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BILL ANALYSIS

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Senate Bill 1205 (as enrolled)  
Senate Bills 1264, 1265, and 1266 (as enrolled)  
Sponsor: Senator George A. McManus, Jr.  
Committee: Finance

Date Completed: 7-26-00

### **RATIONALE**

As stated in its title, the motor fuel tax Act "prescribe[s] a privilege tax for the use of the public highways by owners and drivers of motor vehicles by imposing a specific tax on the sale or use within the state of Michigan, of motor fuel". The statute was enacted in 1927. Some people believe that many of its provisions are archaic, and that the Act needs to be reorganized.

In addition to general concerns about the Act, the issue of tax evasion has been raised. Under the Act, the State levies a tax of 19 cents per gallon on gasoline and 15 cents per gallon on diesel fuel. The Federal government also levies a tax of 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel fuel. Motor fuels purchased for uses other than powering vehicles on the public highways (that is, for use in generators, power equipment, and farm equipment, and for heating fuel, industrial uses, etc.) are not subject to either State or Federal motor fuel taxes, and the taxes either are not charged at the point of purchase or are refunded to the purchaser upon request. Some time ago, it was pointed out that the disparity between the price of a taxable gallon and of a nontaxable gallon of motor fuel could encourage persons to evade the tax by attempting to purchase tax-exempt fuel and use it for taxable purposes. To address this problem, the Federal government in 1994 started a dyed diesel fuel program, to allow persons who use diesel fuel for a tax-exempt purpose to purchase the fuel tax-free if it is dyed red in accordance with Federal standards, and to prohibit the use of dyed fuel on the public highways except for specified uses. This allows Federal and state authorities who inspect the equipment of truckers (who consume the bulk of the diesel fuel used) to discover if a trucker is operating with clear fuel or dyed fuel on the highways. Since 1994, 35 states have instituted dyed diesel fuel programs to conform to the Federal program. It has been suggested that Michigan also initiate a dyed diesel fuel program.

### **CONTENT**

**Senate Bill 1205 (S-1)** would repeal and recodify the "Motor Fuel Tax Act". The bill would prescribe a tax on the sale and use of fuel in motor vehicles on the public highways; provide for the collection and remittance of the tax to the State; require the licensure of persons involved in the sale, use, and transportation of motor fuel; establish a dyed diesel fuel program; prescribe fees; provide for exemptions from and refunds of the tax; create a "Motor Fuel Tax Evasion Prevention Fund"; require a person who purchased aviation fuel for resale to register with the Department of Treasury; and provide for the enforcement of the Act's provisions and penalties for violations of the Act. (The bill would not change the current tax rates in the Act; the current diesel discount provisions; the current exemptions from the tax (except for adding an exemption for dual use vehicles used on a jobsite); and the current application of the tax to persons.) The bill would take effect October 1, 2000.

**Senate Bills 1264-1266** would amend three Acts to bring their provisions into conformity with the Motor Fuel Tax Act (as proposed to be repealed and recodified by Senate Bill 1205).

#### **Senate Bill 1205 (S-1)**

#### **Intent**

The bill provides that it would be the intent of the proposed Act:

- To require persons who operate a motor vehicle on the public roads or highways of the State to pay for the privilege of using those roads or highways.
- To impose on suppliers of motor fuel a requirement to collect and remit the tax imposed by the Act at the time of removal of motor fuel, unless otherwise specifically provided.
- To allow persons who pay the tax and who use the fuel for a nontaxable purpose to seek a refund

or claim a deduction as provided in the Act.

- That the tax imposed be collected and paid at those times, in the manner, and by those persons specified in the Act.

#### Transportation Fund/Prevention Fund

Currently, all money collected under the Act, except for license fees, is appropriated to and deposited in the Michigan Transportation Fund, after the payment of necessary expenses incurred in the enforcement of the Act. The bill would recodify this provision. Further, the bill would create the Motor Fuel Tax Evasion Prevention Fund in the Department of Treasury. Money in the Fund could be used only for the following purposes:

- To fund the development of an efficient and effective diesel fuel enforcement program that would have to include oversight of the public roads and highways to ensure that dyed diesel fuel and other untaxed fuel were not being used in violation of Michigan law; and development of auditing techniques to aid the Department in exposing tax evasion schemes and incidents.
- To fund the inspection, testing, and sampling provisions in the bill, including the funding of additional inspectors engaged in random on-road inspections.
- To fund the additional administrative costs associated with the implementation of the bill.

In order to prevent and detect motor fuel tax evasion, the Department could enter into a cooperative agreement with other states, Canadian provinces, the Federal government, or other countries for the exchange of information in hard copy or electronic format.

#### Motor Fuel Tax

The bill would do the following:

- Provide that a person who failed or refused to pay the tax on motor fuel to the Department at the time required, or who withheld tax with intent to defraud, would be guilty of embezzlement, punishable as provided in the Michigan Penal Code.
- Require that the tax be remitted to the State by a supplier who "removed" motor fuel as shown by a terminal operator's records; that is, made a physical transfer of motor fuel from a terminal, manufacturing plant, customs custody, pipeline, marine vessel, or refinery that stored motor fuel.
- Require a supplier who sold motor fuel to collect the tax from the purchaser.
- Allow an "eligible purchaser" to withhold payment

of the tax to the supplier until one business day before the tax was due to be remitted to the Department (the 20th day of the month following the date of the transaction). An "eligible purchaser" would be a purchaser authorized by the Department, who provided evidence to the Department that the purchaser met the financial responsibility or bonding requirements of the bill.

- Specify that there would be an irrebuttable presumption that all motor fuel delivered in Michigan into the fuel supply tank of a motor vehicle, required to be licensed for use on the State's public roads, was to be used or consumed on the public roads for producing or generating power for propelling motor vehicles. The presumption would not apply to that portion of the fuel used by a commercial motor vehicle outside the State, or to fuel used by a dual use vehicle on a jobsite to operate attached equipment.
- Specify that the tax would be imposed on a nonexempt end user upon delivery into a motor vehicle, of the following: any fuel or component of fuel taxable under the bill that had not been taxed previously under the bill; dyed diesel fuel or any motor fuel that contained a dye; and motor fuel on which a refund claim had been made.
- Provide that the ultimate vendor (the person who sold motor fuel to an end user) would be jointly and severally liable with the end user for the tax, if the ultimate vendor knew or had reason to know that the tax had not been paid or that the fuel was or would be used by a nonexempt end user or in a nonexempt use.
- Specify that the tax imposed by the bill would be levied on "gross gallons" of motor fuel, that is, the total measured product in gallons, exclusive of any temperature or pressure adjustments, considerations, or deductions.
- Maintain the current remittance allowance. (Currently, a supplier in calculating the tax may deduct 1.5% of the quantity of gasoline removed by the supplier, for the cost of remitting the tax.)
- Allow a supplier to claim a credit against the tax for taxes paid by the supplier that the supplier was unable to collect from an eligible purchaser and remained uncollected for 90 days. The Department could promulgate rules to require evidence that a supplier would have to provide to receive the credit. (Currently, a supplier may claim a deduction for taxes paid that become uncollectible.)

#### Exemptions/Refunds

The bill would exempt from the tax motor fuel that was any of the following:

- Dyed diesel fuel or dyed kerosene.

- Gasoline or diesel fuel sold directly by the supplier to the Federal government, the State government, or a political subdivision of the State for use in a motor vehicle owned and operated or leased and operated by the Federal or State government or political subdivision.
- Sold directly by the supplier to a nonprofit, private, parochial, or denominational school, college, or university, and used in a school bus owned and operated or leased and operated by the educational institution that was used in the transportation of students.
- Fuel for which proof of export was available in the form of a terminal-issued destination state shipping paper under circumstances specified in the bill.
- Gasoline removed from a pipeline or marine vessel by a taxable fuel registrant with the Internal Revenue Service as a fuel feedstock user.
- Sold by a supplier to a licensed industrial process reseller for resale to an industrial end user who used the fuel for an exempt purpose.
- Motor fuel sold for use in aircraft, but only if the purchaser paid the tax imposed under the Aeronautics Code, and were registered with the Department.

Motor fuel would be exempt from the tax if it were acquired by an end user outside the State and brought into the State in the fuel supply tank of a motor vehicle that was not a commercial motor vehicle, but only if the fuel were retained within and consumed from that fuel supply tank.

If a person used motor fuel for a taxable purpose and the tax imposed were not collected, the person would have to pay the tax and any applicable penalties or interest, on a form or in a format prescribed by the Department.

The bill would allow the following persons or entities, who paid the tax, to seek a refund of the tax:

- A person who used motor fuel for a nontaxable purpose.
- An end user of diesel fuel used for nonhighway purposes, except for diesel fuel used in a snowmobile, off-road vehicle (ORV), or vessel.
- Persons who paid the tax on purchases that were tax-exempt.
- A licensed exporter (a person who obtained motor fuel in the State for export outside the State) for tax paid on fuel, on which the tax had already been paid or accrued, and that was subsequently exported.
- A person who exported from a bulk plant in a tank wagon to another state.
- A person licensed under the bill and registered with the Federal government under the Internal

Revenue Code as an ultimate vendor, for State tax paid on K-1 kerosene sold tax-free through a blocked pump, if the person met certain requirements of the Code and any regulations concerning a blocked pump. (The Department could revoke the license of a person who allowed anyone to fuel a motor vehicle from a blocked pump or to purchase K-1 kerosene from a blocked pump for a taxable purpose.)

- An end user of gasoline used in an implement of husbandry, or otherwise used for nonhighway purposes not otherwise expressly exempt under the bill. (This would not apply to a snowmobile, ORV, or vessel.)
- An end user of diesel fuel used in a passenger vehicle with a capacity of 10 or more under a certificate of authority issued by the State Transportation Department, or under a municipal franchise, license, permit, agreement, or grant.

The bill also would allow a refund to be sought by an end user who operated a motor vehicle with a common fuel supply tank from which diesel fuel was used both to propel the vehicle and to operate attached equipment. This refund would be limited to 15% of the tax paid, unless the operator provided evidence to the Department of Treasury that a refund or deduction of more than 15% was justified. The Department would have to determine the evidence necessary to justify a refund of more than 15%. This refund would apply only to a motor vehicle that was used by the end user exclusively for business or other commercial purposes and not to an automobile, whether or not it was used by the end user for business or other commercial purposes.

In addition, the bill would allow a person to seek a refund for the following:

- Motor fuel that was accidentally contaminated by dye or another contaminant, including gasoline that was mixed with diesel fuel, if the resulting product could not be used to operate a motor vehicle; or that was accidentally lost or destroyed as a direct result of a sudden and unexpected casualty loss.
- Motor fuel that was used in a passenger vehicle with a capacity of five or more under a municipal franchise, license permit, agreement, or grant; by a person operating a passenger vehicle for the transportation of school students; or by a community action agency.

The bill also would allow the following persons to claim a deduction for taxes paid:

- A licensed retail diesel dealer for sales of undyed diesel fuel in amounts of 100 gallons or less sold for a nontaxable purpose. (For amounts over 100 gallons, the end user would have to file a claim

for a refund.)

- A licensed exporter for motor fuel placed in storage in Michigan and subsequently exported, if the tax had been paid previously.

The bill specifies the requirements that a person would have to fulfill to claim a refund.

#### Dyed Diesel Fuel

The bill would prohibit a person from selling, using, or holding for sale or use dyed diesel fuel or other exempt fuel, including but not limited to motor fuel used in industrial processing, undyed diesel fuel that was repackaged into a container that held 55 gallons or less, or aviation, aircraft, or jet fuel, for any use that the person knew or had reason to know was a taxable use of the diesel fuel.

A person could not operate or maintain a motor vehicle on the highways with dyed diesel fuel in the vehicle's fuel supply tank. The bill would not apply to dyed diesel fuel used in any of the following:

- A motor vehicle owned and operated or leased and operated by the Federal or State government or a political subdivision of the State.
- A motor vehicle used exclusively by the American Red Cross.
- An implement of husbandry.

An owner, operator, or driver of a vehicle who used dyed diesel fuel on the public highways would be subject to a civil penalty of \$200 for each of the first two violations within a 12-month period. For a third violation within a 12-month period, and for each subsequent violation thereafter, the person would be subject to a civil penalty of \$5,000. A vehicle owner, operator, or driver who knowingly violated the prohibition against the sale or use of dyed diesel fuel would be subject to a civil penalty equal to that imposed under Section 6714 of the Internal Revenue Code (the greater of \$1,000 or \$10 per gallon).

A person could not alter or attempt to alter the strength or composition of any dye or marker in any dyed diesel fuel, with the intent to evade taxation. Further, a person could not, with intent to evade taxation, possess, sell, or purchase dye removal equipment. A person who violated these provisions would be guilty of a felony punishable by a fine of up to \$50,000, imprisonment for up to five years, or both.

Eighteen months after the bill's effective date, the Department would have to submit a report to the Legislature on dyed diesel fuel, as specified in the bill.

#### Aviation Fuel

The bill would prohibit a person from purchasing for

resale motor fuel identified on a shipping paper or invoice as aviation fuel, unless the person was registered with the Department on a form or in a format prescribed by the Department. Motor fuel upon which tax had been paid under the Aeronautics Code would have to be identified on the shipping paper or invoice as aviation fuel and could be sold only for aviation purposes. A seller would have to obtain from the purchaser a statement that the fuel would be sold or used only as aviation fuel. A person could not sell, use, or label motor fuel that was aviation fuel that was exempt from the motor fuel tax, or that had been identified on a shipping paper or invoice as aviation fuel, for use other than as aviation fuel. A person could not sell, use, or label for aviation purposes motor fuel identified on a shipping paper or invoice as diesel fuel. A person who knowingly violated any of these provisions would be guilty of a felony.

#### Shipping Papers for Fuel Transport/Violations

The bill would require the operator of a refinery, terminal, or bulk plant in Michigan to prepare and provide to the driver of a fuel transportation vehicle, or operator of a train pulling a rail car receiving motor fuel at the refinery, terminal, or bulk plant, an automated, machine-generated shipping paper that included information specified in the bill, including the amount of fuel removed, its destination, and, if required, notice that the fuel being transported was dyed diesel fuel. A manually prepared shipping paper could be substituted, if circumstances prevented generation of machine-generated shipping paper, as provided in the bill. The operator of a terminal or refinery would have to post a conspicuous notice in the area of the terminal or refinery where a fuel transportation vehicle driver received the shipping paper. The notice would have to describe in clear and concise terms the duties of a fuel transportation vehicle operator and driver and the duties of a retail dealer, and include a telephone number that would have to be called if motor fuel were diverted. A person who knowingly violated or aided and abetted another to violate these provisions would be guilty of a felony. Further, an officer, employee, or agent of a corporation who willfully participated in violating these provisions would be jointly and severally liable with the corporation for established Federal penalties.

The driver or operator would have to carry the shipping paper on the vehicle or rail car, and produce it during an inspection. The bill describes specific requirements that a driver or operator would have to follow to deviate from the destination of the fuel as stated on the shipping paper. A person who knowingly violated these provisions would be guilty of a felony.

If dyed diesel fuel were being transported, the

shipping paper would have to contain a notice that stated, "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE". A shipping paper would have to include other statements, as provided in the bill, for undyed motor fuel removed for tax-free uses, and for aviation fuel. A person who violated these provisions would be guilty of a misdemeanor for a first offense, and a felony for a second or subsequent violation.

If a licensed bonded importer or occasional importer acquired from a terminal located outside the United States motor fuel destined for Michigan, that had not been dyed in accordance with the bill, and for which the tax had not been paid or accrued to the supplier at the time of removal from the terminal, the importer or transporter operating on the importer's behalf would have to comply with the conditions specified in the bill before entering or transporting the motor fuel into the State. The requirements would include that the importer or transporter have a shipping paper that contained information prescribed in the bill. A person who knowingly violated or aided and abetted another to violate these provisions would be guilty of a felony.

The bill provides that it would be a misdemeanor for a person knowingly to violate the following:

- A driver or operator would have to provide a copy of the shipping paper to the person to whom the fuel was delivered, or place the shipping paper in a secure receptacle at the facility where the fuel was delivered.
- A retailer, bulk plant operator, bulk end user, or bulk storage facility would have to receive, examine, and retain for 30 days at the delivery location the terminal-issued shipping paper received from the transporter for each shipment of motor fuel delivered to that location, and for at least four years either at the delivery location or at another location.
- A retailer, bulk plant operator, bulk end user, or the operator of any other bulk storage facility could not knowingly accept delivery of motor fuel into a bulk storage facility if the delivery were not accompanied by a shipping paper issued by the terminal operator or bulk plant operator that clearly indicated that Michigan was the destination state, or provided a diversion verification.

The bill would prohibit a terminal operator from imprinting, and a supplier from permitting a terminal operator to imprint on a supplier's behalf, a false or misleading statement on a shipping paper. A terminal operator who negligently imprinted a misleading statement would be subject to a civil penalty of \$50 for each violation. In addition to any other tax, fines, penalties, or sanctions that could be

imposed, a terminal operator or supplier who knowingly violated these prohibitions would be guilty of a felony.

A representative or agent of the Department could examine the shipping paper of a fuel transportation vehicle in order to determine whether it was located outside a reasonably direct route from the supply source to the destination state on the shipping paper. If the vehicle were more than five miles from a reasonably direct route, there would be a rebuttable presumption that the operator or driver of the vehicle intended to divert the motor fuel from the destination on the shipping paper. If the vehicle were five miles or less from a reasonably direct route, there would be a rebuttable presumption that the operator or driver of the vehicle did not intend to divert the motor fuel from the destination on the shipping paper. The operator or driver of a fuel transportation vehicle that was located outside a reasonably direct route from the supply source to the destination state on the shipping paper would be subject to the impoundment, seizure, and subsequent sale and forfeiture of the vehicle, the motor fuel, and any other cargo.

A person (including the owner, operator, or driver) who transported motor fuel without a shipping paper that met the requirements provided in the bill would be subject to a civil penalty of \$1,000 for the first occurrence, and \$5,000 for each subsequent violation.

#### Other Violations/Penalties

The bill provides that it would be a felony for a person to exchange, replace, roll back, or otherwise tamper with motor fuel dispenser metering equipment. The person's motor fuel, meters, pumps, and any other property used in transporting, storing, dispensing, or otherwise distributing motor fuel and related products would be subject to impoundment, seizure, and subsequent sale and forfeiture.

A person who failed or refused to pay to the Department a tax on motor fuel at the time required, or who fraudulently withheld or otherwise used the money would be guilty of a felony. Further, if a person filed a false or fraudulent return, the Department would have to add to the tax owed an amount equal to the tax the person evaded or attempted to evade.

The bill prescribes procedures whereby a person who was subject to the seizure of vehicles, motor fuel, cargo, and inventory could demand a hearing. The Department would have to conduct the hearing and determine if the property was lawfully seized. A person aggrieved by the Department's decision could appeal to the circuit court.

The bill provides that a person who violated the bill would be guilty of a misdemeanor unless a specific penalty were provided.

#### Inspections/Audits

The bill would do the following:

- Provide that inspections to determine shipping paper violations could be conducted by the Department, the State Police, the Department of Agriculture, motor carrier inspectors, and any other law enforcement officer designated by the Treasury Department.
- Allow an inspector to remove samples of motor fuel to determine whether diesel fuel was dyed, and test the fuel in order to determine whether it met American Society for Testing Materials standards.
- Provide for inspections to identify a shipping paper violation at any place where motor fuel was or could be produced, stored, or loaded into transport vehicles.
- Allow an inspector physically to inspect, examine, or otherwise search any equipment, tank, reservoir, or other motor fuel container, and to demand a person to produce for immediate inspection the shipping papers, documents, and records required by the bill.
- Allow inspections to be conducted at various locations specified in the bill.
- Allow a uniformed inspector reasonably to detain a person, a motor vehicle, or other transporting equipment in order to determine whether the person was operating in compliance with the bill. The Department could use only uniformed inspectors when making an inspection at a highway rest stop or on the public road or highways.
- Allow the Department to audit and examine the records, papers, and equipment of any person to verify the accuracy and completeness of any statement or report regarding motor fuel and the tax imposed under the bill.

A person who refused to permit any inspection or audit authorized by the bill would be subject to a civil penalty of \$5,000, in addition to any other penalty imposed by the bill. A person who, for the purpose of evading taxation, refused to allow an inspection would be guilty of a felony, in addition to any other penalty imposed by the bill.

#### Licensing

The bill would prohibit a person from engaging in a business activity in Michigan for which a license was required by the bill unless the person were licensed. An application for a license could contain any information the Department reasonably required to

administer the bill, including the applicant's Federal identification number.

Persons currently licensed would not be required to obtain a new license, and would be licensed under the bill. This provision would apply to a terminal operator licensed as a supplier; a wholesale distributor (who would be considered a fuel vendor under the bill); an exporter; a liquid fuel hauler; or a diesel motor fuel retail dealer.

The bill would provide for a civil penalty of \$1,000 for a person who negligently violated the licensing requirements. A person would be guilty of a felony if he or she knowingly violated the requirements.

The bill would require the Department to investigate each person who applied for a license, and prohibit licensure if the Department found certain conditions as provided in the bill. The Department could require an applicant or a licensee to submit a copy of his or her fingerprints.

The bill provides that, once licensed, a person would remain licensed unless the license was suspended, canceled, or revoked.

The bill would prescribe licensing fees for various licenses required under the bill.

#### Bonding Requirements

The bill would allow the Department to require a surety bond or cash deposit if it considered it necessary to ensure payment of the tax liability of an applicant or licensee. A required surety bond or cash deposit would have to be in an amount determined by the Department that was at least \$2,000 or not more than an applicant's three-month tax liability as estimated by the Department.

The Department would have to require a supplier, a terminal operator, or a bonded importer to post an annual bond of at least \$2 million. If a person were a motor fuel registrant under the Internal Revenue Code, the bond could be reduced to not less than \$1 million. In either case, an applicant could show proof of financial responsibility in lieu of posting bond. Proof of a \$5 million net worth would be presumptive evidence of financial responsibility.

The bill would allow the Department to require an occasional importer to post a bond in an amount determined by the Department, up to \$2 million. An applicant could show proof of financial responsibility in lieu of posting bond. Proof of a \$5 million net worth would be presumptive evidence of financial responsibility.

The bill also would allow the Department to require a

licensee to file a new bond or increase an existing bond or deposit.

A licensee who filed a bond or other security could request that the Department return, refund, or release the bond or security if the Department determined that the licensee had continuously complied with the bill for four years.

The bill prescribes the requirements that a bond would have to meet.

#### LPG

The current Act provides for the regulation and taxation of liquified petroleum gas (LPG). The bill would recodify these provisions, but would raise the application fee for an LPG dealer license from \$1 to \$50; specify that an applicant would be subject to the general licensing and bonding requirements of the bill; and require an LPG dealer to file tax forms and remit the tax on a quarterly, rather than monthly, basis.

#### Mackinac Bridge Authority Bonds

Currently, the Act provides an annual appropriation for the payment of principal, interest, and incidental costs for the outstanding bonds and refunding bonds issued by the Mackinac Bridge Authority. The bill would retain these provisions.

#### Senate Bills 1264-1266

Senate Bill 1264 would amend the Aeronautics Code to provide that the privilege tax of three cents per gallon on all fuel sold for propelling aircraft using facilities in Michigan would have to be collected and remitted in the same manner as fuel taxes collected under the Motor Fuel Tax Act. (Currently, the three cents per gallon tax must be paid to the Secretary of State.) Further, the bill provides that if a person required to register with the Department of Treasury under Section 94 of the Motor Fuel Tax Act were not registered, the person would have to pay the applicable tax imposed under the Motor Fuel Tax Act instead of the three cents per gallon privilege tax. (As proposed in Senate Bill 1205 (S-1), Section 94 would prohibit a person from purchasing for resale motor fuel identified as aviation fuel unless the person was registered with the Department of Treasury.)

Senate Bill 1265 would amend the Natural Resources and Environmental Protection Act, which imposes a privilege tax on gasoline and diesel fuel sold for the operation of watercraft, ORVs, and snowmobiles, to require that the privilege tax imposed on gasoline and undyed diesel fuel be paid to the Department in the same manner as taxes paid

under the Motor Fuel Tax Act. Further, the bill specifies that the privilege tax imposed on dyed diesel fuel would have to be paid to the Department by the retail distributor or other person who sold the dyed diesel fuel to a person who used it to generate power for the operation of watercraft, ORVs, and snowmobiles.

Senate Bill 1266 would amend the Motor Carrier Fuel Tax Act to replace references to Public Act 150 of 1927 (the current motor fuel tax Act) with references to the "Motor Fuel Tax Act" (as proposed in Senate Bill 1205).

MCL 259.203 (S.B. 1264)  
324.71102 (S.B. 1265)  
207.211 & 207.214 (S.B. 1266)

#### ARGUMENTS

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### Supporting Argument

The motor fuel tax Act was enacted over 70 years ago, and has been amended numerous times during that period. Both the Department of Treasury, which administers the regulations prescribed in the Act, and persons regulated, have expressed concern that portions of the Act are confusing and badly organized. Senate Bill 1205 (S-1) would recodify the Act into a clear, concise document that would specify what would be required of the Department and of the various entities that comprise the motor fuel industry. This would give the Department the tools necessary to enforce the tax effectively, and would reduce any unnecessary regulatory burden on the industry.

#### Supporting Argument

The price difference between a taxable and a tax-exempt gallon of diesel fuel is 39.4 cents in Michigan, and is substantial in other states as well. This can be an incentive for a person who uses plenty of diesel fuel, normally a trucker or a trucking company, to evade the tax by purchasing tax-exempt fuel and then using it on the highways. Both state and Federal fuel taxes are levied as a privilege tax on those who use motor fuel to move vehicles on the public highways. Thus, using tax-exempt fuel in motor vehicles is a form of tax evasion and is illegal. The Federal government, followed by 35 states thus far, instituted a dyed diesel fuel program that allows persons to purchase fuel dyed red as a tax-exempt purchase, and, with specified exceptions, prohibits the use of dyed red fuel on the public highways. This is a tool that can greatly enhance the enforcement of the motor fuel tax because the authorities can easily determine through inspection whether a truck on the

highway is using clear fuel (taxable, and legal) or red fuel (tax-exempt, and illegal when used on the highways). This makes it more difficult for diesel fuel consumers to evade the tax by driving with tax-exempt fuel. By instituting a dyed fuel program in Michigan, Senate Bill 1205 (S-1) would bring the State into conformity with the Federal program, help the State identify crooks, eliminate any unfair advantage that tax cheats hold over competitors who purchase legitimate, taxable fuel, and ensure that the State would collect all the taxes due for the use of motor fuel on the highways.

Legislative Analyst: G. Towne

## **FISCAL IMPACT**

### **Senate Bill 1205 (S-1)**

The bill would result in additional administrative costs to the Department of Treasury associated with the implementation, administration, and enforcement of a dyed diesel fuel program. These additional administrative costs would include inspection, testing, and sampling activities of on-road inspectors.

To the extent that the bill reduced tax evasion, additional State revenues would be realized. An estimate of this revenue increase is currently unavailable. As a point of reference, in 1998 the State collected about \$80.8 million in diesel tax revenue.

The bill also would have an indeterminate fiscal impact on State and local government due to the receipt of fine revenue or costs incurred for incarceration. The bill would create or retain eight misdemeanors for possessing, selling, or delivering untaxed gasoline, failure to report properly on imported gasoline, using a tank-wagon without proper license, failure to have proper statements on shipping papers (first offense), failing to provide shipping papers to the location receiving fuel, failing to keep shipping papers 30 days, and receiving fuel into bulk storage without proper shipping papers. There are no data currently available that would indicate how many offenders could be convicted of these misdemeanors. However, local units of government would receive the fine revenue or incur the costs of incarceration for these offenses.

Also, the bill would create or retain 12 felony offenses including failing to provide shipping papers, refusing inspection of shipping papers and delivery to a location other than as noted in shipping papers, violating provisions for newly purchased terminals outside the United States, second or subsequent failure to have proper statements on shipping papers, knowingly imprinting false or misleading statements on shipping papers, evading taxes by

altering dye in fuel or owning the equipment to alter dye in fuel, evading taxes by using aviation fuel for purposes other than as aviation fuel, not properly disposing of fuel that was not ASTM-approved, refusing or failing to pay taxes in a timely manner, refusing inspection or audit of records, and failing to transfer taxes collected to the State in a timely manner. In 1998, there were no felony convictions for violations of similar existing statutes. Thus, there are no data available to indicate how many offenders could be convicted of newly established or continuing felonies.

## **Senate Bills 1264-1266**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: C. Thiel  
K. Firestone

### **A9900's1205a**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.