

SENATE BILL

No. 2

Introduced by Senator Skinner

December 5, 2022

An act to add Section 25355.5 to the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as introduced, Skinner. Energy: transportation fuels: supply and pricing: maximum gross gasoline refining margin.

Existing law requires 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 State Energy Resources Conservation and Development Commission containing certain information regarding its refining activities related to the production of gasoline in that month. Existing law 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 establish a maximum gross gasoline refining margin at an unspecified amount per gallon and would authorize the commission to annually adjust the maximum gross gasoline refining margin, as provided. The bill would authorize the commission to petition the court to enjoin a refiner from exceeding the maximum gross gasoline refining margin. The bill would also authorize the commission to assess an administrative civil penalty on a refiner for exceeding the maximum gross gasoline refining margin, as provided. The bill would authorize the commission to grant a refiner's request for an exemption from the maximum gross gasoline refining margin upon a showing by the refiner

of reasonable cause, and to subject the refiner to alternative maximum margins or other conditions set by the commission. The bill would require a refiner seeking an exemption to file a statement under the penalty of perjury setting forth the basis of the request for exemption. By requiring the statement to be filed under the penalty of perjury, this bill would expand the scope of the crime of perjury, thereby imposing a state-mandated local program. The bill would require the penalties collected to be deposited into the Price Gouging Penalty Fund, which the bill would create in the State Treasury. The bill would require moneys in the fund, upon appropriation by the Legislature, to be returned, as refunds, to residents of the state.

This bill would state the intent of the Legislature to enact subsequent legislation relating to transportation fuels, as described, including requiring the commission to conduct regular assessments of the supply and price of transportation fuels in the state, and of the impacts on production of refinery maintenance and turnarounds on fuel supply and price.

Existing law establishes the California Department of Tax and Fee Administration and provides that the department is the successor to, and is vested with, the duties, powers, and responsibilities of the State Board of Equalization.

This bill would state the intent of the Legislature to enact subsequent legislation that would direct the department, in collaboration with the commission, to investigate and report on aspects of the gasoline market, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) From August to October of 2022, Californians experienced
- 4 some of the highest gasoline prices ever recorded in the state, even
- 5 though the price of crude oil declined, state taxes and fees remained

1 unchanged, and gasoline prices did not increase outside the western
2 United States.

3 (b) Much of this increase was caused by refiners, which
4 increased the costs and profits they added to the price California
5 consumers paid at the pump, leading to prices that were
6 substantially higher per gallon than average prices in the rest of
7 the United States.

8 (c) During the third and fourth quarters of 2022, the overlap in
9 timing of planned maintenance at refiners' facilities resulted in a
10 larger decrease in crude oil processing capacity than would
11 otherwise have occurred if planned maintenance at refiners'
12 facilities had not coincided.

13 (d) During this same period of time, refiners allowed gasoline
14 inventory levels to reach decade-low levels, placing an upward
15 pressure on gasoline prices.

16 (e) This refiner conduct makes clear that greater transparency
17 into and oversight of refinery maintenance schedules and inventory
18 is necessary, to avoid preventable supply shocks in the market for
19 transportation fuels.

20 (f) Historically, refinery outages and issues have created an
21 opportunity for market participants to take advantage of naturally
22 high prices by manipulating prices to stay higher longer, as
23 evidenced by gasoline prices in California remaining elevated
24 without explanation following a temporary price shock after a
25 refinery explosion in 2015, which further demonstrates the need
26 for greater visibility into the pricing, contracting, and marketing
27 practices of industry participants.

28 (g) Although preventable capacity limitations and inventory
29 shortages played a role in the third quarter of 2022 price increases,
30 they cannot account for all of those increases. Similar factors did
31 not lead to extreme price spikes in prior years, suggesting that the
32 sky-high prices Californians faced from August to October of 2022
33 were due in significant part to opportunistic price gouging by oil
34 companies.

35 (h) Indeed, during the third quarter of 2022, refiners earned
36 record profits, with some refiners earning more than tenfold their
37 profits for the same period of time in 2021.

38 (i) Fundamental change is necessary to prevent future extreme
39 price spikes and price gouging by oil companies, which are entitled
40 to a reasonable return but are not entitled to reap exorbitant profits

1 at the expense of Californians, many of whom rely on gasoline as
2 an essential commodity or who are impacted by the increased cost
3 of goods and services that results from the gasoline price spikes,
4 even as the state begins to transition away from dependence on
5 the fossil fuels that are destroying our climate.

6 SEC. 2. It is the intent of the Legislature to enact subsequent
7 legislation that would do all of the following:

8 (a) Require that the State Energy Resources Conservation and
9 Development Commission (Energy Commission) conduct regular
10 assessments of the supply and price of transportation fuels in the
11 state, and of the impacts on production of refinery maintenance
12 and turnarounds on fuel supply and price.

13 (b) Expand the Energy Commission's authority to investigate
14 and obtain necessary information, including information regarding
15 pricing, supply contracts, and inventory management, from
16 participants in the market for transportation fuels.

17 (c) Expand the Energy Commission's authority to order that
18 refinery maintenance and turnarounds be rescheduled in specified
19 circumstances, when consistent with employee and public safety
20 and necessary to avoid supply shocks in the market for
21 transportation fuels.

22 (d) Establish an advisory committee of fuels market experts to
23 provide the Energy Commission with independent advice and
24 insights.

25 (e) Require the Energy Commission and the State Air Resources
26 Board, in consultation with the state's fuel producers and refiners,
27 to plan for and monitor progress toward the state's reliable, safe,
28 equitable, and affordable transition away from petroleum fuels,
29 and to issue periodic reports to the Governor and the Legislature.

30 (f) Supplement existing refinery reporting requirements by
31 requiring more detailed reports to the Energy Commission on
32 transportation fuel imports, inventory levels, and transactions, and
33 on refinery maintenance and turnarounds.

34 SEC. 3. It is the intent of the Legislature to enact subsequent
35 legislation that would direct the California Department of Tax and
36 Fee Administration, in collaboration with the State Energy
37 Resources Conservation and Development Commission, to
38 investigate and report on the drivers of and factors affecting the
39 price of gasoline in the refining, distribution, and retail segments
40 of the gasoline market; to uncover pricing irregularities in the

1 California gasoline market and their effect on tax revenue; and to
2 report its findings to the Governor and the Legislature.

3 SEC. 4. Section 25355.5 is added to the Public Resources Code,
4 to read:

5 25355.5. (a) For purposes of this section, the following
6 definitions apply:

7 (1) “Gross gasoline refining margin excluding state program
8 costs” means the amount, expressed in dollars per barrel and
9 calculated on a monthly basis, equal to the volume-weighted
10 average rack price of wholesale gasoline sold by the refiner, less
11 the volume-weighted fees or estimated valuations of costs
12 embedded in all of the refiner’s wholesale gasoline sales associated
13 with the low carbon fuel standard and the cap and trade
14 cap-at-the-rack program, less the refiner’s volume-weighted
15 average acquisition cost.

16 (2) “Maximum gross gasoline refining margin” means the
17 maximum amount of gross gasoline refining margin excluding
18 state program costs established or adjusted under subdivision (c).

19 (3) “Volume-weighted average acquisition cost” is the combined
20 volume-weighted average of the refiner’s volume-weighted average
21 crude oil acquisition cost and the refiner’s volume-weighted cost
22 of acquiring refined gasoline imported to California or acquired
23 from another refiner.

24 (4) “Volume-weighted average rack price of wholesale gasoline”
25 means the combined volume-weighted average of the refiner’s
26 rack price of branded and unbranded rack sales reported under
27 paragraph (3) of subdivision (b) of Section 25355.

28 (5) “Volume-weighted average crude oil acquisition cost” is
29 the amount reported as required by paragraph (2) of subdivision
30 (b) of Section 25355.

31 (b) Reports required under subdivision (b) of Section 25355
32 shall also include the volume weighted average cost of any refined
33 gasoline acquired by a refiner during the calendar month, and the
34 volume in barrels of refined gasoline acquired.

35 (c) (1) (A) On and after the effective date of this section, the
36 maximum gross gasoline refining margin shall be ____ cents per
37 gallon.

38 (B) On July 1, 2024, and on July 1 of each year thereafter, the
39 maximum gross gasoline refining margin shall automatically be

1 adjusted annually to reflect the changes in the Consumer Price
2 Index.

3 (2) Beginning ____, the commission may, at a publicly noticed
4 meeting, adjust the maximum gross gasoline refining margin based
5 on market data as necessary to fulfill the intent and purposes of
6 the section and to ensure that a full and affordable supply of
7 gasoline is available to Californians.

8 (3) Within 15 days of an adjustment to the maximum gross
9 gasoline refining margin pursuant to subparagraph (B) of paragraph
10 (1) or paragraph (2), the commission shall notify refiners of the
11 new maximum gross gasoline refining margin by a means
12 determined by the commission that may include, but is not limited
13 to, mail, email, or internet website postings.

14 (4) Adjustments to the maximum gross gasoline refining margin
15 pursuant to this subdivision shall be effective on the first day of
16 the calendar month at least 15 days after the commission gives
17 public notice of the adjustment, unless the commission orders
18 otherwise.

19 (d) On and after ____, it is a violation of this section for a refiner
20 to exceed the maximum gross gasoline refining margin.

21 (e) The commission may petition a court to enjoin a refiner from
22 violating subdivision (d).

23 (f) The commission may impose an administrative civil penalty
24 for a violation of subdivision (d). The amount of the penalty shall
25 presumptively be set based on the amount by which the refiner's
26 gross gasoline refining margin excluding state program costs
27 exceeds the maximum gross gasoline refining margin, converted
28 from barrels to gallons and multiplied by the number of gallons
29 sold by the refiner during the calendar month through all
30 transactions described in paragraph (4) of subdivision (b) of Section
31 25355, as follows:

32 (1) ____ percent on amounts earned by a refiner that exceed the
33 maximum gross gasoline refining margin by less than ____ cents
34 per gallon.

35 (2) ____ percent on amounts earned by a refiner that exceed the
36 maximum gross gasoline refining margin between ____ and ____
37 cents, inclusive, per gallon.

38 (3) ____ percent on amounts earned by a refiner that exceed the
39 maximum gross gasoline refining margin by more than ____ cents
40 per gallon.

1 (g) (1) The commission may, in its discretion, grant a refiner's
2 request for an exemption from the maximum gross gasoline
3 refining margin upon a showing by the refiner of reasonable cause,
4 and subject to alternative maximum margins or other conditions
5 as the commission may set.

6 (2) Any refiner seeking an exemption shall file a statement with
7 the commission, signed under penalty of perjury, setting forth the
8 facts that form the basis for the request for exemption.

9 (3) The commission shall by regulation develop procedures for
10 considering and adjudicating requests made pursuant to this
11 subdivision.

12 (h) (1) The commission shall identify, on a quarterly basis, the
13 name and address of each refiner that has exceeded the maximum
14 gross gasoline refining margin for any month during the previous
15 quarter, and the amount of administrative civil penalty to be
16 assessed.

17 (2) Before imposing the administrative civil penalty under
18 subdivision (f), the executive director of the commission shall
19 issue and serve a complaint on the refiner, and the commission
20 shall hold a hearing, adopt a decision, and require payment of the
21 penalty in accordance with the procedures described in subdivisions
22 (a) to (d), inclusive, of Section 25534.1.

23 (3) All penalties collected under this section, less refunds and
24 reimbursement to the commission for expenses incurred in the
25 collection of the penalties, shall be deposited into the Price
26 Gouging Penalty Fund, which is hereby created in the State
27 Treasury and, upon appropriation by the Legislature, shall be
28 returned as refunds to residents of the state.

29 (4) The Administrative Procedure Act (Chapter 3.5
30 (commencing with Section 11340) of Part 1 of Division 3 of Title
31 2 of the Government Code) does not apply to any regulation,
32 guideline, or adjustment of the maximum gross gasoline refining
33 margin adopted by the commission under this chapter.

34 SEC. 5. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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