ASSEMBLY BILL No. 2390

Introduced by Assembly Member Muratsuchi

February 21, 2014

An act to add Section 43870 to the Health and Safety Code, relating to air resources.

legislative counsel's digest

AB 2390, as introduced, Muratsuchi. Low Carbon Fuel Standard: Green Credit Reserve.

Existing law requires that the State Energy Resources Conservation and Development Commission, in partnership with the State Air Resources Board, and in consultation with specified state agencies, develop and adopt a state plan to increase the use of alternative fuels, as defined, not later than June 30, 2007.

The California Global Warming Solutions Act of 2006 establishes the State Air Resources Board as the state agency responsible for monitoring and regulating sources emitting greenhouse gases. The act requires the state board to adopt a statewide greenhouse gas emissions limit, as defined, to be achieved by 2020, equivalent to the statewide greenhouse gas emissions levels in 1990. The state board is additionally required to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions reductions. Pursuant to the act, the state board has adopted the Low Carbon Fuel Standard (LCFS) regulations. Under federal law, the Renewable Fuel Standard (RFS) is administered by the United States Environmental Protection Agency.

This bill would require the Governor, by June 30, 2015, to designate a state agency to establish and administer a Low Carbon and Renewable

Fuels Credit Reserve (Green Credit Reserve or Reserve) to facilitate and encourage the development of renewable and low carbon transportation fuel projects in California by providing stability and predictability for the value of credits generated by the production of those fuels pursuant to the low carbon fuel standard and the federal renewable fuel standard. The bill would provide for the Green Credit Reserve to enter into specified contracts with developers of projects that are intended to produce renewable transportation fuels that qualify for state and federal low carbon or renewable fuel credits, and that will commit the Reserve to purchase the LCFS and RFS credits at a contracted price when the renewable fuel is produced.

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

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

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

(a) On January 18, 2007, Governor Arnold Schwarzenegger issued Executive Order S-01-07 ordering that a statewide goal be established to reduce the carbon intensity of California's transportation fuels by at least 10 percent by 2020 and requiring that a low carbon fuel standard for transportation fuels be established for California.

(b) In January 2010, the State Air Resources Board adopted regulations to implement the Low Carbon Fuel Standard (LCFS) (Sections 95480 to 95490, inclusive, of Title 17 of the California Code of Regulations), which will reduce greenhouse gas emissions by reducing the full fuel-cycle, carbon intensity of transportation fuels used in California by 10 percent by 2020. Under the LCFS, all refiners, blenders, producers, or importers of transportation fuels in California are required to purchase LCSF credits, as necessary, to comply with the LCFS.

(c) The federal Renewable Fuel Standard (RFS), created under the Energy Policy Act of 2005, established the first renewable fuel volume mandate in the United States. Under the Energy Independence and Security Act of 2007, the RFS was expanded to include additional fuels, renewable fuel categories, and increased volumes of renewable fuels. Under the program, petroleum refiners and importers of gasoline are required by the United States

Environmental Protection Agency to obtain sufficient renewable fuel credits, known as Renewable Identification Numbers (RINs), to show that they have complied with their obligations.

(d) LCFS and RFS renewable fuel credits can have significant value, over and above the market value of the fuel itself. When the value of LCFS and RFS renewable fuel credits is combined with the underlying value of the fuel, the renewable fuel can command a premium price, far above the value of a nonrenewable fuel. Yet companies that wish to invest in plants and equipment to produce low carbon transportation fuels that qualify for the state's LCFS and the federal RFS often find it difficult to secure adequate financing. This is because banks and other financing sources will typically provide financing based only on the projected value of the fuel produced and are reluctant to provide financing based upon the anticipated but uncertain future value of LCFS and RFS renewable fuel credits.

(e) Developers of projects to produce low carbon transportation fuels, and institutions that finance those projects, need a mechanism to provide stability and predictability for the value of credits earned pursuant to the state's LCFS and the federal RFS. That mechanism would allow financial institutions to provide financing based on the full value of low carbon fuel that is produced, including the value of the LCFS and RFS credits generated by the production of the fuel.

(f) It is in the interest of the state to establish a Low Carbon and Renewable Fuels Credit Reserve (Reserve), to enter into long-term voluntary contracts with developers of projects to produce renewable transportation fuels that will commit the Reserve to purchase the LCFS and RFS credits at a contracted price at such time as the renewable fuel is produced. The Reserve would, at its discretion, hold and eventually sell the credits to refiners, blenders, producers, and importers of transportation fuels that are subject to the LCFS and RFS.

(g) A Reserve will provide stability and predictability for the value of LCFS and RFS credits and allow project developers to obtain long-term financing based on the full value of the project. It additionally will stimulate innovation, create jobs in California, and further enhance the ability of parties subject to the LCFS and RFS to comply.

SEC. 2. Section 43870 is added to the Health and Safety Code, to read:

43870. (a) For purposes of this section, the following terms have the following meanings:

(1) “Green Credit Reserve” or “Reserve” means the Low Carbon and Renewable Fuels Credit Reserve.

(2) “LCFS” means the Low Carbon Fuel Standard administered by the state board pursuant to Sections 95480 to 95490, inclusive, of Title 17 of the California Code of Regulations.

(3) “RFS” means the Renewable Fuel Standard administered by the United States Environmental Protection Agency pursuant to the federal Energy Policy Act of 2005 as later modified by the federal Energy Independence and Security Act of 2007 and any future modifications to that program.

(4) “LCFS credit” means a marketable credit associated with the production and use of a low carbon fuel pursuant to the requirements of the state LCFS.

(5) “RFS credit” means a marketable credit, also referred to in the RFS as a Renewable Identification Number, or RIN, that is associated with the production and use of a renewable fuel pursuant to the requirements of the federal RFS.

(b) Not later than June 30, 2015, the Governor shall designate a state agency to establish and administer a Green Credit Reserve. The purpose of the Reserve shall be to facilitate and encourage the development of renewable and low carbon transportation fuel projects in California by providing stability and predictability for the value of credits generated by the production of those fuels pursuant to the LCFS and RFS.

(c) In order to carry out its purpose, the Green Credit Reserve shall do all of the following:

(1) Enter, at the discretion of the Reserve, into long-term contracts with developers of projects, as defined in subdivision (d), that are intended to produce renewable transportation fuels in California that qualify for the state’s LCFS and the federal RFS. The contracts shall commit the Reserve to purchase credits, at a price established pursuant to paragraph (2), when the project developer produces qualifying fuel.

(2) Guarantee, at the time of contract execution, a price or price schedule for the purchase of LCFS and RFS credits.

(3) Hold credits purchased pursuant to paragraph (1) until such time as the Reserve deems it appropriate to sell the credits.

(4) Sell credits to qualified parties under the LCFS and RFS.

(5) Manage the purchasing, holding, and selling of LCFS and RFS credits so as to minimize the risk of financial loss to the state.

(6) Develop criteria to be used by the Reserve in evaluating projects with which to contract, including consideration of whether an auction mechanism should be employed and, if so, the type of auction, in the event that suitable projects exceed the capital resources available to the Reserve.

(7) Develop mechanisms for the Reserve to use when it sells credits to qualified parties pursuant to the state's LCFS and the federal RFS, including consideration of whether an auction mechanism should be employed, and if so, the type of auction.

(8) Develop contractual terms and conditions to be included in contracts between project developers and the Reserve.

(9) Obtain any federal approvals necessary to authorize the bank to purchase, hold, and sell RFS credits.

(10) Recommend any statutory changes necessary or useful to the establishment or administration of the Reserve.

(d) For purposes of this section, projects that are intended to produce renewable transportation fuels in California that qualify for the state LCFS and the federal RFS include, but are not limited to:

(1) Facilities that produce transportation fuels from agricultural waste that is remaining after all reasonably usable food content is extracted.

(2) Facilities that produce transportation fuel from forest waste produced from sustainable forest management practices.

(3) Facilities that capture and clean landfill gas that is used for transportation fuels.

(4) Sewage treatment facilities that produce transportation fuels.

(5) Digester gas facilities that produce transportation fuels.

(6) Facilities that produce transportation fuels from solid waste.

(e) Long-term contracts for the purchase of credits by the Reserve shall be made available not later than September 1, 2015. Contracts may be for a term that does not exceed the total amount of time included in all of the following provisions:

(1) A time period, as specified in the contract, to finance, design, and construct a facility to produce a low carbon and renewable

fuel that is expected to produce LCFS credits or RIN credits as those credits are defined at the time the contract is entered into.

(2) A defined start-up period to begin commercial-scale production of the fuel.

(3) A period of time, as specified in the contract, but not more than 15 years after the start-up period for the production of a low carbon or renewable fuel.

(f) The Reserve is obligated to purchase only those LCFS and RFS credits that are actually produced by the fuel producer that is a party to a contract with the Reserve and that meet the requirements of the contract and the requirements of the LCFS or RFS in effect at the time the contract is executed. Future amendments, modifications, or changes to the RFS or LCFS that are made after the contract execution date shall not affect the requirements of the Reserve to purchase the RFS credits or LCFS credits, or their equivalent, as those terms are defined at the time the contract is executed.

(g) The Reserve shall not enter into contracts for the purchase of LCFS or RFS credits from LCFS obligated parties or RFS regulated parties that are required to obtain and retire those credits pursuant to the LCFS and RFS.

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