the night by Senate leaders and wound up facing a committee vote reflecting the change -- despite the author's promise that it would not be changed.

Indeed, despite that change, the chair of a committee that heard the bill, Assembly member Felipe Fuentes, D-Sylmar, told colleagues on the Assembly floor that there was nothing improper about the bill's journey to the Assembly floor.

"It's been alluded to a couple of times that this was a 'gut and amend.' It was not," Fuentes said. "This bill was heard in Senate E.Q. (Environmental Quality) and in Assembly Natural Resources, and it was just heard in Utilities and Commerce. There has been a process to this bill."

But Fuentes didn't have all of his facts quite right. And he wasn't alone: Others made statements on the bill that were similarly misleading.

According to the Legislative Counsel's bill tracking system, SB 827 was never heard in the Senate Environmental Quality Committee. While the bill was in fact heard in the Assembly Natural Resources Committee on Sept. 9, the controversial amendments had not yet been added to the bill. Those amendments did not materialize until a hearing of the Assembly Utilities and Commerce Committee, held just before midnight on Friday, Sept. 11.

Assemblyman Jared Huffman, D-San Rafael, said the late amendments betrayed an earlier promise from Wright not to amend the bill. Wright made those assurances to Huffman during a Sept. 9 hearing of Assembly Natural Resources.

When Huffman confronted Wright about the late amendments during the late-night hearing of the Assembly Utilities committee, Wright said he had essentially lost control over his bill, and that the amendments to the bill were being added

at the behest of Senate Leader Darrell Steinberg, D-Sacramento.

By then, the bill had clearly been marked for quick passage by Steinberg -- "Pro-Tem-ized", in Capitol parlance. After the bill left the Assembly floor, it was supposed to go back to the committee, based on an earlier agreement between the committee chairman, Joe Simitian, D-Palo Alto, and Wright. But the bill moved directly to the Senate floor without a committee vote after passing the Assembly shortly after 2 a.m. Saturday morning.

The bill passed the Senate on a 27-9 vote. Only 12 Democrats voted for the bill.

Those who knew the bill had been diddled were not happy.

"The process was awful, and all of this political intrigue and lobbying was swirling around these bills to the point that it was one of the more distressing things we did," said Assemblyman Jared Huffman, D-San Rafael. "I am very discouraged that the Legislative process turned into an open market for CEQA exemptions in the final days of the session." CEQA is the state's principal environmental law.

Assemblyman Ira Ruskin, D-Redwood City, expressed dismay that the Assembly was overriding environmental laws at the 11th hour. "The Pandora's Box is fully opened and the process has begun to run amok," he said. "Just on the merits of the process, I would urge a 'no' vote" on SB 827.

Proponents of the measure were not impressed with the protests of environmentalists. "No more sanctimonious comments about the high moral ground," snapped an increasingly angry Assemblyman Charles Calderon, D-Montebello, who successfully jockeyed the bill in the lower house.

Wright's SB 827 -- originally known as SB 696 before parliamentary surgery -- blocks a November 2008 court ruling and allows the AQMD to resume its method of banking and distributing air-emission credits.

"The bottom line in all this is that we wanted to make sure that the emission credits being exchanged are actually

resulting in a reduction of pollution," said Jane Williams, executive director of the Communities Against Toxics, which fought the district in court.

The ruling, stemming from a lawsuit brought by Williams' group, the Natural Resources Defense Council and its allies, effectively froze AQMD's banking, sale and distribution of credits not only to businesses and commercial interests, but to the purveyors of essential services as well, including schools, emergency services, hospitals, and the like.

Last week, the court lifted the moratorium on those services, in what partisans called the "free-the-hostages decision," after environmentalists led by the NRDC sought the exemption from the court.

The court fights aren't over. If Schwarzenegger signs SB 827, it will go into effect in January. As soon as the AQMD begins redistributing the credits, the environmentalists intend to go back to court, Williams said.

The environmentalists contend that the AQMD distributes the valuable emissions credits in such a way that high-polluting entities operate at the expense of cleaner emitters, and that the process violates the state's environmental laws. The fight in the Capitol over SB 827 pitted the environmentalists on one side, in opposition, and the AQMD and an array of business and local groups in support, who said Wright's bill was crucial to boosting Los Angeles' recession-crippled economy.

"Whenever you talk about CEQA, there are people for whom that's a Holy Grail. But you had every segment of Southern California on hold. You had commerce tied up, you had \$2 billion in stimulus money on hold. It was wreaking havoc in the region."

Wright said the court's ruling blocked businesses and essential services from operating, threatened 65,000 jobs and forced a \$4 billion hit on the L.A. area economy.

"I don't question the validity of the advocacy of the people who brought this (suit), but you can't stop commerce in the whole region because four or five people don't like each other," Wright added.

Senate Bill No. 827

Passed the Senate September 12, 2009

Secretary of the Senate

Passed the Assembly September 12, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District.

LEGISLATIVE COUNSEL'S DIGEST

SB 827, Wright. South Coast Air Quality Management District: CEQA: permits.

(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. 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 authorize the district to issue permits under specified circumstances, notwithstanding this court decision. The provisions of the bill would be repealed on May 1, 2012.

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

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

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

(a) As a result 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 that 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.

(b) The district may also have to set aside several thousand permits that were previously issued in reliance on the district's internal offset bank.

(c) Prompt legislative action is necessary as an interim measure; otherwise projects will be stopped from going forward or frozen in place, representing significant losses to the economy and the loss of numerous well-paying jobs.

(d) Nothing in the case described in subdivision (a) requires the setting aside of any permit issued by the South Coast Air Quality Management District to any essential public service, that relied on Rule 1309.1, nor any permit that relied on Rule 1304, between September 8, 2006, and November 3, 2008.

(e) Section 40440.13 of the Health and Safety Code is not intended to affect any pending litigation challenging the district's internal offset accounts in federal court, or to give an advantage to a party in that litigation.

(f) The district shall have the authority to carry out the provisions of this act.

SEC. 2. Section 40440.13 is added to the Health and Safety Code, to read:

40440.13. (a) Notwithstanding the decision of the court in *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No.

BS 110792), the south coast district may issue permits in reliance on, and in compliance with, south coast district Rule 1304, as amended on June 14, 1996, and Rule 1309.1, as amended May 3, 2002, for essential public services, as defined in subdivision (m) of Rule 1302, as amended December 6, 2002.

(b) Nothing in this section affects the decision in the case described in subdivision (a) concerning the adoption, readoption, or amendment, or environmental review, of south coast district Rule 1315.

(c) (1) In implementing subdivision (a), the south coast district shall rely on the offset tracking system used prior to the adoption of Rule 1315 of the south coast district until a new tracking system is approved by the United States Environmental Protection Agency and is in effect, at which point that new system shall be used by the south coast district.

(2) In addition to using the prior offset tracking system, the district shall also make use of any emission credits that have resulted from emission reductions and shutdowns from minor sources since 1990. The district shall make any necessary submissions to the United States Environmental Protection Agency with regard to the crediting and use of emission reductions and shutdowns from minor sources.

(d) This section shall remain in effect only until May 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before May 1, 2012, deletes or extends that date.

SEC. 3. 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.

Approved _____, 2009

Governor

DISTRICT : SD25

BILL DETAILS - MEASURE : SB827

South Coast Air Quality Management District: CEQA: permits.		<u>Add to "My Bills"</u>	
Measure	2009-2010 <u>SB 827</u>	Version	96
Appropriation	No	Hearing Date	09/09/2009
Fiscal Committee	No	Hearing Location	Asm Natural Resources
Local Program	No	Vote Required	Majority
Chapter			

Authors	
Lead Authors	Wright (S)
Principal CoAuthors	
CoAuthors	

Vote History							
Date	Result	Location	Ayes	Noes	Abstain	Motion	Member Vote
09/12/2009	(PASS)	Senate Floor	27	9	4	W/O REF. TO FILE SB827 Wright Concurrence	AYE
09/12/2009	(PASS)	Assembly Floor	45	21	13	SB 827 Wright Senate Third Reading	
09/11/2009	(PASS)	Asm Utilities and Commerce	9	2	4	Do pass as amended.	
09/09/2009	(PASS)	Asm Natural Resources	9	0	0	Do pass and be re-referred to the Committee on Utilities and Commerce.	
07/08/2009	(PASS)	Asm Governmental Organization	17	0	2	Do pass, to Consent Calendar.	
05/18/2009	(PASS)	Senate Floor	36	0	3	Consent Calendar 2nd SB827 Committee on G.O. (Florez)	AYE
05/12/2009	(PASS)	Sen Governmental Organization	10	0	3	Do pass and be placed on the Consent Calendar.	AYE

Amendments		
Version	Action	Date
96	Enrolled	09/15/2009
97	Amended Assembly	09/12/2009
98	Amended Assembly	09/04/2009
99	Introduced	03/19/2009

Bill History	
09/12/2009	Senate concurs in Assembly amendments. (Ayes 27. Noes 9.) To enrollment.

09/12/2009 In Senate.
09/12/2009 Read third time. Passed. To Senate.
09/12/2009 Amended.
09/12/2009 Read second time.
09/12/2009 (Heard in committee on September 11.)
09/12/2009 From committee: Do pass as amended. (Ayes 9. Noes 2.)
09/11/2009 Joint Rule 62(a) file notice suspended.
09/09/2009 (Heard in committee on September 9.)
09/09/2009 From committee: Do pass, but first be re-referred to Com. on U. & C. (Ayes 9. Noes 0.) Re-referred to Com. on U. & C.
09/04/2009 Re-referred to Coms. on NAT. RES. and U. & C. pursuant to Assembly Rule 77.2.
09/04/2009 Read third time. Amended. (Page 3044.)
08/24/2009 From inactive file to third reading file.
08/20/2009 Notice of motion to remove from inactive file given by Assembly Member Torrico.
07/13/2009 Placed on inactive file on request of Assembly Member Torrico.
07/13/2009 From Consent Calendar to third reading.
07/13/2009 Read second time. To Consent Calendar.
07/09/2009 (Heard in committee on July 8.)
07/09/2009 From committee: Do pass. To Consent Calendar. (Ayes 17. Noes 0.)
06/02/2009 To Com. on G.O.
05/18/2009 In Assembly. Read first time. Held at Desk.
05/18/2009 Read third time. Passed. (Ayes 36. Noes 0. Page 928.) To Assembly.
05/13/2009 Read second time. To Consent Calendar.
05/12/2009 From committee: Do pass. To Consent Calendar. (Ayes 10. Noes 0. Page 849.)
03/27/2009 Set for hearing May 12.
03/26/2009 To Com. on G.O.
03/20/2009 From print. May be acted upon on or after April 19.
03/19/2009 Introduced. Read first time. To Com. on RLS. for assignment. To print.