

Date of Hearing: June 27, 2011

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 225 (Simitian) – As Introduced: February 9, 2011

SENATE VOTE: 40-0

SUBJECT: California Pollution Control Financing Authority: Capital Access Loan Program.

SUMMARY: Allows the California Pollution Control Financing Authority (CPCFA) to establish loss reserve accounts for the purposes of the terminal rental adjustment clause (TRAC) leasing, if funds are available for contribution into the loss reserve account from any source other than the CPCFA. Specifically, this bill:

- 1) Prohibits the CPCFA from contributing any funds into a loss reserve account created under this measure.
- 2) Allows the executive director to establish conditions for TRAC leasing loss reserve accounts created under this measure.

EXISTING STATE LAW

- 1) Establishes the CPCFA with specified powers and duties. (Health and Safety Code, Sections 44550 et seq.)
- 2) Defines "California Capital Access Fund" as a fund created within the (CPCFA) to be used for the purposes of the program. (Health and Safety Code, Section 44559.1)
- 3) Authorizes CPCFA to establish loss reserve accounts for financial institutions to participate in the California Capital Access Loan Program (CalCAP) which provides loans to qualifying small businesses. (Healthy and Safe Code, Section 44559.4)
- 4) Defines "loss reserve account" as an account in the State Treasury or any financial institution that is established and maintained by the CPCFA for the benefit of a financial institution participating in CalCAP for the purposes of the following: (Health and Safety Code, 44559.1)
 - a) Depositing all required fees paid by the participating financial institution and the qualified business;
 - b) Depositing contributions made by the state and, if applicable, the federal government or other sources; and,
 - c) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.
- 5) Defines "Executive Director" as the Executive Director of the CPCFA. (Health and Safety Code, Section 44559.1)

EXISTING FEDERAL LAW

- 1) Defines "TRAC" as a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.
 - a) Definition also establishes a special rule for lessee dealers to also include a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results. (United States Code, 7701 (h) (3) of Title 26)

FISCAL EFFECT: Unknown.

COMMENTS:

What a TRAC is: In the typical automobile lease, at the end of the lease term the lessee often has the option to purchase the vehicle or the vehicle is sold to a third party. Commercial automobile lessors use a provision called a "terminal rental adjustment clause" or "TRAC" in the lease contract to establish an expected value for the vehicle at the end of the lease term. In general, a TRAC provision provides that at the end of the lease term the total rental payment for the vehicle can be adjusted upward or downward, depending upon the condition of the vehicle at the end of the lease, in order to make up for any difference between the projected value of the vehicle estimated at the beginning of the lease and the actual value of the vehicle upon lease termination.

Uses of TRAC: A TRAC provision is frequently used in commercial fleet leases to provide a financial incentive for the lessee/user, who is the party to the transaction best able to maintain the vehicle, to keep it in good repair. If the lessee abuses the vehicle so that it is worth less than its projected value, the lessee is responsible for that difference in value at the end of the lease. If the vehicle is sold for more than the projected value, the lessee is rebated the excess. The flexibility to adjust the cost of the lease at the end of the lease term allows lessors to offer lower monthly rates on vehicle leases. The potential for cost savings is also attractive to commercial vehicle lessees.

BACKGROUND:

CalCAP makes it easier for small businesses to obtain financing through participating financial institutions. CalCAP provides funds for the financial institution to place in a "loan loss reserve" account. With these funds available, financial institutions are more comfortable lending to businesses and typically offer more favorable terms than the business would otherwise qualify for.

On December 12, 2008, the California Air Resources Board (ARB) approved a new regulation to significantly reduce emissions from existing on-road diesel vehicles operating in California. The regulation requires affected trucks and buses to meet performance requirements between 2011 and 2023. By January 1, 2023 all vehicles must have a 2010 model year engine or equivalent.

In addition, the ARB developed a regulation to reduce greenhouse gas emissions produced by heavy-duty tractors that pull 53-foot or longer box-type trailers by making them more fuel efficient.

The CalCAP program is working with the ARB to make it easier for truck owners to obtain financing to meet the new requirements. The maximum loan amount is \$1.5 million. Businesses that are eligible must have 100 or fewer employees and \$10 million or less in annual revenues and business with 40 or fewer heavy-duty diesel vehicles in the fleet. The business must meet the lending criteria established by financial institutions but the availability of CalCAP funding should make it easier for financial institutions to approve a loan.

SB 225 allows eligible companies who use TRAC leases to participate in CalCAP.

According to the Author, in the trucking industry the TRAC lease is a common form of financing. Specifically for trucks, it is often less expensive and offers some tax benefits compared to typical loans. Under existing law, however, the CPCFA is unable to include TRAC leases among the financing tools available under CalCAP.

SUGGESTED AMENDMENTS:

- 1) On page 1, line 4-5, delete , "the purposes of terminal rental adjustment clause (TRAC) leasing" and insert "a terminal rental adjustment clause"
- 2) On page 2, line 5-6, delete, "TRAC leasing loss reserve accounts created" and insert "loss reserve accounts for a terminal rental adjustment clause"

REGISTERED SUPPORT / OPPOSITION:

Support

California trucking Association
Clean Fleets Coalition
Pena's Disposal, Inc.
South Tulare-Richgrove Refuse Services, Inc.
Westside Waste Management Co, Inc.

Opposition

None on file.

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