SENATE BILL REPORT
SB 6052

As of January 16, 2024

Title: An act relating to petroleum products supply and pricing.

Brief Description: Concerning petroleum products supply and pricing.

Sponsors: Senators Nguyen, Conway, Hasegawa, Keiser, Kuderer, Liias, Pedersen, Saldaña, Stanford and Valdez; by request of Office of the Governor.

Brief History:
Committee Activity: Environment, Energy & Technology: 1/17/24.

Brief Summary of Bill

- Requires certain petroleum industry entities to report or retain specified information regarding supply, pricing, transportation, maintenance, and transactions of petroleum and petroleum products, subject to confidentiality requirements.
- Creates a Division of Petroleum Market Oversight within the Utilities and Transportation Commission (UTC), and directs the UTC to gather, analyze, interpret, and report on submitted information and other petroleum supply and price information.
- Requires the UTC to submit a transportation fuels assessment to the Governor and Legislature, and requires the UTC and the Department of Ecology to prepare a transportation fuels transition plan.
- Authorizes the UTC to impose civil penalties for failing to provide or falsifying information related to transportation fuels.
- Prohibits a person from making a deceptive environmental marketing claim related to transportation fuels.
- Imposes an enhanced penalty under the Consumer Protection Act for unlawful acts or practices relating to the sale of transportation fuels.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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Background: Petroleum Refining and Transportation. Petroleum refineries convert—or refine—extracted crude oil into petroleum products for use as fuels for transportation, heating, paving roads, and generating electricity, and as feedstocks for producing chemicals. A U.S. 42-gallon barrel of crude oil yields about 45 gallons of petroleum products in U.S. refineries because of a processing gain. Petroleum products produced from a barrel of crude oil include, among others, gasoline, jet fuel, and distillate. After production, outgoing petroleum products are temporarily stored in large tanks near the refinery until they are transported to other destinations by pipelines, trains, marine vessels, and trucks.

Currently, there is no crude oil extraction in Washington State, however, there are five oil refineries: (1) BP Cherry Point in Blaine; (2) Phillips 66 in Ferndale; (3) Shell Oil in Anacortes; (4) Tesoro in Anacortes; and (5) U.S. Oil in Tacoma. The Olympic Pipeline system runs 400 miles from Blaine, Washington to Portland, Oregon and transports gasoline, diesel, and jet fuel.

Petroleum Industry Oversight. At the federal level, the petroleum industry is regulated by several agencies. For example, the Federal Trade Commission (FTC) reviews oil industry mergers and acquisitions, business conduct of oil and gas companies for possible antitrust violations, and gas prices in numerous markets across the country. In Washington, the Washington Attorney General's Office (AGO) monitors gas prices to determine whether price increases indicate possible anticompetitive behavior or reflect normal market forces. The AGO produces a quarterly gas report regarding factors contributing to state gas prices. The Utilities and Transportation Commission (UTC) regulates the rates and services of many transportation industries, including investor-owned utilities, solid waste companies, pipeline companies, and marine pilotage.

Fuel Action Plan. In November 2023, the Energy Resilience & Emergency Management Office, housed within the Department of Commerce, published the 2023 State Fuel Action Plan. The plan describes the fuel supply chain, hazards to fuel infrastructure, and tactics available to the state for responding to a fuel shortage or disruption.

Consumer Protection Act. The Consumer Protection Act (CPA) prohibits, among other things, unfair or deceptive trade practices in commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. A private person or the AGO may bring a civil action to enforce the CPA. Civil penalties differ depending on the alleged CPA violation and in some cases, may include enhanced penalties. Every five years, the AGO must evaluate the efficacy of certain maximum civil penalty amounts in deterring CPA violations and to account for inflation.

Public Records Act. The Public Records Act (PRA) requires government agencies to make records available to the public for inspection and copying upon request, unless a specific statutory exemption applies. For example, certain records filed with the UTC or the AGO containing commercial information are not subject to inspection or copying under the PRA.

Other States. In June 2023, California established a Division of Petroleum Market Oversight (CA Division) as an independent agency within the California Energy Commission to monitor petroleum markets and flag potential market manipulation. The CA Division is authorized to refer violations to the California Attorney General for prosecution.

Summary of Bill: Definitions. Transportation fuels means gasoline, gasoline blending components, diesel, or diesel blending components. Major marketer means any person who sells transportation fuels or oil intended for use in Washington in amounts determined by the UTC as having a major effect on transportation fuel supplies in the state. Refinery means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing transportation fuels in the state.

Several other terms are defined, including "destination facility," "environmental marketing claim," "operational costs," "person," "planned maintenance," "refiner," "spot market transaction," "turnaround," "unbranded," and "unplanned maintenance."

Division of Petroleum Market Oversight. The Washington Division of Petroleum Industry Oversight (Division) is established within the UTC, but with independent authority, to collect, analyze, and report on operational, pricing, and cost information from fuel suppliers, refineries, and other entities in the supply chain for transportation fuels sold in Washington.

The Division must be led by a Governor-appointed director, who must hire necessary staff, including economists, fuel market experts, and investigative staff. The Division has the powers and duties to:

- provide independent oversight and analysis of the transportation fuels markets for the protection of consumers by identifying market design flaws, market power abuses, and other methods by which market participants act to harm competition or act contrary to the best interests of Washington consumers;
- provide guidance and recommendations to the UTC relating to the development of the transportation fuels assessment and the transportation fuels transition plan;
- provide guidance and recommendations to the Governor, UTC members, and other UTC divisions on any other issues relating to transportation fuels pricing and transportation decarbonization in the state;
- report its findings and recommendations to improve market performance to the Legislature, Governor, UTC, AGO, and the Department of Licensing;

- subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require production of records material to the performance of its duties, including, without limitation, current and historical pricing and sales data and contracts with other petroleum industry participants; and
- refer potential violations to the AGO confidentially.

<u>Reporting Requirements.</u> *Refiner and Major Marketer Monthly Reporting.* Within 30 days after the end of each monthly reporting period: (1) refiners must report by volume, price, and type, for each of their refineries, feedstock inputs, origin of petroleum receipts, imports of finished petroleum products, blendstocks, and ethanol, including the source of those imports and exports, and the destination and receiving entity, refinery outputs by product type, refinery stocks, finished product supply and distribution, including all gasoline sold unbranded by the refiner, blender, or importer; and (2) major marketers must report, by volume, price, and type, on sales of petroleum products intended for use in Washington.

The UTC must prepare and make available a quarterly, public summary report based on the data collected above. Information used in the report must be aggregated to the extent necessary to assure confidentiality of all specific confidential information exempt from public disclosure and protected as confidential under the act. The UTC may require additional information to be submitted as necessary to perform its responsibilities under the act.

Each refiner must submit to the UTC, within 30 days after the end of each monthly reporting period, monthly Washington weighted average prices and sales volumes of finished transportation fuels sold through company-operated retail outlets, to other end users, and to wholesale customers.

Additional Refiner, Major Marketer, and other Petroleum Entity Monthly Reporting. Each refiner, major marketer, major transporter, major storer, pipeline operator, or port through which transportation fuel is imported or exported, must annually submit the following information to the UTC, within 30 days after the end of each reporting period:
- major transporters must report the petroleum capacities of each major transportation system, the amount transported by each system, and inventories of each system. The UTC may, by rule, exclude pipeline and transportation modes operated entirely on property owned by major oil transporters from specified reporting requirements if the data or information is not needed to fulfill the purposes of the act;
- major storers must report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions;
- refiners must report on facility capacity, and utilization and method of transportation of refinery receipts and distributions;
- major marketers must report on facility capacity, methods of transportation and distribution, and all sales of petroleum products intended for use in Washington; and
- pipeline operators and port operators must report their capacities for all pipelines and ports used to transport transportation fuels.

The information submitted above must include in the report for each reporting period, the full names of all persons or entities that directly or indirectly own 10 percent or more of the entity submitting the information. The UTC may, by order or rule, determine the form and extent to which reporting is required, and modify the reporting period for any individual item of information.

Beginning August 1, 2024, and each month after, an oil refiner, petroleum product transporter, petroleum product marketer, petroleum product pipeline operator, and terminal operator must submit a report including, as the UTC prescribes, any of the following information:

- receipts and inventory levels of crude oil and petroleum products at each refinery and terminal location;
- amount of transportation fuels imported and exported out of the state;
- amount of transportation fuels transported intrastate by marine vessel;
- amount of crude oil imported, including information identifying the source; or
- the regional average of invoiced retailer buying price.

Petroleum industry entities must retain specified contract information relating to transactions with other petroleum industry entities for three years.

Transportation Fuel Importer Reporting. All importers of transportation fuels by marine vessel must report to the UTC, at least four days before the arrival of a marine vessel delivery to Washington, all of the following information:

- the name of the product tanker or name of the barge, including associated tug name;
- the loading location or locations for cargo;
- the volume by each type of transportation fuel;
- the cargo landed cost, including the cost incurred to purchase, load, transport, and all other costs and fees to deliver each type of transportation fuel; and
- the status of any transportation fuel sold before discharge, the identity of the buyer for any presold product, and the sale price of any presold product.

Non-Refiner Information Retention. Non-refiners that commercially trade in transportation fuels must retain for three years, copies of monthly transportation fuels inventory volume records by type for each position holder by name of company, and copies of all contracts or agreements entered into with petroleum entities that trade in petroleum products, whether or not the entities take possession of those products.

Refiner and Non-Refiner Monthly Reporting on Spot Market Transactions. Spot market transaction means a single bulk transaction involving a maximum of one product and one delivery, with title transfer occurring within one year. Beginning 30 days after the effective date of the act, refiners and non-refiners completing spot market transactions must submit a monthly report to the UTC, including information relating to each transaction occurring during the preceding month. Some of the information required includes:

- the identity of the spot market where the transaction occurred;
- the date and time of the transaction and scheduled or actual delivery date;
- the contract identification number for the transaction;
- the name, or non-anonymized identification, of the executing trader for the transaction;
- the counterparty for the transaction, including company name and name or non-anonymized identification of the executing trader;
- the type of transportation fuel and product name;
- the volume of each transaction in thousands of barrels, or specified unit of measurement if unable to be indicated in thousands of barrels;
- the invoiced volume of each transaction in thousands of barrels, or specified unit of measurement if unable to be indicated in thousands of barrels;
- the time and date the material that is the subject of the transaction is scheduled to be delivered or was delivered;
- the actual title transfer date;
- the contract sub-cycle, including several listed descriptors;
- the type of pricing method;
- the contract price formula, including the differential from any contract formula and the unit of measurement for any price differential;
- the pricing start and end dates for each contract;
- the price value of the contract; and
- for exchange of futures for physical product contracts, the name of the product, the contract month of the product, and the price value of the product.

Refinery Quarterly Reporting on Maintenance Activities. Refiners must provide quarterly reports to the UTC of planned and unplanned maintenance and turnaround activities that occurred at each refinery during the reporting period. While the UTC may request additional information necessary to assess the effect of the planned maintenance event, the report must include, at a minimum, all of the following information:
- a brief description of the completed work;
- the start and return-to-service dates;
- the individual process units involved, and name and operational capacity of each unit;
- the daily decrease in output of transportation fuel intended to be used in Washington;
- the quantity of contractual supply obligations for finished transportation fuels due during the planned maintenance event or turnaround;
- the drawdown of inventory levels of transportation fuels and other material or substance produced by the unit controlled by the refiner at the refinery and at other storage locations during the planned maintenance event or turnaround;
- the levels of such inventories immediately before the start of the planned maintenance event or turnaround;
- imports of transportation fuels and other material or substance produced by the unit in preparation for or during the planned maintenance event;
- purchases of transportation fuels and other material or substance produced by the unit from other market participants in the state related to the planned maintenance event;

and
- planned reductions of non-contracted sales of transportation fuels or other material or substance produced by the unit related to the planned maintenance event.

For unplanned maintenance resulting in a shutdown of a refinery process for longer than 24 hours, each refiner must submit the following, additional information:
- the name and operational capacity of each process unit involved in the unplanned outage;
- the daily decrease in output of transportation fuels from each process unit affected by the unplanned outage;
- the inventory levels of the material or substance produced by the unit affected by the unplanned outage controlled by the refiner at the refinery and other storage locations in the state during the unplanned maintenance event;
- a description of the reason for the unplanned maintenance or outage;
- the duration of production reduction;
- the return-to-service date;
- the total decreased output of transportation fuels from each affected process unit;
- the total increased output from other process units by type of product to partially compensate for the reduced output from the process units affected by the unplanned outage;
- the drawdown of inventory levels of any material or substance produced by the unit controlled by the refiner at the refinery and at other storage locations in the state during the unplanned maintenance event.

Refinery Monthly Reporting on Refining Margins. Gross transportation fuel refining margin (gross refining margin) means the difference, expressed in dollars per barrel, between the volume-weighted average price of wholesale transportation fuels sold by a refiner in the state and the average price of crude oil received by the refinery. Net transportation refining margin (net refining margin) means the gross refining margin minus the refinery's operational costs.

Beginning August 1, 2024, within 30 days of the end of each calendar month, the operator of each refinery operating in the state producing transportation fuel meeting Washington specifications must submit a report to the UTC with the following information:
- the volume, in barrels, of crude oil received that month, subtotaled by country of origin;
- the volume-weighted average of crude oil acquisition cost paid for crude oil received and intended to be refined that month, separated into such costs by country of origin;
- the volume in barrels of transportation fuels received or imported in that month from entities other than the refiner;
- the volume-weighted average cost of any transportation fuels received or imported by a refiner during that month;
- the quantity, in barrels, of wholesale transportation fuels meeting Washington specifications sold and the corresponding volume-weighted average prices, less all

applicable local, state, and federal taxes, separated by unbranded rack sales, branded rack sales, bulk sales, spot pipeline sales, and dealer tankwagon sales in that month;
- the gross refining margin per barrel of gasoline sold in that month;
- the operational costs per barrel of gasoline sold in that month; and
- the net refining margin per barrel of gasoline sold in Washington that month.

Within 45 days of the end of each calendar month, the UTC must post the following information on its website:
- the gross refining margin reported by refineries, any gross refining margin independently calculated by the UTC, as a volume-weighted gross refining margin in aggregate for all Washington refineries, and separately for each refiner operating more than one refinery in the state;
- the net refining margin reported by refineries, any net refining margin independently calculated by the UTC, as a volume-weighted net refining margin in aggregate for all Washington refineries, and separately for each refiner owning more than one refinery in the state;
- the aggregated data collected above; and
- the average retail price of gasoline by region, separating the average retail price into refinery, distribution, wholesale, and retail margins and costs.

The UTC, in consultation with the Department of Ecology (Ecology) and after public input, must adopt a methodology for refiners to separately quantify the volume-weighted fees or estimated costs embedded in all wholesale sales of transportation fuels associated with the Washington Clean Fuels Program and Climate Commitment Act. Beginning 60 days after the UTC adopts the methodology, the information must be included in the monthly reports on refining margins.

<u>Additional Utilities and Transportation Commission Duties.</u> The UTC must gather, analyze, and interpret information submitted by the petroleum industry and other information regarding petroleum supply and price. Specifically, the UTC must review:
- the nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply;
- economic and environmental impacts of any petroleum or petroleum products shortage or condition affecting supply;
- petroleum or petroleum products demand and supply forecasting methodologies used by the industry;
- prices, with particular emphasis on retail motor fuel prices, including sales to unbranded retail markets, and any significant changes in prices charged by the industry and reasoning;
- profits, before and after taxes, of the industry overall and major entities, where in the supply chain the profits are realized, including a comparison with other major industry groups and major entities as to profits, return on equity and capital, and price-earnings ratio;
- for companies that own a Washington refinery and one or more refineries in other

states, a comparison of profits at the Washington refinery to other refinery profits;
- emerging trends relating to supply, demand, and conservation of petroleum and petroleum products;
- the nature and extent of the industry to expand refinery capacity and acquire additional supplies of petroleum and petroleum products;
- the development of an information system to enable the state to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply; and
- the impacts of state and federal policies and regulations on transportation fuels supply and pricing.

Subject to the confidentiality requirements in the act, within 70 days after the end of each preceding calendar quarter, the UTC must report to the Governor and Legislature a summary, analysis, and interpretation of the information submitted by the petroleum industry under the act. If a report is delayed, the UTC must provide a detailed written explanation of the cause of delay. The UTC may use reasonable means necessary and available to obtain required information and must include unsuccessful attempts to obtain information in its reports.

<u>Transportation Fuels Assessment.</u> On or before July 1, 2026, and every three years, the UTC must submit a transportation fuels assessment (assessment) to the Governor and Legislature that:

- identifies methods to ensure a reliable supply of affordable and safe transportation fuels in Washington;
    1. the assessment must consider the potential benefits to Washington transportation fuel consumers of creating certain reserve level estimates to prevent shortages that result in sharp price increases;
    2. the assessment must consider all factors causing price fluctuations in retail transportation fuels prices when recommending adequate reserve levels;
    3. the commission must consider all relevant evidence from any reasonably available source; and
    4. the commission must transmit to the Legislature any proposals it deems appropriate for mandatory reserve levels and the terms of a program to implement those levels; and
- evaluates the price of transportation fuels, including branded and unbranded retail prices, alternate formulations of transportation fuels with lower carbon impact, and other suitable refinery products at three, seven, 10, and 20-year intervals, which must also include:
    1. an examination of whether branded fuel additives have any impact and, if so, how much on fuel efficiency and vehicle emissions; and
    2. an assessment of the presence and availability of retail outlets; and
- considers different levels of supply conditions and assesses the impact of potential refinery closures in the state;
- includes an analysis on the production impacts due to planned and unplanned maintenance, and turnaround activities at Washington refineries;

- evaluates the utility and feasibility of alternative methods to maintain adequate supplies of transportation fuels; and
- proposes solutions to mitigate impacts.

The first assessment must include an evaluation of transportation fuels refining. Each assessment must be developed in a public process and approved by UTC Commissioners.

<u>Transportation Fuels Transition Plan.</u> On or before December 31, 2025, the UTC and Ecology, with assistance from the Division must prepare a transportation fuels transition plan (plan) based on the assessment. The plan must include, at a minimum, a discussion of how to ensure the supply of transportation fuels is affordable, reliable, equitable, and adequate to meet demand. The plan must be prepared in consultation with a specified multi-stakeholder, multi-agency work group convened by the UTC and Ecology to identify mechanisms to plan for and monitor progress toward the state's reliable, safe, equitable, and affordable transition away from petroleum fuels consistent with declining instate petroleum demand, the Clean Fuels Program, and the Climate Commitment Act.

<u>Confidential Information.</u> In general, information provided, disclosed, or presented to the UTC or any other state agency, or otherwise obtained by such entities, is confidential and exempt from public disclosure. Internal agency records developed from confidential information is confidential. Data must be aggregated to prepare reports required under the act.

With respect to petroleum products and blendstocks reported by type under specified reporting requirements, the UTC, Ecology, Department of Licensing, and the AGO may not (1) use the information for any purpose other than law enforcement or statistical purposes; (2) make any publication where the information provided by a particular entity can be identified; and (3) permit anyone other than the listed state agencies to review the records. The UTC may share, no more than quarterly, aggregated or anonymized confidential information, with Ecology, the AGO, and the Legislature, subject to a written agreement to keep the information confidential. The UTC may share other confidential information with Ecology upon request for oil spill planning and preparedness purposes, and with first responders after an accident or spill.

Additional provisions relate to information supplied to the Division being confidential and exempt from disclosure unless the Division determines public disclosure would not result in unfair competitive advantage to the person supplying the information, or would not adversely affect market competition. The Division will provide 30 days to the person supplying the information to review the determination and provide input.

Records filed with the UTC or AGO under the act are explicitly exempted from disclosure under the PRA.

<u>Enforcement and Penalties.</u> *Penalties Related to Withholding or Falsifying Information.* If,

within five business days after being notified by the UTC of a failure to provide required information, the person is subject to a civil penalty of between $5,000 and $20,000 per day for each day the required information is refused or delayed, up to a maximum penalty of $500,000 per submission. A person who willfully makes a false statement, representation, or certification in required information is subject to a maximum civil penalty of $40,000, in addition to all other civil and criminal liability provided under applicable law. The UTC may petition a court to compel a person to provide required information.

In connection with any investigation or action under the act, the UTC is explicitly granted several powers, including, among others, the ability to inspect and copy books and other documents; hear complaints; issue subpoenas; and provide information or evidence to the AGO or other governmental entities if the entity agrees to maintain confidentiality. The UTC may issue a civil penalty to any person or entity on whom an administrative penalty may be imposed under the act. Additional procedural requirements are stated. When determining the amount of an administrative civil penalty, the UTC must consider certain factors relating to the violation or violations, the enforcement cost to the state, and other factors related to the violating party.

Consumer Protection Act. It is unlawful for a person to make deceptive environmental marketing claims, whether explicit or implied, regarding transportation fuels. It is a defense for certain lawsuits or complaints where the person's environmental marketing claims conform to standards in FTC guides regarding such claims. Legislative intent language provides that a violation of the act is not reasonable in relation to the development and preservation of business and is an unfair method of competition under the CPA. For unlawful acts or practices relating to the sale of transportation fuels, an enhanced penalty of up to three times the profit gained or loss avoided as a result of such unlawful acts or practices applies under the CPA. The AGO must evaluate the efficacy of certain maximum penalty amounts in the CPA by December 1, 2026, rather than December 1, 2027.

<u>Other.</u> The UTC is granted rulemaking authority and the ability to enter into contracts to implement the act. The act contains a state severability clause and may be known and cited as the Oil Industry Accountability Act.

Appropriation: None.

Fiscal Note: Requested on January 9, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.