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BILL ANALYSIS

Senate Bill 1205 (as introduced 4-11-00)
Sponsor: Senator George A. McManus, Jr.
Committee: Finance

Date Completed: 5-17-00

CONTENT

The bill 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 and designate a portion of the tax to the fund; 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 (19 cents per gallon on gasoline, 15 cents per gallon on diesel fuel); 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.

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, but also would allow a portion of the tax to be dedicated to the proposed Motor Fuel Tax Evasion Prevention Fund. The bill would create the Prevention Fund in the Department of Treasury and require that one-tenth of 1% of the tax revenue collected under the bill be deposited into the Fund. 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 was 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 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 was to be used by a nonexempt end user.
- 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 supplier collected the tax imposed under the Aeronautics Code.

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, 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.
- An end user for 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, off-road vehicle, or vessel.)
- An end user on diesel fuel used in a passenger vehicle of 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, respectively.

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 that a refund or deduction of more than 15% was justified. The Department would have to determine the evidence that was 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 of 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 effective date of the bill, the Department would have to submit a report to the Legislature on dyed diesel fuel, as specified in the bill.

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 and its destination. 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 provisions:

- 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 the fuel 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 under the bill 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 terminal operators licensed as suppliers; a wholesale distributor (who would be considered a fuel vendor under the bill); an exporter; 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 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 bond would be conditioned upon the keeping of records and the making of full and complete reports and payments as required by the bill.

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 was 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's provisions 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.

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 1205 would have an indeterminate fiscal impact on State and local government for the receipt of fine revenue or costs incurred for incarceration.

The bill would create or retain eight misdemeanor crimes 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 11 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, 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.

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. It is estimated that these additional costs would be covered by annual appropriations from the proposed Fuel Tax Evasion Prevention Fund.

The bill would increase the amount of motor fuel tax revenue the State retains, as a result of the deposit of one-tenth of 1% of all fuel tax revenue collected under the Act in the Fuel Tax Evasion Prevention Fund. Under current law, all fuel tax revenue is deposited in the Michigan Transportation Fund for subsequent distribution to state and local road programs, pursuant to the provisions of Public Act 51 of 1951. Based on 1998 figures of gasoline, diesel,

and LPG tax revenue, the deposit of fuel tax revenue in the Fuel Tax Evasion Prevention Fund would approximate \$1 million. The deposit would effectively reduce the amount of fuel tax revenue for distribution to State and local road programs under the Public Act 51 provisions.

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.

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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.