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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**08/25/11**	Bill No:	**Senate Bill 791**
Tax Program:	**Regional Congestion Reduction Charge**	Author:	**Steinberg**
Sponsor:		Code Sections:	**GC Chapter 2 (commending with Section 55830)**
Related Bills:		Effective Date:	**01/01/12**

This analysis only addresses the provisions that impact the BOE.

BILL SUMMARY

This bill would allow a metropolitan planning organization (MPO), as designated, to impose a regional congestion reduction charge on the purchaser of motor vehicle fuel, as defined, at the point of retail or wholesale sale in each county or city and county within its jurisdiction.

ANALYSIS

CURRENT LAW

Under the **Motor Vehicle Fuel Tax Law** (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of $0.357 per gallon ($0.18 excise tax and $0.177 surtax) on the removal of gasoline (except for aviation gasoline) at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Under Chapter 12 (commencing with Section 8500) of this same law, the Metropolitan Transportation Commission (Commission) has the authority to levy a local tax on motor vehicle fuel to fund transportation projects. The Commission is made up of nine Bay Area members that include the City and County of San Francisco and the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma.

Under the **Diesel Fuel Tax Law** (Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of $0.13 per gallon on the removal of diesel fuel at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Under the **Use Fuel Tax Law** (Part 3 (commencing with Section 8601) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of $0.18 per gallon for use of fuels. For liquefied petroleum gas (LPG), liquid natural gas (LNG), compressed natural gas (CNG), ethanol, and methanol, which are types of use fuels, the excise tax rates are $0.06, $0.06, $0.07 (per 100 cubic feet), $0.09, and $0.09, respectively. In lieu of the specified tax rates, an annual flat rate fuel tax may be paid by the owner or operator of vehicles powered by LPG, LNG, or CNG. The flat rate is based on the vehicle's weight.

Additionally, Parts 1, 1.5, and 1.6 of Division 2 of the Revenue and Taxation Code impose state, local, and transactions **sales and use taxes** on all tangible personal

property, including gasoline, sold at retail. The rates in the different cities and counties throughout the state range from 7.25% to 8.75%, depending upon the jurisdiction in which the tangible personal property is purchased.

Lastly, the **Local Motor Vehicle Fuel Tax Law**, as contained in Part 4 (commencing with Section 9501) of Division 2 of the Revenue and Taxation Code, authorizes counties to impose countywide excise taxes on motor vehicle fuel at increments of one cent per gallon, provided a majority of the voters approve the proposition. The funds collected must be used only for purposes authorized by Article XIX of the California Constitution, such as transportation planning and construction. To date, however, no county imposes a local fuel tax under this authority.

PROPOSED LAW

This bill would add Chapter 2 (commencing with Section 55830) to Part 3 of Division 2 of Title 5 to the Government Code to allow a MPO, as designated pursuant to Section 134 of Title 23 of the United States Code, to impose a regional congestion reduction charge in all or part of its jurisdiction, subject to voter approval.

Specifically, the MPO would be required to adopt, or amend, a regional transportation plan to provide for a regional congestion reduction charge. Upon that adoption or amendment, the board of supervisors of each county and city and county in the jurisdiction of the MPO where the charge would be imposed would be required, upon request by the MPO, to submit to the voters, at a local election that is consolidated with a statewide primary or general election, a measure authorizing the MPO to impose the charge within all or part of the region. The charge would become operative on the first day of the first calendar quarter commencing more than 90 days after approval by a majority of the voters.

The regional congestion reduction charge would be imposed upon the purchaser of motor vehicle fuel[1] at the point of retail or wholesale sale in each county or city and county within the region where the charge is imposed. The charge would be collected from the purchaser by the retailer or wholesaler and transmitted to the State Board of Equalization (BOE) on or before the last day of the month next succeeding each calendar quarter, accompanied by a return in the form prescribed by the BOE.

Any charges required to be collected by the retailer or wholesaler, and any amount unreturned to the customer that was misrepresented as a charge when collected, would constitute debts owned by the retailer or wholesaler to the state.

Refunds. Any charges paid for motor vehicle fuel not used in a vehicle on public roads would be required to be refunded to the purchaser by the BOE.

Administration. The MPO would be required to contract with the BOE for the administration of the charge, and the BOE would be reimbursed for its actual cost in the administration of, and for its actual cost of preparation to administer, the charge based upon an independent audit.

The BOE would be required to collect the charges pursuant to the Fee Collection Procedures Law (Part 30 (commending with Section 55001) of Division 2 of the Revenue and Taxation Code).

[1] A charge would also be imposed on the registration of electric vehicles licensed to be driven on public roads and registered to an address in the jurisdiction the charge on motor vehicle fuel is imposed; this charge would be collected by the Department of Motor Vehicles.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Disposition of Proceeds. After deducting the costs of administration of the charge, the BOE would be required to periodically transmit the net revenues, less refunds, to the MPO as promptly as possible. Transmittal of those revenues must be made at least twice each calendar quarter.

Definition. The term “motor vehicle fuel” includes, but is not limited to, gasoline and diesel fuel, which would have the same meanings set forth in Revenue and Taxation Code Sections 7316 and 60022, respectively.

Operative Date. This bill would become effective January 1, 2012, but the operative date of the charge would be dependent on the local election approving the charge. Once commenced, the charge may not be imposed for longer than 30 years.

BACKGROUND

Assembly Bill 595 (Ch. 878, 1997) authorized the Metropolitan Transportation Commission to place before the voters in the nine-county region a local excise tax on motor vehicle fuel to fund specified transportation projects.

In 2008, several measures were introduced or amended to impose a local fee on motor vehicle fuel.

- AB 2744 (Huffman) would have allowed the Bay Area Commission to impose a local fee on motor vehicle fuel to fund greenhouse gas mitigation programs. AB 2744 failed passage in the Assembly Transportation Committee.
- SB 445 (Torlakson) would have allowed the regional transportation planning agency or a local transportation commission to impose a greenhouse gas mitigation and funding fee on motor vehicle fuels sold in the Bay Area region. That bill was held in the Assembly Transportation Committee.
- AB 2558 (Feurer) would have allowed regional transportation agencies to impose a local fee on motor vehicle fuels to fund environmental and transportation programs. The bill would have also repealed existing authority for the Metropolitan Transportation Commission to impose a local motor vehicle fuel tax to fund transportation projects. That bill died on the Senate inactive file.

COMMENTS

1. **Sponsor and Purpose.** This bill is intended to provide a dedicated source of funds to reduce vehicle congestion and to provide capital improvements for maintenance, safety, and rehabilitation to increase overall mobility for motorists within a region imposing the charge.

2. **The charge would be imposed on the purchaser of "motor vehicle fuel."** The bill defines "motor vehicle fuel" to include, but not be limited to, gasoline and diesel fuel, as defined pursuant to Revenue and Taxation Code Sections 7316 and 60022, respectively. Since motor vehicle fuels would not be limited to gasoline and diesel fuel, the charge may also be imposed on fuels such as kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, and all other fuels used by motor vehicles and sold in the MPO jurisdiction.

3. **What is a MPO and its jurisdiction?** Pursuant to Section 134 of Title 23 of the United States Code, a MPO is generally defined to mean the policy board of an organization created to carry out the transportation planning process within urbanized areas with a population of 50,000 or more individuals. There are currently 18 MPOs designated in California. The boundaries of an MPO, which are determined by an agreement between the MPO and the Governor, run along county lines and may include a single county or multiple counties. A map of MPOs in California can be found HERE.

   This measure authorizes a MPO to impose a regional congestion reduction charge in all or part of its jurisdiction. The measure also contains language requiring the charge to be imposed in each county or city and county within the region where the charge is imposed. Does the authorization language limit the imposition of the charge within a county, or would this allow for the charge to be imposed in part of a county? Is the language clear enough for the charge only to be imposed within a defined county or city and county? Without a defined city or county boundary within which the charge is imposed, administration and collection of the charge would be extremely difficult and costly. It is therefore suggested that the bill be amended to make clearer that the charge may be imposed within one or more counties in the MPOs jurisdiction.

4. **One level of imposition, one charge-payer.** In its current form, the bill would allow the imposition of the charge on the purchaser of motor vehicle fuel at the point of retail or wholesale sale. It also provides that the charge shall be collected from the purchaser by the retailer or wholesaler. As such, it is unclear if a MPO would be authorized to impose the charge on the purchaser at the wholesale level and retail level, or at one of those levels?

   If the charge may be imposed at both the wholesale and retail levels, the charge would likely be paid more than once on the same fuel. More than one charge payment is also likely if the charge is imposed at only the wholesale level since the same fuel could be sold to multiple wholesalers within a jurisdiction – and that fuel could subsequently be sold to a retailer outside the jurisdiction of the MPO imposing the charge.

   Allowing a MPO to choose a level of imposition would result in high implementation costs and would essentially require the BOE to administer two new charge programs. Imposing a charge at the wholesale level involves a different workload than imposing the charge at the retail level. The charge-payers registered would be different, as well as the computer programming, publications, and returns.

Permitting MPOs to choose one or both of two levels of imposition may also be confusing to charge-payers that conduct business in more than one MPO imposing a charge.

It is therefore suggested the bill be amended to specify the imposition of the charge at either the wholesale or retail level, not both. Between the wholesale and retail level, BOE staff suggests imposing the charge on the purchaser at the point of the retail sale with the charge collected and remitted to the BOE by the retailer. The amendments should also include language stating the purchaser is liable for the charge until paid to the retailer and a provision requiring the charge be separately stated, or a statement that the charge is included in the selling price of the motor vehicle fuel, on the receipt or invoice provided by the retailer to the purchaser.

5. **Uniform charge.** This bill does not appear to require a uniform charge to be included in the measure placed before the voters, nor does it include a rate range, cap, or rate adjustments. The measure would simply authorize the MPO to impose a charge within all or part of its region. Without a uniform charge submitted to and adopted by voters, is it possible for a MPO to make revisions to that charge (imposition, rate, exemptions) with voter approval? Any revisions by the MPO to the charge would require sufficient time for the BOE to implement and notify charge-payers. If a MPO has the option to make any revisions to the charge, language should be added to the bill making the change operative on the first day of a calendar quarter with a delayed operative date depending on the type of changes an MPO would be authorized to make to the charge.

   Allowing too many differences to the charge would be difficult and costly for the BOE to administer, and could result in a different charge program in each of the 18 MPO jurisdictions. Furthermore, a lack of uniformity in administration of the charge between the MPOs could result in charge-payers being subject to different rules and requirements from county to county, which could lead to reporting errors, and increased administrative burdens and costs for such persons.

   To impose a uniform charge, the bill should be amended to incorporate uniform charge imposition language, including uniform exemptions, which would be required to be included in the measure submitted to the voters. The language may also be added to allow a MPO to adjust the charge rate or extend the charge, not to exceed a 30 years. The BOE staff is available to assist in drafting these amendments.

6. **Costs may exceed revenues.** This bill does not increase administrative costs to the BOE because it only authorizes a MPO to impose a charge. However, if the charge is approved by voters, the MPO would be required to contract with the BOE for administration of the charge. As such, the BOE would incur fixed costs related to the start-up of a new charge program, in addition to ongoing costs for the BOE's services in administering the charge. These start-up costs would be the same, regardless of whether one MPO or all 18 MPOs adopt a measure to impose the new charge. Accordingly, much, if not all, of the start-up costs would be attributable to the first MPOs that impose the charge. Once the “system” is established then subsequent administrative costs should level out, assuming a uniform charge is adopted by the first and subsequent MPOs.

   In addition, if the rate is set too low and/or only a few MPOs impose the charge, fixed start-up costs would be paid from a smaller revenue base. Under these circumstances, it is possible that the revenues generated by the proposed charge may not be sufficient to cover the BOE's start-up administrative costs. If the costs

were to exceed the revenues, more than likely the **General Fund** would need to make up the difference.

7. **The BOE has the following administrative concerns.** There are many technical concerns with this bill, including, but not limited to, the following:

   - **Operative date.** The bill provides that the charge shall become operative on the first day of the first calendar quarter commencing more than 90 days after voter approval. This does not provide the BOE sufficient time to properly implement a new charge program, which includes identifying, notifying, and registering charge-payers, developing computer programs, hiring and training key staff, and creating necessary forms and publications. While the 90 day operative language in the bill would be sufficient for voter approved charges if the MPO is not the first to impose the charge and contract with the BOE **and** uniform charge language is incorporated into the bill and required to be submitted to the voters (see Comment 5), it is not enough time for the imposition of the charge under the current version of the bill. As such, a delayed operative date of the first day of the first calendar quarter commencing more than 180 days after voter approval would be necessary to allow the BOE to effectively and successfully implement any newly approved charge.

   - **Consistency and definitions necessary.** The bill authorizes, in Section 55830(a), a MPO to impose a "regional congestion reduction charge. However, the charge is referenced as a "motor vehicle fuel charge" throughout subdivision (f) of that same section. In addition, Section 55830(a) also provides that the charge may be imposed in all or part of a MPO's "jurisdiction," but the term "region" is used throughout subdivision (f). Is there a distinction between the two terms? It is suggested key terms be defined and the terminology made consistent throughout the section to avoid any ambiguity regarding the imposition of the charge.

     Furthermore, definitions should be added for other key terms, such as "purchaser," "retailer," "wholesaler," "point of retail sale," and "point of wholesale sale."

   - **Separately state the charge.** Since the charge would be imposed on the purchaser, it should be separately stated on the receipt or invoice provided to the purchaser to document the charge has been paid and to relieve the purchaser of any further liability for the charge. The receipt or invoice may also include a statement that the charge is included in the selling price of the motor vehicle fuel.

   - **Readability.** It is recommended that Section 55830 be broken up into multiple sections for ease of comprehension and amendment. This bill creates a whole new chapter that includes one lengthy section (Section 55830). The next section following Section 55830 is in Division 3, which commences with Section 56000, thereby providing plenty of room to expand Section 55830 into multiple sections.

   - **Fee Collection Procedure Law.** The BOE would be required to administer the charge pursuant to the Fee Collection Procedures Law. To make that law consistent with the charge imposed by this bill, Section 55830(g)(2) should clarify that the references in the Fee Collection Procedures Law to "fee" include the regional congestion reduction charge and references to "feepayer" include a required charge-payer (retailer or wholesaler) and a purchaser.

- **Reimbursement to the BOE is based on an independent audit. How does that work?** The bill provides that the BOE would be reimbursed for its actual costs to implement and administer the charge. The actual costs are to be determined by an independent audit. Who would contract or pay for the independent audit? Just how does the reimbursement – based on an audit – work? Would the BOE be expected to implement a local charge without funding, and be reimbursed upon validation of those costs by the audit? This would result in the BOE having to divert **General Fund** dollars to implement and administer the proposed charge program until the BOE could obtain funding, which would have a negative impact on the revenues of State and local government.

- **BOE staff has additional administrative concerns in collecting a local charge on a commodity already subject to an excise tax.** In addition to collecting excise taxes on motor vehicle fuels, the BOE also collects excise taxes that are generally imposed on alcoholic beverages, cigarettes and tobacco products, natural gas, electrical energy, and certain telephone communication services.

  To the general public, it would appear the BOE would have the resources, expertise, and ability to seamlessly implement a charge on already taxed commodities. However, as discussed in this analysis, there is a lot to consider with these types of proposed fees/taxes/charges. In addition to those previously mentioned, the BOE may have additional comments including, but not limited to, the following issues: co-administration of a fee program with a MPO; unconstitutional or invalid fees and the refund of such fees; contract specifications; sales tax computation; possible separation of certain administrative functions (e.g. appeals/refunds); reimbursement of expenses; and technical definitions.

COST ESTIMATE

This bill does not increase administrative costs to the BOE because it only authorizes MPOs to impose a regional congestion reduction charge. Voter approval would be required before any charge is levied pursuant to these provisions.

If a city or county within a MPO adopted a measure to levy the charge, the MPO would be required to contract with the BOE to administer the charge, and reimburse the BOE its actual costs of preparation to administer the charge as well as the actual costs for the BOE's services in actually administering the charge. Costs for preparation and administration of this charge could be higher than other local and district taxes the BOE administers, since the proposed charge is unlike other local and district taxes. These costs would be substantially dependent on the level of the imposition of the charge and on the extent to which the imposition of the charge varies among the MPOs that adopt a charge. Generally, the higher up the supply chain the charge is imposed, the more closely it would mirror current collections of gasoline and diesel excise taxes – meaning fewer registrants in the new charge program. The lower the charge is imposed, the more it becomes similar to the BOE's collection of sales taxes – a larger number of fuel retailers and purchasers. Costs could be related to registering fuel retailers or wholesalers, developing related computer programs, processing returns, payments, and claims for refunds, and carrying out compliance and audit efforts to ensure proper reporting, along with developing regulations, training staff, and answering inquiries from the public.

REVENUE ESTIMATE

This bill would authorize a MPO to impose a charge on motor vehicle fuel, including, but not limited to, gasoline and diesel fuel sold in the MPO jurisdiction, at a rate to be established by the MPO. Since an amount or the range of that charge is not specified, a revenue estimate could not be prepared.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.