SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2023 - 2024 Regular

Bill No:	SB 32		
Author:	Jones		
Version:	12/5/2022	**Hearing Date:**	4/19/2023
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Eric Walters		

SUBJECT: Motor vehicle fuel tax: greenhouse gas reduction programs: suspension

DIGEST: This bill exempts transportation fuel suppliers from California's cap-and-trade program, the Low-Carbon Fuel Standard, and gas tax for one year.

ANALYSIS:

Existing law:

1) Establishes the California Air Resources Board (CARB) as the air pollution control agency in California and requires CARB, among other things, to control emissions from a wide array of mobile sources and coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Safety Code (HSC) §39500 et seq.)

2) Requires CARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030 (i.e., SB 32); and allows CARB, until December 31, 2030, to adopt regulations that utilize market-based compliance mechanisms (i.e., the cap-and-trade program) to reduce GHG emissions. (HSC §§ 38566, 38562)

3) Establishes the Low-Carbon Fuel Standard (LCFS) regulations to encourage the innovation, use, and production of cleaner, low-carbon fuels in California in order to reduce GHG emissions. (Subarticle 7 (commencing with Section 95480) of Title 17 of the California Code of Regulations).

This bill:

1) Suspends the Low Carbon Fuel Standard (LCFS) as defined, for one year, and further:
   a) Stipulates that savings must be passed on to the end consumer; and
   b) Provides details of how violations will be handled.

2) Exempts transportation fuel suppliers from California's Cap-and-Trade program for one year, and further:
   a) Backfills an amount (equal to 2021-2022 fiscal year Greenhouse Gas Reduction Fund (GGRF) revenue from fuel suppliers) of funds from the General Fund to GGRF, with the exception of funding to the High-Speed Rail Authority;
   b) Stipulates that savings must be passed on to the end consumer; and
   c) Provides details of how violations will be handled.

3) Suspends specified taxes on motor vehicle fuels for one year, and further:
   a) Requires any sale of a motor vehicle fuels includes a receipt that indicates the amount of motor vehicle fuel tax that otherwise would have applied;
   b) Backfills an amount (equal to the amount collected pursuant to the suspended taxes in the 2021-2022 fiscal year) of funds from the General Fund to the Motor Vehicle Fuel Account in the Transportation Tax Fund.
   c) Stipulates that savings must be passed on to the end consumer; and
   d) Provides details of how violations will be handled.

Background

1) *Why's California gas so expensive?* Higher prices on gasoline fuel can have crippling effects for residents on fixed or limited incomes, especially those who rely on long commutes to get to work or home, or those who require driving as part of their job.

   Californians generally pay higher prices for gasoline compared to the rest of the country, which is the result of, according to the CEC, five main reasons: (1) higher taxes on gasoline, (2) higher gasoline production costs, (3) environmental program costs, (4) California's shorter winter season, and (5) the isolated nature of the California fuels market.

   Even beyond the explainable differences, there is also a so-called "mystery gasoline surcharge." For example, in February 2020, the fact that California had higher taxes and environmental fees and a cleaner gas formulation could account for only 72 cents of the $1.18 price differential between us and other states. Dr. Severin Borenstein—who coined the term mystery gasoline surcharge—has said that the cost is hidden within "refining, marketing, and retailing" and has been kept in place by gasoline suppliers charging more because they can.

   As of Monday, March 27th, California's average statewide price for a gallon of gas was $4.82, about $1.38 more than the national average, according to AAA.

Prices have fallen in recent months after spiking to a statewide average of about $6.42 in early fall, at least $2.61 more per gallon than drivers nationwide were paying at the time.

State taxes and fees account for only half of the roughly $1.38 difference in the average price, according to Consumer Watchdog. Thus, even without any state taxes and fees, Californians would still be paying 69 cents per gallon more than the national average.

2) *Special session*. As oil companies evaded questions about unexplained gas price increases, Governor Gavin Newsom convened a special session of the California Legislature on December 5 to pass a so-called "price gouging penalty" on oil companies.

   The Governor's action came on the heels of a state hearing – which five major oil refiners refused to attend – to investigate 2022's unprecedented spike in gasoline prices. The spike in gasoline prices had resulted in record refiner profits of $63 billion in just 90 days, disproportionately affecting low- and middle-income families. In calling for the special session, Governor Newsom said, "Big oil is ripping Californians off, and the deafening silence from the industry yesterday is the latest proof that a price gouging penalty is needed to hold them accountable for profiteering at the expense of California families."

   This bill, co-authored by the entirety of the Senate Republican Caucus, was also introduced as SBX1-1 on the first day of the extraordinary session, and appears to be a counterpoint to the price gouging penalty called for by the Governor.

3) *SBX1-2*. Introduced by Senator Skinner the first day of the special session and amended into its current form on March 20, 2023, SBX1-2 proposes several policies to address gasoline supply and pricing. These include authorizing the California Energy Commission (CEC) to establish a maximum gross gasoline refining margin and penalty on gasoline sold by refiners in the state. The bill requires pricing transparency from gasoline refiners, directs an independent watchdog division at CEC to detect efforts to manipulate gas prices, and authorizes CEC to impose a price-gouging penalty.

   The bill passed the Senate on a 30-8 vote, the Assembly on a 52-19 vote, and was signed by the Governor on March 28th, 2023. Upon SB1X-2's passage out of the Legislature, ACR 1X (Rendon, 2023) was adopted by both houses, thereby adjourning the special session. This action also effectively killed SBX1-1—the identical bill to SB 32 that was introduced in the special session—without that bill receiving a hearing.

4) *Climate programs and fuel suppliers*. As a world leader on climate policy, California has a number of policies that financially affect the suppliers of transportation fuel. Two major programs are specifically named in this bill, the Low-Carbon Fuel Standard (LCFS), and cap-and-trade.

   a) *LCFS*. The Low Carbon Fuel Standard is designed to decrease the carbon intensity of California's transportation fuel pool and provide an increasing range of low-carbon and renewable alternatives, which reduce petroleum dependency and achieve air quality benefits. It was established pursuant to AB 32 (Nunez, 2006) as an "early action GHG emission reduction measure" and has been administered by CARB—with several regulatory amendments—since its adoption in 2007.

      The program sets a declining target of carbon intensity and, briefly, requires conventional fossil fuel-based transportation fuel (i.e. gasoline and diesel) producers to purchase "credits" from low-carbon fuel (i.e. biofuels, hydrogen, electricity, etc.) producers. Thus, fossil fuel-based transportation fuel producers directly subsidize the production of lower-carbon alternative fuels by buying credits from them.

   b) *Cap-and-trade*. Also established pursuant to AB 32 (Nunez, 2006), California's cap-and-trade program is a market-based compliance mechanism that requires certain polluters (totaling roughly 80% of the state's overall emissions) to obtain an allowance for each ton of GHG emissions they release. Those allowances can be traded between entities, purchased at auction from the state, or are allocated freely to certain industries. Over time, the total number of allowances issued declines, which should reduce statewide emissions accordingly.

      Moreover, the proceeds from allowance auctions are collected in the GGRF. In turn, the GGRF supports a plethora of state efforts to equitably and rapidly decarbonize the state's economy and address the impacts of air pollution. In the past several years, GGRF proceeds have hovered around $4 billion annually.

      In 2021, Cap-and-Trade covered 292 million tons of GHG emissions; 139 million of all covered emissions were from fuel suppliers—roughly 48%.

5) *Proposition 6*. In 2018, Californian voters were given the opportunity to repeal the SB 1 gas tax (as well as require any future fuel taxes or vehicle fees

approved by the Legislature to also be approved by the voters) with Proposition 6. The voters roundly rejected the measure by an over 13-point margin.

In opposition to the proposition, the Los Angeles Times' editorial board wrote, "It's hard to overstate how destructive Proposition 6 would be for California. It would eliminate $5 billion a year from the state budget, wiping out funds that could be used to fill potholes on local streets, smooth highways and stabilize bridges. It would cancel funding for highway and rail projects designed to move cargo more cleanly and efficiently, hurting the state's vital freight industry. It would slash money for light rail lines and commuter rail service, meaning fewer trains for people trying to get to work."

Although the gas tax revenues lost through SB 32 would be backfilled by General Fund revenues, California's current budget problem means the General Fund is already unable to cover all existing obligations, even without this proposal.

Comments

1) *Purpose of Bill.* According to the author, "Gas prices in California are going up again and one way the Legislature can offer immediate relief to motorists is to suspend the State's gasoline tax. A state gas tax suspension would immediately lower the price of gasoline in California by $1 per gallon! Many other states have successfully relieved their residents gas costs by suspending their gas taxes. Even President Biden came out in favor of states suspending their gas taxes.

   "Additionally, SB 32 has two built in important safeguards: 1) Any programs/projects currently being funded by the state's gas tax would still be covered during the suspension by the state's general fund; and 2) the suspension of the state's gas tax must be passed on to consumers.

   "SB 32 will immediately help California's consumers by offering immediate relief from high prices at the pump."

2) *Taxes and fees.* SB 32 proposes to pause three surcharges on gasoline for one year: the gas tax, cap-and-trade, and LCFS. According to information provided by the author, in November 2022—when California gas averaged roughly $5 per gallon as compared to the national average of $3.50 per gallon—the gas tax accounted for 53.9 cents per gallon, cap-and-trade accounted for 25 cents per gallon, and LCFS for 22 cents per gallon.

Should this measure be passed by the committee today, it will go to the Senate Governance and Finance committee, which will be the more appropriate venue for discussion of the gas tax suspension. The remainder of this analysis will discuss the impacts of the proposed pause on the two climate programs named in this bill.

3) *Fatal pause*. Despite the fact that SB 32 proposes to suspend cap-and-trade and the LCFS for only one year, the bill would have ramifications far beyond that year. As noted in the background, almost half of the emissions produced in 2021 were from transportation fuel providers. It is notable that those millions of tons of GHG emissions are important to the state's cap-and-trade program for two reasons: the auction proceeds provided to the GGRF, but also the demand for 139 million allowances to be claimed for the associated emissions.

   Under SB 32, the lost GGRF revenues would be backfilled from the General Fund, but no such accommodations are made for the impacts on the market for allowances.

   According to recent data from CARB at the end of the latest cap-and-trade compliance period (as reported on by the Legislative Analyst's Office) there are already over 300 million allowances banked to meet future compliance obligations. These 300 million banked allowances alone will make meeting our 2030 GHG emission reduction goal difficult, and doing so is a topic of significant ongoing discussions and deliberations. All of the concerns raised about the stringency of these programs would be worsened by reducing demand by 139 million tons of GHGs for a year.

   Under current levels of demand, there are likely too many allowances available at too low of a price to achieve the state's emission reductions goals. If SB 32 passed, what impact would it have on the sale (and banking) of allowances for the year of the pause? Would covered entities and speculators purchase even more low-cost allowances to bank for future compliance obligations without truly reducing emissions? Would other industries reduce their decarbonization ambitions because of the abundance of cheap allowances? SB 32 includes no direction for addressing any of these potential issues.

   For LCFS, the impacts to the compliance instrument market are different but still massively harmful. The price of LCFS credits is a product of supply and demand, without any of the additional containment mechanisms cap-and-trade has. If fuel suppliers were not required to purchase credits for one year, there would be virtually zero demand. This would cause the value of credits to plummet. Any producers who could weather the storm and still produce fuels and credits for that year would find that even once fuel suppliers are required to purchase credits again, their struggles would not be over. Thanks to a year of producing LCFS credits without any demand for them, there may be such a glut of surplus credits that the value of those credits may be slow to restore its current price, if ever.

Market-based compliance mechanisms are complicated, and their success depends on careful tuning over time of compliance instrument supply, demand, and banking. It is not clear if solutions could be developed to reconcile any of the above issues with the contents of this bill. It is not clear if the author intends to work towards developing such solutions.

Ultimately then, the question before the committee is whether these potentially foundational, lasting damages to two of the state's biggest climate programs are justified by reducing a portion of the California-specific surcharges on gasoline sales for one year. Again, according to information provided by the author, the fees for cap-and-trade and LCFS would reduce the cost of $5 gasoline to $4.53 a gallon: not quite 10% in savings.

Especially given the recent efforts in SBX1-2 to address the price of California gasoline without potentially crippling these vital programs, SB 32 may be the wrong solution to this important problem.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Governance and Finance Committee.

Related/Prior Legislation

SBX1-2 (Skinner, 2023) authorized the CEC to establish a maximum gross gasoline refining margin and penalty on gasoline sold by refiners in the state. The bill also required pricing transparency from gasoline refiners, directed an independent watchdog division at CEC to detect efforts to manipulate gas prices, and authorized CEC to impose a price-gouging penalty. SBX1-2 was signed by the Governor on March 28th, 2023.

SBX1-1 (Jones, 2023) is identical to SB 32. SBX1-1 has not been referred to committee in the Senate.

ABX1-1 (Fong, 2023) would suspend the gas tax and backfill the funds from the

General Fund. ABX1-1 has not been referred to committee in the Assembly.

AB 53 (Fong, 2023) is identical to ABX1-1. It has been referred to the Assembly Transportation committee.

SOURCE: Author

SUPPORT:

None received

OPPOSITION:

California Federation of Teachers AFL-CIO
Plug In America
Sierra Club California
State Building and Construction Trades Council of California
Transportation Agency for Monterey County (TAMC)

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