
SENATE COMMITTEE ON APPROPRIATIONS

Senator Nancy Skinner, Chair
2023 - 2024 2nd Ext. Session

ABX2 1 (Hart) - Energy: transportation fuels: inventories: turnaround and maintenance

Version: October 7, 2024

Urgency: No

Hearing Date: October 8, 2024

Policy Vote: F.S. & P.S. 9 - 2

Mandate: No

Bill Summary: This bill would authorize the California Energy Commission (CEC) to increase transportation fuel supply through various actions, including by authorizing the CEC to develop requirements on refiners to maintain resupply plans to cover production loss during maintenance events and to maintain minimum levels of supply inventories, among other things.

Fiscal Impact:

- Should the CEC exercise authority that would be established by this bill to require refineries to maintain minimum fuel supplies and resupply plans, as specified, there would be several fiscal effects:
 - Unknown, potentially significant one-time costs (Energy Resources Programs Account [ERPA]) for the CEC to make a finding that the likely benefits of any requirements on refiners related to resupply plans or minimum levels of supply inventories would outweigh potential costs for consumers and promulgate regulations establishing such requirements and associated enforcement mechanisms.
 - Unknown, potentially significant ongoing costs (ERPA) for the CEC administer, oversee, and enforce these requirements.
 - Unknown, potentially significant ongoing costs (various funds) for the Attorney General to bring enforcement actions against any refiners in violation of these requirements.
 - Unknown, potentially significant cost pressure to the state funded trial court system (Trial Court Trust Fund, General Fund) to review and enforce orders imposing administrative civil penalties authorized by this bill. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2024 includes a \$97 million reduction to the trial courts and a \$37.3 million General Fund backfill for the Trial Court Trust Fund to address the continued decline in revenues.
 - To the extent that refiners fail to meet requirements established by the CEC and the civil penalties created by this bill are collected, there would be potential ongoing revenue increases of an unknown amount.
 - To the extent that the CEC seeks any form of injunctive or remedial relief to enforce compliance with its regulations authorized by this bill, unknown, potentially moderate workload cost pressures (General Fund, Trial Court

Trust Fund) to the courts. Additional cost pressures could result to the extent that CEC seeks a preliminary injunction or any other type of remedial relief that is given calendar precedence over other civil matters on the court's calendar, likely at the expense of other civil cases that have already been calendared.

- The CEC estimates that its costs in the near-term would be absorbable within existing resources. It notes, however, that additional resources may be needed once the full scope of regulatory analyses and activities are known and better quantified.
- The California Air Resources Board, Labor & Workforce Development Agency, and Department of Industrial Relations anticipate that any costs would be minor and absorbable.

Background:

Gasoline prices trend higher in California compared to the rest of the nation. Californians, generally, pay higher prices for gasoline compared to the rest of the country. According to the CEC, there are five main reasons why California retail gasoline prices are higher than the average price in the United States, specifically: higher taxes on gasoline, higher gasoline production costs, environmental program costs, California's shorter winter season, and the isolated nature of the California fuels market. California's unique, cleaner-burning gasoline blend costs more to produce than other types of gasoline, accounting for an additional 10 to 15 cents per gallon (according to the CEC). The summer-blend gasoline is designed to evaporate at a higher temperature than winter-blend gasoline so as to minimize its contribution to unhealthy ground-level ozone (also known as smog). However, the summer-blend gasoline is more expensive to produce and tends to be used for longer stretches of the year, given California's warm climate.

California gasoline fuels market is isolated. California's gasoline fuels market is geographically isolated from other locations in the U.S. that produce refined fuel products. As of March 2024, California has nine refineries that refine crude oil into gasoline fuel that meets state requirements; the majority are located in and around the South Bay region in the Los Angeles Basin, a few in the East Bay region of the Bay Area, and the smallest by volume produced is located in Bakersfield. The state's refineries process over 1.6 million barrels of crude oil per day. In 2021, 88 percent of gasoline production was used in-state and 12 percent was exported. These refiners produce transportation fuels that meet the specially formulated gasoline to meet California's air quality standards mandated by the California Air Resources Board (CARB), known as California Reformulated Gasoline Blendstock for Oxygenate Blending (CARBOB) gasoline. The number of refineries has been decreasing as some have shuttered and others have transitioned to producing alternative fuels. The CEC has noted that as demand for gasoline declines due to the state's adoption of zero-emission vehicles, more refineries may close or convert to renewable fuels, and, as a result, supply conditions may increase baseline prices and add to price spike risk.

Unexpected disruptions and facility outages can result in reduced supply and price spikes. California has no ability to deliver gasoline into the state via pipelines, as the existing pipelines deliver gasoline and other refined fuels out of the state. Gasoline imports, generally, provide a smaller portion of overall supply. However, when needed,

California imports gasoline via marine shipments, which can take three to four weeks to deliver and with prices that account for the additional costs of transporting via international marine vessel. As a result of California's isolated gasoline fuels market, unexpected and unplanned disruptions on the system, including unplanned refinery outages, can impact the supply and often result in price spikes. This was the situation after the unexpected outage at the then-Exxon Mobil Torrance Refinery in February 2015 due to an explosion of the facility that resulted in an extended outage. Gasoline prices were immediately affected, as prices increased \$0.25 per gallon within a week of the outage.

Extraordinary session and passage of legislation. In late 2022, in response to spikes in the retail price of gasoline, Governor Newsom called the Legislature into an extraordinary session to consider ways to address the gasoline price spike. The Legislature, in turn, approved SBX1-2 (Skinner), which among its many provisions, required petroleum refiners to notify the CEC, under specified timelines, of any planned, unplanned or turnaround scheduled maintenance. SBX1-2 also directed the CEC, in consultation with the Labor and Workforce Development Agency and labor and industry stakeholders, to consider ways to manage necessary refinery turnarounds and maintenance that would protect the health and safety of employees and the public and authorized the CEC to regulate the timing of turnaround and maintenance.

DPMO sends letters regarding gasoline price increases. In September 2023, DPMO Director Tai Milder sent letters to the Governor and Legislature providing an interim update. The letter noted that the average price for gasoline was \$5.78 per gallon, 25 cents higher than the previous week, and 52 cents higher than the previous month. DPMO cited three reasons for the higher gasoline prices: (1) an increase in global crude oil prices; (2) refinery maintenance events causing decreases in supply that "refiners did not adequately prepare for by increasing inventories and imports; and (3) an unusual spot market transaction on September 15, 2023 that has had an outsized impact on gas prices, causing prices to jump \$0.50 per gallon. Director Milder suggested the situation highlighted "several market flaws that make California gasoline prices vulnerable to price spikes." These include: spot market volatility and its outsized impacts on prices, lack of spot market liquidity, inadequate inventories, of gasoline and blend stocks, and refinery undersupply during maintenance.

Governor Newsom responds to DPMO letter. On September 27, 2023, Governor Newsom directed DPMO to identify "initial proposals" of potential spot market reforms. In addition, Governor Newsom, as he had the previous year, directed CARB to allow for an early transition to winter-blend gasoline in order to quickly increase fuel supply in the market. In January 31, 2024, DPMO sent a letter to the Governor outlining two policy options that can improve how California's spot market functions and help protect consumers. Specifically, DPMO recommended near-term options: (1) publishing a California spot market report and (2) establishing minimum inventory and resupply obligations on refiners. The CEC moved forward with adopting new spot market reporting requirements, utilizing the authority in SBX1-2, including utilizing emergency regulations. On March 26, 2024, the California Fuels and Convenience Alliance (CFCA) filed a lawsuit against the CEC for failing to observe the requirements of CEQA and the California Administrative Procedures Act (APA) and other provisions of California law. The lawsuit remains active. With regards to establishing minimum inventory and resupply obligations, the CEC held a public workshop in August to discuss the issue.

Proposed Law: This bill would authorize the CEC to increase transportation fuel supply through various actions. Specifically, this bill would:

1. Expressly require the refinery turnaround regulations authorized by SBX1-2 to protect the health and safety of employees, local communities, and the public, and to include criteria that are required to be met before a refinery commences a turnaround or maintenance event, including, demonstrating to the satisfaction of the executive director of the CEC that a refiner has made resupply plans for other arrangements sufficient to ensure that the loss of production during the turnaround or maintenance event does not adversely affect the California transportation fuels market.
 - a. Provide that it does not modify any requirements of, or standards issued pursuant to, Section 6311 of, or Part 7.5 (commencing with Section 7850) of Division 5 of, the Labor Code, including the authority of employees to perform an emergency shutdown of the refinery and necessary maintenance work for safety.
 - b. Provide that a regulation adopted, or action taken, pursuant to this section shall not excuse an employer's compliance with the skilled and trained workforce and wage requirements set forth in Section 25536.7 of the Health and Safety Code.
2. Require the CEC, in consultation with the ICFAC, to consider the effects of refiners' inventories of fuel and feedstocks and blending components on the price of transportation fuels in California. Authorize the CEC, by regulation, to develop and impose requirements for refiners operating in the state to maintain minimum levels of inventories of refined transportation fuels meeting California specifications, including any feedstocks and blending components, as specified.
 - a. Require the regulations adopted by the CEC to provide for a multitude of considerations, adjustments, requirements, including:
 - i. A process to for establishing minimum inventory levels for each refiner or refining region, defined as the two in-state regions of concentrated refineries (San Francisco Bay Area and the Los Angeles Area).
 - ii. A process for maximizing the use of existing storage infrastructure.
 - iii. A process for waiving, if appropriate, minimum inventory requirements (as specified) for a small refinery, as defined, if the refiner demonstrates that those requirements would impose a disproportionate economic hardship.
 - iv. A process for adjusting, if appropriate, minimum inventory requirements for one or more refiners based on region, season, refinery size and storage capacity, and changes in regional or statewide supply and demand for refined transportation fuels meeting California's specifications.

or decisions rendered, under this chapter before or after the effective date of this subdivision.

6. Require that the CEC's SBX1-2 Assessment, beginning with the first Assessment submitted after the effective date of the bill, also include an evaluation of California's future petroleum product and crude oil import needs, identification of steps that can be taken to ensure that marine infrastructure and port facilities will be adequate to accommodate the efficient movement of petroleum products to meet those needs, an evaluation of ways to maximize use of existing infrastructure and minimize cumulative pollution burdens, and an evaluation of the effects on supplies of transportation fuels of state regulations that the CEC identifies may be causing supply constraints, or for which the CEC believes alternative compliance pathways should be considered by state agencies to mitigate potential impacts on supply.
7. Provide that the director of the DPMO is a "head of a department" and may undertake investigations in the manner prescribed in Article 2 (commencing with §11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code. Authorizes the DPMO to confidentially refer violations to the Attorney General.
8. Specify that the prohibition for participating on the ICFAC does not exclude a representative of a labor organization whose membership consists of, in whole or in part, individuals employed by a company that produces, refines, distributes, trades in, markets, or sells any petroleum product.
9. Require the ICFAC to meet no less than annually, instead of exclusively as prescribed by the CEC.

Related Legislation:

SBX1-2 (Skinner, Chapter 1, Statutes of 2023-24 First Extraordinary Session) included several policies to address gasoline supply and pricing, including authorizing the CEC to establish a maximum gross gasoline refining margin and penalty on gasoline sold by refiners in the state.

SB 842 (Bradford, 2023) would have required the CEC to also consult with the DIR, in addition to the Labor and Workforce Development Agency, when considering ways to manage necessary refinery turnarounds and maintenance. Would have required the CEC, for any adopted regulations regarding scheduling or rescheduling of maintenance, to consult with labor and industry stakeholders and aim to avoid any adverse impacts to the safety of employees and surrounding communities, labor and equipment availability, other market impacts, and cost. The bill was vetoed.

SB 1322 (Allen, Chapter 374, Statutes of 2022) required the CEC to collect specified pricing data from each oil refinery operating in the state.

SB 448 (Leno, 2013) would have required the CEC to collect and analyze specific information regarding petroleum pricing, establish the Motor Vehicle Fuel Market Advisory Committee to provide subject matter expertise on fuel pricing, and include specified recommendations regarding its findings, including an analysis of potential market manipulation in the Integrated Energy Policy Report. The bill was vetoed.

AB 2076 (Shelley, Chapter 936, Statutes of 2000) required the CEC, by January 31, 2002, to examine the feasibility of operating a strategic fuel reserve to insulate California consumers and businesses from substantial short-term price increases arising from refinery outages and other similar interruptions.

SB 1444 (Holmdahl, Chapter 1055, Statutes of 1980) established the PIIRA which requires specified monthly and annual reporting requirements for certain members of the petroleum industry and quarterly and annual reporting of the CEC. The bill includes confidentiality protections for the data submitted so as to prevent unfair competitive disadvantage.

Staff Comments:

Cost to implement SBX1-2. This bill would make additional changes to and expand on SBX1-2, which authorized the CEC to establish a maximum gross gasoline refining margin, establish and enforce penalties, collect additional data from the transportation fuels industry, including refiners, and develop reports and an assessment and plan ensuring a reliable supply of affordable and safe transportation fuels in California.

In order to implement SBX1-2, the CEC requested \$3.8 million in the first year (ERPA) to develop the programs and reports for the Legislature, and \$3.8 million annually thereafter (ERPA) to continue to support the program and staff and generate subsequent reports. This corresponds to 14 permanent positions and \$1 million to provide ongoing technical support to support the triennial assessment and market analysis. The CEC also requested \$2.1 million ERPA ongoing to support 10 positions that were redirected internally to support the new independent Division of Petroleum Market Oversight utilizing existing position authority. In addition, the Department of Industrial Relations requested 1.0 position and \$286,000 in 2023-24 and \$272,000 in 2024-25 and ongoing from the Occupational Safety and Health Fund to implement SBX1-2.

Subsequently, as part of the 2024-25 budget, the CEC requested an additional \$493,000 annually (ERPA) to hire more specialized staff and fund contracting services. In addition to the \$2.048 million for ten positions DPMO received in 2023-24, DPMO requested an additional \$231,000 ongoing to adjust the classifications of those ten positions in order to hire individuals with specialized backgrounds as well as an additional \$240,000 ongoing for contracting services, specifically for consulting experts in the California fuels industry.

ERPA structural deficit. The main funding source supporting CEC is ERPA, which was established to provide funds for ongoing energy programs and projects. ERPA is supported by a statutory surcharge on electricity consumption. According to the CEC, as building and appliance energy efficiency and the increase of behind-the-meter solar produce customer savings and flatten statewide electricity consumption, ERPA revenues have decreased, and the costs have been borne by fewer and fewer customers. Even as revenues drop, ERPA is repeatedly tapped to support new programs and must cover increases in employee compensation and benefit contributions.

The primary source of revenue for ERPA is a surcharge on retail electricity sales, which is currently set to the statutory maximum of \$0.0003 per kWh. This surcharge generated \$71.6 million in 2022-23. On average, a California ratepayer pays about 16 cents per month for the surcharge—or about \$2 annually.

According to the administration, the current level of revenues generated by this surcharge is insufficient to support CEC sustainably. In 2024-25, the Governor's proposed budget included \$95.7 million in expenditures from ERPA, which continues a structural deficit in the fund. Absent any changes, ERPA is projected to become insolvent in 2027-28.

The administration reports that this imbalance between revenue and expenditures stem from a variety of factors. First, one factor is the growing capacity of BTM rooftop solar, wind, and non-utility generation. Because the ERPA surcharge only applies to retail electricity sales, revenues are expected to decrease as BTM makes a growing share of the total electricity consumption. Although transportation, building, and other forms of electrification is expected to increase electricity consumption in the coming years, the administration claims that the growth of ERPA expenditures currently outpace the growth of electricity consumption.

Second, the scope of CEC's roles and responsibilities have grown in the last several years, as clean energy, electrification, and energy reliability have become key in reaching the state's climate change goals. For example, ERPA expenditures grew about \$6.5 million in 2023-24, in part to implement legislation, such as SB X1-2, SB 1158, and SB 1112.

To address this structural deficit, the Governor proposed, as part of the 2024-25 budget, trailer bill language that would, beginning January 1, 2025: (1) adjust the surcharge cap to \$0.00066 per kWh; (2) tie the surcharge cap to the Consumer Price Index; and (3) apply the ERPA surcharge to BTM energy consumption. This proposal was ultimately not adopted in the final 2024-25 budget, but the proposal does highlight the ongoing budgetary issues with ERPA.

Any increase in ERPA expenditures may accelerate the need for an increase in the statewide surcharge on electricity consumption that provide revenue for this fund.

Trail court cost pressures. This bill would authorize the CEC to impose an administrative civil penalty and to seek any form of injunctive or remedial relief to enforce compliance with its regulations, as provided.

The fiscal impact of this bill to the courts will depend on many unknown factors, including the numbers of violations alleged to have occurred, if parties settle the matter before the filing of an action, and the factors unique to each case. An eight-hour court day costs approximately \$8,000 in staff in workload. If the bill results in only 12 or more days spent in court, trial court costs could be in the hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations. The Budget Act of 2024, for the fiscal year beginning July 1, 2024, includes a \$97 million reduction to the trial courts, a commensurate reduction of up to

7.95 percent to the budget for the state-level judiciary, and a reduction of the trial court state-level emergency reserve in the Trial Court Trust Fund from \$10 million to \$5 million. The Budget Act also includes a \$37.3 million General Fund backfill for the Trial Court Trust Fund to address the continued decline in civil fee and criminal fine and penalty revenues expected in fiscal year 2024–25.

Staff notes that “preliminary injunctions” get preference on the court calendar. Should the CEC seek a preliminary injunction under its authority that would be established by this bill, it could result in moderate staff workload impacts associated with ensuring the bill’s calendaring requirements are met in court, likely at the expense of other civil cases that have already been calendared. Staff notes that there are currently other calendar preferences given to civil matters such as CEQA, protective orders, and motions to strike, as well as cases where certain personal conditions are met. Continuing to add to the expedited cases list requires clerks to make a determination on which cases take preference over others and then move hearings around, as deemed necessary. Creating preferences for certain civil case types creates an access to justice issue for all court users whose hearings will be postponed in order to meet the bill’s requirements.

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