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SB-1322 Energy: petroleum pricing. (2021-2022)

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Senate Bill No. 1322

CHAPTER 374

An act to amend Sections 25362 and 25364 of, and to add Section 25355 to, the Public Resources Code, relating to energy.

[Approved by Governor September 16, 2022. Filed with Secretary of State September 16, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, Allen. Energy: petroleum pricing.

The Petroleum Industry Information Reporting Act of 1980 requires each refiner, within 30 days after the end of each month reporting period, to submit to the State Energy Resources Conservation and Development Commission certain information regarding petroleum sales volumes and price. The act requires the commission to notify a refiner that has failed to timely provide the required information and imposes a civil penalty on the refiner that fails to submit the required information within 5 days of being notified of the failure.

This bill would enact the California Oil Refinery Cost Disclosure Act and would require operators of refineries in the state that produce gasoline meeting California specifications, within 30 days of the end of each calendar month, to submit a report to the commission containing certain information regarding its refining activities related to the production of gasoline in that month. The bill would require the commission to post those reported data, in aggregate, within 45 days of the end of each calendar month, on its internet website. The bill would require the commission to notify a refiner that has failed to timely submit the information required by the bill and would impose the above-described civil penalty on the refiner as specified above.

Existing law authorizes a refiner or major marketer required to present to the commission certain information related to its petroleum-related activities to request that certain submitted information be held in confidence. Existing law requires the commission to take certain actions if the commission receives a request to publicly disclose that information and to make a written determination as to whether the requested information should be publicly disclosed.

This bill would make the above requirement regarding the confidentiality of submitted information applicable to the information required to be submitted to the commission by the bill. The bill would specify that the confidentiality provision does not apply to aggregate data that are required to be posted on the commission's internet website.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and maybe cited, as the California Oil Refinery Cost Disclosure Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) In October of 2019, the State Energy Resources Conservation and Development Commission issued an analysis on gasoline prices in California pursuant to a request from Governor Newsom for an in-depth analysis of the causes of the increased differential between national and California gasoline prices.

(b) In the analysis, the commission states that “the primary cause of the increased differential is simply that California retail gasoline outlets are charging higher prices than those in other states.”

(c) The analysis finds that “[w]hile all retailers in California have increased their retail margins above the national average, higher-priced brands, such as [Phillips] 76, Chevron, and Shell have increase their margins far beyond their competitors.”

(d) The analysis concludes that “[t]he overall California increase in retail margins, above that experienced by the rest of the U.S. has resulted in California gasoline consumers paying an estimated additional \$1,500,000,000 in 2018 and \$11,600,000,000 over the last five years.”

SEC. 3. Section 25355 is added to the Public Resources Code, to read:

25355. (a) For purposes of this section, “gross gasoline refining margin” means the difference, expressed in dollars per barrel, between the volume-weighted average price of wholesale gasoline sold by a refiner in the state and the average price of crude oil received by the refinery.

(b) Within 30 days of the end of each calendar month, the operator of each refinery operating in the state that produces gasoline meeting California specifications shall submit a report for the refinery containing all of the following information:

(1) The volume of crude oil received in that month, separated into domestic and foreign subtotals.

(2) The volume-weighted average crude oil acquisition cost paid for crude oil that is received and intended to be refined during that month, separated into domestic and foreign crude oil acquisition costs.

(3) The quantity of wholesale gasoline meeting California specifications sold and the corresponding volume-weighted average prices, less all applicable local, state, and federal taxes, separated by unbranded rack sales, branded rack sales, bulk sales, spot pipeline sales, and dealer tankwagon (DTW) sales in that month.

(4) Separate quantification of the volume-weighted fees or estimated valuations of costs embedded in all wholesale gasoline sales associated with the low-carbon fuel standard (LCFS) and associated with the cap and trade cap-at-the-rack (CAR) program, for each volume-weighted average price for: (A) unbranded rack sales, (B) branded rack sales, (C) bulk sales, (D) spot pipeline sales, and (E) DTW sales, in that month.

(5) The gross gasoline refining margin per barrel of gasoline sold in that month.

(c) Within 45 days of the end of each calendar month, the commission shall post on its internet website all of the following:

(1) The gross gasoline refining margin data reported pursuant to this section for that month as a volume-weighted gross refining margin in aggregate for all the combined refineries in the state.

(2) The gross gasoline refining margin data reported for that month in aggregate for each refiner with more than one refinery operating within California.

(3) The aggregated data submitted pursuant to paragraphs (1) through (4), inclusive, of subdivision (b) for that month.

SEC. 4. Section 25362 of the Public Resources Code is amended to read:

25362. (a) The commission shall notify those persons who have failed to timely provide the information specified in Section 25354 or 25355. If, within five days after being notified of the failure to provide the specified information, the person fails to supply the specified information, the person shall be subject to a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the commission regarding the information and the commission has not yet held a hearing on the matter, or the commission has held a hearing and the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) A person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission shall be subject to a civil penalty not to exceed two thousand dollars (\$2,000).

(c) For purposes of this section, the term "person" shall mean, in addition to the definition contained in Section 25116, any responsible corporate officer.

SEC. 5. Section 25364 of the Public Resources Code, as amended by Section 385 of Chapter 615 of the Statutes of 2021, is amended to read:

25364. (a) A person required to present information to the commission pursuant to Section 25354 or 25355 may request that specific information be held in confidence. Information requested to be held in confidence shall be presumed to be confidential.

(b) Information presented to the commission pursuant to Section 25354 or 25355 shall be held in confidence by the commission or aggregated to the extent necessary to ensure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage to the person supplying the information.

(c) (1) Whenever the commission receives a request to publicly disclose unaggregated information, or otherwise proposes to publicly disclose information submitted pursuant to Section 25354 or 25355, notice of the request or proposal shall be provided to the person submitting the information. The notice shall indicate the form in which the information is to be released. Upon receipt of notice, the person submitting the information shall have 10 working days in which to respond to the notice to justify the claim of confidentiality on each specific item of information covered by the notice on the basis that public disclosure of the specific information would result in unfair competitive disadvantage to the person supplying the information.

(2) The commission shall consider the respondent's submittal in determining whether to publicly disclose the information submitted to it to which a claim of confidentiality is made. The commission shall issue a written decision which sets forth its reasons for making the determination whether each item of information for which a claim of confidentiality is made shall remain confidential or shall be publicly disclosed.

(d) The commission shall not make public disclosure of information submitted to it pursuant to Section 25354 or 25355 within 10 working days after the commission has issued its written decision required in this section.

(e) No information submitted to the commission pursuant to Section 25354 or 25355 shall be deemed confidential if the person submitting the information or data has made it public.

(f) With respect to petroleum products and blendstocks reported by type pursuant to paragraph (1) or (2) of subdivision (a) of Section 25354 and information provided pursuant to subdivision (h) or (i) of Section 25354, and information provided under Section 25355, neither the commission, the State Air Resources Board, or the Attorney General, nor any employee or contractor of those entities, may do any of the following:

(1) Use the information furnished under paragraph (1) or (2) of subdivision (a) of Section 25354, under subdivision (h) or (i) of Section 25354, or under Section 25355 for any purpose other than law enforcement or the statistical purposes for which it is supplied.

(2) Make any publication whereby the information furnished by any particular establishment or individual under paragraph (1) or (2) of subdivision (a) of Section 25354, under subdivision (h) or (i) of Section 25354, or under Section 25355 can be identified.

(3) Permit anyone other than commission members, the State Air Resources Board, the Attorney General, and employees or contractors of those entities to examine the individual reports provided under paragraph (1) or (2) of subdivision (a) of Section 25354, under subdivision (h) or (i) of Section 25354, or under Section 25355.

(g) Notwithstanding any other law, the commission may disclose confidential information received pursuant to subdivision (a) of Section 25304, or Section 25354 or 25355 to the State Air Resources Board or the Attorney General if the state board or the Attorney General agrees to keep the information confidential. With respect to the information it receives, the state board and the Attorney General shall be subject to all pertinent provisions of this section.

(h) Notwithstanding any other law, the commission may disclose confidential information received pursuant to paragraph (1) of subdivision (f) of Section 25354 to the administrator for oil spill response, appointed pursuant to Section 8670.4 of the Government Code, upon request for oil spill planning and preparedness purposes, and to first responders in the event of an accident or spill. Information disclosed to the administrator or first responders pursuant to this subdivision that has been identified as confidential under subdivision (a) shall not be disclosed to any other entity except pursuant to a request in accordance with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code). Upon receipt of a records request seeking information disclosed pursuant to this subdivision, the administrator or first responder receiving the request shall provide the destination facility who provided the confidential information to the commission with an opportunity to submit, within a reasonable time, a response and information in support of exemption from disclosure before making the

determination whether the requested records are exempt from disclosure. No requirement or deadline contained in the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) shall be extended or waived as a result of this subdivision.

(i) This section does not apply to aggregate data that are required to be posted on the commission's internet website pursuant to subdivision (c) of Section 25355.

SEC. 6. The Legislature finds and declares that Section 5 of this act, which amends Section 25364 of the Public Resources Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To protect consumers, avoid unfair competitive advantages or disadvantages, and protect proprietary information received by the state pursuant to Section 3 of this act, which adds Section 25355 to the Public Resources Code, it is necessary that the information reported pursuant to this act be treated in a confidential manner upon request by the reporting entity.