

CONCURRENCE IN SENATE AMENDMENTS

AB 692 (Quirk)

As Amended September 4, 2015

Majority vote

ASSEMBLY: 52-27 (June 4, 2015)

SENATE: 25-14 (September 9, 2015)

Original Committee Reference: **NAT. RES.**

SUMMARY: Requires each state agency that is a buyer of transportation fuels to buy at least 3% of "very low carbon transportation fuels," as defined, beginning January 1, 2017, increasing by 1% per year thereafter until 2024.

The Senate amendments:

- 1) State a legislative finding that incentives for the development of low carbon transportation fuels can be enhanced if the state's purchasing power is used to buy very low carbon transportation fuel for its own fleets.
- 2) Delete a provision that authorized the Legislature to appropriate funds from the Greenhouse Gas Reduction Fund to state agencies that buy transportation fuel to offset increased costs associated with the purchase of very low carbon transportation fuel.
- 3) Specify that the Department of General Services (DGS) shall submit an annual progress report to the Legislature consistent with the existing report relating to alternative fuels.
- 4) Require the state to procure very low carbon transportation fuel only to the extent feasible, if DGS, in consultation with the chair of the Air Resources Board (ARB), makes a determination that very low carbon transportation fuel does not perform adequately for its intended use or is not available for a reasonable price and in a reasonable period of time.

EXISTING LAW:

- 1) Pursuant to the California Global Warming Solutions Act (AB 32 (Núñez), Chapter 488, Statutes of 2006), requires the ARB to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to 1990 levels by 2020 and to adopt rules and regulations to achieve maximum technologically feasible and cost-effective GHG emission reductions.
- 2) Pursuant to Executive Order S-01-07, sets a statewide goal to reduce the carbon intensity (CI) of California's transportation fuels by at least 10% by 2020. Pursuant to AB 32, ARB adopted a Low Carbon Fuel Standard (LCFS) regulation in 2009 to implement this goal. The LCFS attributes CI values to a variety of fuels based on direct and indirect GHG emissions, including land use changes caused by production of biofuels. The LCFS permits producers of certain low-CI fuels to opt in to LCFS regulation for the purpose of generating credits, which can be banked and used for compliance, sold to regulated parties, and purchased and retired by regulated parties. In addition, LCFS credits can be exported to other GHG emission reduction programs.
- 3) Establishes the Greenhouse Gas Reduction Fund (GGRF) and requires all moneys, except for fines and penalties, collected by ARB from the auction or sale of allowances pursuant to a

market-based compliance mechanism (i.e., the cap-and-trade program adopted by ARB under AB 32) to be deposited in the Fund and available for appropriation by the Legislature.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Unknown costs, but potentially minor, to the General Fund and various special funds to the DGS to manage fuel purchases to meet the purchase requirements.
- 2) Potential costs up to \$175,000, but likely minor, to the Cost of Implementation Account (special) to ARB to assist state agencies with compliance with the purchase requirements.

COMMENTS: In 2007, Governor Schwarzenegger issued Executive Order S-1-07, calling for a reduction of at least 10% in the CI of California's transportation fuels by 2020. The order instructed the California Environmental Protection Agency to coordinate activities between the University of California, the California Energy Commission and other state agencies to develop and propose a draft compliance schedule to meet the 2020 target.

The Order further directed ARB to consider initiating regulatory proceedings to establish and implement the LCFS. In response, ARB adopted the LCFS regulation in 2009, to be implemented beginning in 2010. 2010 was a reporting year and the first CI reduction requirement of 0.25% began in 2011. The target increased to 0.5% in 2012 and 1% in 2013. To date, fuel suppliers have over-complied, predominantly by blending ethanol with gasoline, which is preferred in the near term because ethanol blending is required by the federal Renewable Fuel Standard and does not require significant changes in fueling and vehicle infrastructure. However, natural gas, biodiesel and electricity have also been used in significant amounts to comply with the LCFS.

In 2009 and 2010, three lawsuits were filed against the LCFS by ethanol interests – two in federal court and one in state court. The federal lawsuits were brought by trade associations of ethanol producers and refiners who claim that the LCFS is preempted under the Energy Independence and Security Act of 2007 and violates the Commerce Clause of the U.S. Constitution (e.g., by assigning corn ethanol from the Midwest a CI value above that of corn ethanol made in California). The combined federal lawsuit (*Rocky Mountain Farmers Union v. Corey*) was heard by the Ninth Circuit Court of Appeals, which considered ARB's appeal of several adverse rulings and a preliminary injunction that were issued by the lower federal court in Fresno in December 2011. In April 2012, the Ninth Circuit granted ARB's request for a stay of the preliminary injunction, which allowed ARB to resume enforcement of the LCFS during the pendency of the lawsuit. In September 2013, the Ninth Circuit ruled that the LCFS provisions were not facially discriminatory, leaving the LCFS in place while the plaintiffs petition for review by the U.S. Supreme Court.

The state lawsuit (*Poet, LLC v. California Air Resources Board*), brought by a major ethanol producer, alleges that ARB did not fully comply with the Administrative Procedure Act (APA) and the California Environmental Quality Act (CEQA) when adopting the LCFS regulation. In November 2011, the Fresno Superior Court ruled in favor of ARB on all 14 causes of action raised by the plaintiffs. Plaintiffs then appealed the case to the Court of Appeal in Fresno, which found both APA and CEQA defects with ARB's process of adopting the LCFS. As a result, ARB has proposed adopting an alternative regulation for diesel and readopting the LCFS regulation to comply with the court's instructions.

Meanwhile, the LCFS is frozen at its 2013 (1% CI reduction) level. In addition to revising the regulation to comply with the Court of Appeal ruling, ARB has proposed several other modifications related to adjusting compliance schedules, determining CI, cost containment in the credit market, and other assorted issues. ARB proposes to readopt the LCFS regulation in July, with a target of 2% in 2016, 3.5% in 2017, 5% in 2018, 7.5% in 2019, and 10% in 2020 and thereafter.

According to proposed CI tables published by ARB, the following fuels may fall under the 40% definition in this bill:

- 1) Natural gas (biomethane) from landfills, dairy/feedlot sources, and anaerobic digestion of food/green waste and wastewater.
- 2) Biodiesel and renewable diesel from used cooking oil, tallow and plant sources.
- 3) Hydrogen, depending on the fuel source and production process.

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