Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
SB 1322 (Allen) – As Amended May 4, 2022

Policy Committee: Natural Resources Vote: 8 - 3

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill requires the California Energy Commission (CEC) to publicly report specified pricing data from each oil refinery operating in the state.

Specifically, this bill:

1) Requires, within seven calendar days of the end of each month, the operator of each refinery operating in the state that produces gasoline to submit a report for the refinery containing all of the following information:

   a) The volume of crude oil refined into gasoline in the prior calendar month.

   b) The average price paid for each barrel of crude oil that is refined into gasoline in the prior calendar month.

   c) The gross and net refining margin per barrel of gasoline sold in the prior calendar month.

2) Requires, within 14 calendar days of the end of each month, CEC to post on its website the data reported pursuant to this bill for the prior calendar month in aggregate.

3) Extends CEC's existing enforcement authority and civil penalties for false and delinquent data submissions to the reporting required by this bill.

FISCAL EFFECT:

Minor and absorbable costs to CEC.

COMMENTS:

1) **Purpose.** According to the author:

> SB 1322 focused on what happens to oil once it arrives at a California refinery. Whether that oil is domestic or foreign, whether it comes from Bakersfield or overseas – evidence suggests the price by the time it arrives as gasoline in our tanks is significantly higher than it should be. Some factors causing gas prices to spiral to record highs are beyond our control. But finding out who is pocketing the billions in extra costs Californians have paid for gas is a mystery we can solve.

> The California Oil Refinery Cost Disclosure Act will provide the public with data to help illuminate who is adding a mystery gas surcharge that continues to cost drivers billions more than neighboring states, seven years after the Torrance refinery explosion that first caused gas prices to spike.

2) **Background.**

a) **Petroleum Industry Information Reporting Act of 1980 (PIIRA).** Over the years, California has experienced a number of price spikes for fuel refined from petroleum, related to pipeline and refinery outages, weather impacting supply, political instability and conflicts in oil-producing nations, and a range of other factors. In 1980, the Legislature passed SB 1444 (Holmdahl), Chapter 1055, Statutes of 1980, which established PIIRA and required CEC to collect and analyze specified petroleum related data from fuel market participants to track market trends. PIIRA was intended to provide the state with sufficient oil pricing information to identify price and supply volatility to get ahead of oil shocks similar to those experienced in the mid-to-late 1970s.

b) **Gas Prices.** The retail price of gas is impacted by various factors, including the cost of crude oil, federal and state taxes and fees (including the cost of environmental programs, such as the Low Carbon Fuel Standard and cap-and-trade), refining costs and profits, and distribution and marketing costs and profits.

c) **High Gas Prices in California.** Californians pay higher gas prices compared to the rest of the nation, and these higher prices appear unrelated to larger market trends. A 2012 fire at the Chevron Richmond Refinery led to an outage that contributed to higher gas prices in California. While fuel pricing experts expected the outage to produce temporarily higher prices at the pump, research showed that Californians experienced unusual price increases even while supply was increasing and crude oil prices decreased. Following these reports, a number of elected officials requested investigations into potential market manipulation.

d) **Petroleum Market Advisory Committee (PMAC).** In 2013, the Legislature passed SB 448 (Leno) to investigate suspected motor vehicle fuel price manipulation. Governor Brown vetoed SB 448 and instead directed the CEC to work with the Attorney General to evaluate market trends and develop a plan for responding to petroleum price volatility. In response to this direction, the CEC established the PMAC in 2014 to provide expertise on factors leading to price increases and strategies for addressing price volatility. In 2015, the ExxonMobil Torrance Refinery explosion contributed to a sudden increase in California petroleum prices, renewing concerns about fuel price volatility in California. The PMAC's final report indicated that Californians had paid a higher cost for petroleum since the 2015 ExxonMobile Torrance Refinery fire that could not be attributed to the fire, normal market conditions, or California's environmental regulations. While PMAC noted that this unexplained differential (termed the "mystery surcharge" by U.C. Berkeley professor Severin Borenstein) may not be the result of illicit behavior by petroleum providers, the PMAC could not determine the reason for California's higher average petroleum prices. According to Professor Borenstein, the average mystery surcharge in California is around 48 cents.

e) **CEC Analysis.** In April 2019, Governor Newsom directed the CEC to conduct an analysis of the causes of the increased differential between national and California gasoline prices. In October 2019, the CEC produced a report that concluded, "…the primary cause of the residual price increase is simply that California's retail gasoline outlets are charging higher prices than those in other states." The CEC noted that the California Department of Justice has more expertise than the CEC to investigate whether price fixing or false advertising had occurred. Attorney General (AG) Bonta's office, in support of the bill, writes:

> The Attorney General's Office has investigated gas prices, looked for price-fixing and market manipulation, and prosecuted bad actors that schemed to drive up the price of gas. On March 18, 2022, the Attorney General sent a letter to California refiners warning them against illegal market manipulation and other violations of state antitrust laws after the sharp increase in gas prices. The letter warned refiners not to take advantage of the current market disruptions as an opportunity for market manipulation…SB 1322 will improve transparency and help determine what has caused the long-standing higher prices in California compared to other states. It may also shed light on whether any market players are taking advantage of current events to pad their profits at the expense of California consumers.

f) **Limitations of Refinery Data.** This bill requires refinery operators to report specified information to the CEC on a monthly basis. This data would provide information needed to determine the economic performance of each refinery in the state. This information may help identify the extent to which a refinery is obtaining an unusually high profit margin; however, the reporting required by this bill may not help the CEC determine why gasoline retailers in California are charging a higher price differential. While some refineries are vertically integrated in a company that also includes distributors and retailers, other refineries are not. Additionally, high refinery profit margins could be influenced by other factors, including the refining margins for other fuels.

g) **Opposition Concerns.** The Western States Petroleum Association (WSPA), in opposition to the bill, argues that the bill ignores the existing authority and responsibilities of the AG and the CEC with respect to robust data collection and statutory oversight and undercuts state and federal antitrust laws by requiring California refinery operators to provide market sensitive pricing, volume, and sales data that could harm market participants and California consumers. WSPA also points to one of the conclusions drawn in the 2019 CEC report: "With little to no growth in the difference between the United States and California refiner margins, the CEC concludes that refiner margins are not the cause of the residual price increase in California."

Analysis Prepared by: Nikita Koraddi / APPR. / (916) 319-2081