



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536


BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5751 (Substitute H-3 as passed by the House)
House Bill 5755 (Substitute H-1 as passed by the House)
Sponsor: Representative Philip LaJoy (H.B. 5751)
Representative John Stahl (H.B. 5755)
House Committee: Agriculture
Senate Committee: Technology and Energy

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CONTENT

House Bill 5751 (H-3) would amend the Motor Fuel Tax Act to do the following:

- **Allow a licensed supplier temporarily to claim a deduction for taxes paid for certain alternative fuels.**
- **Require the State Treasurer to make an annual determination of the difference between the amount of revenue collected under the bill and the amount that would have been collected under existing tax provisions.**
- **Require the Legislature to appropriate the amount of the difference to the Michigan Transportation Fund (MTF).**

House Bill 5755 (H-1) would amend the Motor Fuels Quality Act to extend to diesel and specified alternative fuels regulations concerning the quality, testing, storage, manufacture, delivery, and sale of gasoline; require distributors and retail dealers of diesel and alternative fuels to obtain a license for each retail outlet; and require firms selling hydrogen in Michigan to register with and be approved by the Michigan Department of Agriculture (MDA).

House Bill 5751 (H-3) is tie-barred to House Bill 5755. The bills are described below in further detail.

House Bill 5751 (H-3)

Under the Motor Fuel Tax Act, a tax of 19 cents per gallon on gasoline and 15 cents

per gallon on diesel fuel must be imposed on motor fuel imported into or sold, delivered, or used in this State. The bill would allow a licensed supplier to claim a deduction on its supplier return for tax paid under the Act for diesel fuel that contained at least 5% biodiesel if the person were a supplier of biodiesel or gasoline that was at least 70% ethanol. The deduction could be claimed only by the licensed supplier withdrawing the fuel from the rack or importing the fuel as indicated by the bill of lading for loads with a destination in Michigan other than a terminal. The deduction for biodiesel would be three cents per gallon. The deduction for gasoline that contained at least 70% ethanol would be seven cents per gallon.

Beginning on the bill's effective date, the State Treasurer at least annually would have to determine the difference between the amount of motor fuel tax collected and the amount of motor fuel tax that would have been collected but for the refund rates established under the bill. The deduction would no longer be effective 10 years after the bill's effective date, or on the date the State Treasurer certified that the total cumulative rate differential was greater than \$2.5 million, whichever was earlier.

The Legislature annually would have to appropriate the amount determined as the rate differential to the MTF within 60 days after the certification. If the Legislature did not do so, the deduction would no longer be effective.

Notwithstanding anything in the Act to the contrary, a person who imported into Michigan or withdrew diesel fuel that contained at least 5% biodiesel or gasoline that was at least 70% ethanol from a rack would be considered a supplier for the purposes of the Act and would have to obtain a license. This requirement would be separate from the other supplier license qualification requirements of the Act. A person licensed under this provision would have to comply with all of the supplier duties and reporting requirements in the Act. Facilities that manufactured motor fuel and disbursed it from a rack would qualify as a terminal and would have to obtain a terminal operator license and comply with all responsibilities and reporting requirements applicable to terminal operators under the Act.

"Biodiesel" would mean that term as defined in Section 2 of the Motor Fuels Quality Act (which would contain a definition under House Bill 5755 (H-1)).

"Ethanol" would mean denatured fuel ethanol that is suitable for use in a spark-ignition engine when mixed with gasoline so long as the mixture meets the American Society for Testing and Materials D-5798 specifications.

House Bill 5755 (H-1)

Standards

The Motor Fuels Quality Act requires the MDA Director to establish standards to ensure the purity and quality of gasoline sold or offered for sale in Michigan, and standards for the amount and type of additives allowed to be included in gasoline. Under the bill, the MDA Director would have to establish similar standards for diesel fuel.

Currently, "gasoline" means any fuel sold in Michigan that is suitable for use in spark-ignition internal combustion engines, and known commonly or commercially or sold as gasoline. The bill would delete the reference to any fuel sold in Michigan and instead refer to a volatile mixture of liquid hydrocarbons generally containing a small amount of additives.

The bill would define "diesel fuel" as any liquid other than gasoline that is suitable for use as a fuel or a component of a fuel in a

compression-ignition internal combustion diesel engine.

Licensure

The Act requires a distributor or retail dealer to obtain a license from the MDA for each retail outlet the person operates before engaging in transferring, selling, or dispensing gasoline, or offering it for sale. The license fee is \$100 per year. Under the bill, the license requirement also would apply to a distributor or retail dealer of diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

Hydrogen Fuel Registration

The bill would require any firm offering hydrogen fuel for sale in this State first to register with and obtain approval from the MDA. The bill specifies that registration would have to include a complete list of the fuel specifications the product was to meet and the sites where it was offered for sale to the general public.

Under the bill, "hydrogen fuel" would mean a substance containing the chemical formula H_2 that exists as a colorless, odorless, and highly flammable gas except at low cryogenic temperatures or when highly compressed that is gaseous or liquefied and suitable for use in a fuel cell or hydrogen fuel vehicle.

Retail Storage Tanks

The Act requires a retail dealer periodically to test a storage tank at a retail outlet to ensure that the tank does not have more than two inches of water or water-alcohol at the bottom. If there is more than two inches, gasoline may not be sold to a consumer from that tank until the water or water-alcohol level is reduced to a level of less than two inches. Under the bill, these provisions also would apply to tanks storing diesel fuel, biodiesel, or biodiesel blend.

The bill would define "biodiesel" as a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, and, in accordance with standards specified for by the American Society for Testing and Materials, designated B100, and meeting the requirements of D-6751, as approved by the MDA.

"Biodiesel blend" would mean a fuel composed of a blend of biodiesel fuel with petroleum-based diesel fuel, suitable for use as a fuel in a compression-ignition internal combustion diesel engine.

Manufacture of Fuel

Under the Act, except as provided by Federal law or regulation, in the manufacture of gasoline at any Michigan refinery, a refiner may not manufacture gasoline unless it meets the standards established by the MDA Director. Under the bill, this regulation also would apply to the manufacture of diesel or hydrogen fuel.

Distribution of Fuel

The Act prohibits a distributor from selling or transferring to any distributor, retail dealer, or bulk purchaser-end user any gasoline, unless it meets the standards established by the Director, except as provided by Federal law or regulation. The bill would include diesel fuel, biodiesel, biodiesel blend, and hydrogen fuel in this provision. Also, the gasoline or other fuel would have to be suitable for its intended purpose.

Fuel Carrier

The Act prohibits a carrier or an employee or agent of a carrier, whether operating under contract or tariff, from causing gasoline tendered to the carrier for shipment or transfer to another carrier, distributor, or retail dealer to fail to comply, at the time of the delivery, with the standards established by the Director. Under the bill, this prohibition also would apply to a carrier of diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

Fuel Sales

Under the Act, a person may not knowingly sell, dispense, or offer for sale gasoline, unless it meets the MDA Director's standards. Under the bill, this prohibition also would apply to diesel, biodiesel, biodiesel blend, and hydrogen fuel.

Fuel Delivery

The Act prohibits a refiner or distributor from transferring, selling, or dispensing gasoline, or offering it for sale in Michigan unless the refiner or distributor indicates on

each bill, invoice, or other instrument evidencing a gasoline delivery the name of the wholesale distributor who received delivery of the gasoline. The bill would include diesel fuel, biodiesel, biodiesel blend, and hydrogen fuel in this provision.

Currently, a distributor or refiner may not transfer, sell, dispense, or offer for sale gasoline in Michigan to a retail dealer unless the distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, the name and license number issued under the Act of the retail dealer who received the delivery. The bill provides, instead, that a distributor or refiner could not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel for sale in Michigan to a retail dealer unless the retail dealer had a valid retail gasoline outlet license under the Act.

Under the Act, a bill, invoice, or other instrument evidencing a delivery of gasoline issued by a refiner or distributor for gasoline deliveries to purchasers who are not required to hold a license under the Act or the Motor Fuel Tax Act must indicate clearly the name and address and other information necessary to identify the purchaser. Under the bill, this requirement also would apply to a delivery of diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

Sediments

The bill would include diesel fuel, biodiesel, and biodiesel blend in a provision prohibiting a refiner, distributor, bulk purchaser-end user, or retail dealer from transferring, selling, dispensing, or offering for sale gasoline unless it is visibly free from undissolved water, sediments, and other suspended matter.

Inspection, Investigation, & Testing; Documents

The Act requires the MDA Director to establish a gasoline inspection, investigation, and testing program to determine whether gasoline transferred, sold, dispensed, or offered for sale in Michigan meets the Act's requirements; to sample; to investigate allegations of fraud; to inspect and investigate violations of the Weights and Measures Act; and to determine whether gasoline pumps are posted with the required notice indicating

the grade of and the additives in the gasoline. The program must provide for a regular system of monitoring gasoline sold or offered for sale in this State. The bill would require the Director also to establish an inspection, investigation, and testing program for diesel fuel, biodiesel blends, and biodiesel fuel after standards for those fuels were established. The Director could coordinate this program with the gasoline inspection, investigation, and testing program.

If the MDA Director has reason to believe a violation of certain provisions of the Act or rules promulgated under it has occurred, he or she may require a refiner, distributor, storage facility, blender, bulk purchaser-end user, or retail dealer to provide to the MDA the original documents pertaining to the receipt, transfer, delivery, storage, or sale of gasoline, and to allow the documents to remain the Department's possession. Under the bill, this requirement also would apply to violations involving diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

The Act requires a refiner, distributor, bulk purchaser-end user, blender, or retail dealer to preserve information regarding the receipt, transfer, delivery, or sale of gasoline, including loading tickets, bills of lading, drop tickets, meter tickets, invoices, and billings, for three years. The bill would include information regarding the storage of gasoline in this requirement, and require sales reports also to be kept for three years.

The Act requires a retail outlet to retain on its premises the original drop tickets and invoices for one month before transfer to another location, unless the storage location is easily accessible from the retail outlet and the original records are delivered to the retail outlet for receipt by the MDA within 24 hours after the retail outlet has been given a written request for the records. The bill would include bills of lading among the documents that must be retained on the premises for one month before transfer. The bill also would delete the exception that applies if the storage location is easily accessible and the records are delivered within 24 hours after receipt of the request.

MCL 207.1008 (H.B. 5751)
290.642 et al. (H.B. 5755)

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 5751 (H-3)

The bill would reduce by an indeterminate amount fuel tax receipts on gasoline containing at least 70% ethanol, commonly referred to as "E70". All fuel tax revenue is deposited in the Michigan Transportation Fund (MTF), pursuant to the Michigan Constitution. Annual revenue to the MTF would be reduced based on the amount of E70 sold in Michigan. Currently, there are no data to indicate the amount of E70 sold in Michigan, although there are nine wholesale distributors of E85 (fuel containing at least 85% ethanol) in Michigan, and eight fueling stations are operating in the State. One manufacturing plant for ethanol is already operational, with a capacity of 63 million gallons, and four more are in various stages of construction. Under the bill, all E70 fuel sold in Michigan would be effectively taxed at 12 cents per gallon, as opposed to 19 cents per gallon. The MTF revenue reduction would grow as E70 sales increased.

Similarly, the bill would reduce MTF deposits associated with the proposed tax imposed on diesel fuel containing at least 5% biodiesel, commonly referred to as "B5". Under the bill, all B5 would be effectively taxed at 12 cents per gallon, as opposed to 15 cents per gallon. Currently, there are no reliable data to indicate the amount of B5 sold in Michigan, although estimates range from 750,000 gallons to 3.0 million gallons; therefore, the impact on the MTF is indeterminate. Assuming the existing E85 stations sell 100,000 gallons of qualified fuel per year, and using a mid-point on the biodiesel, the bill initially would reduce MTF revenue by approximately \$115,000 per year. As indicated below, the maximum reduction under the bill would be \$2.5 million, although that impact would be cumulative.

Under Public Act 51 of 1951, which governs the Michigan Transportation Fund, MTF revenue is distributed in the following manner, after certain statutory deductions: 10% to the Comprehensive Transportation Fund, 35% to the State Trunkline Fund, 35% to county road commissions, and 20% to city and village road agencies. Any reduction to MTF revenue resulting from this

bill would be allocated by the same percentages.

The bill would cap the *cumulative* MTF revenue reduction resulting from the deduction for E70 and B5 at \$2.5 million. The tax deduction would no longer be effective 10 years after the bill's effective date or when the \$2.5 million cap was reached, whichever was earlier. It is unknown when or if the cap would be reached.

The bill would require the Legislature annually to appropriate to the MTF the amount of lost fuel tax revenue resulting from the tax deduction. The bill does not specify how this appropriation would be funded, but does indicate that the deduction would not be effective if the appropriation were not made. It is important to note that current restrictions in Section 10 of Public Act 51 of 1951 (MCL 247.660) prevent the MTF from receiving deposits from other funds. Therefore, the appropriation provision contained in the bill appears to conflict with current statutory language restricting MTF deposits. This provision, combined with the bill's language rendering the deduction ineffective if the appropriation were not made, would appear to render the deduction immediately ineffective and result in the deduction having no fiscal impact.

The reimbursement provisions and the effective date of the deduction also would appear to have potential timing problems. The bill does not provide a date by which the loss to the MTF would have to be certified (only requiring that a determination and appropriation be made annually), and regardless of what date would be specified, the Legislature would not know how much to appropriate until after the deduction had already been effective. However, the bill indicates the deduction would not be effective unless the legislature made the appropriation (assuming that the previous problem, that the MTF cannot accept the transfer, was not an issue). It is unclear how administration of the tax would be expected to proceed if the tax deduction were allowed for a fiscal year and the Legislature then failed to make the appropriation. For example, it is not clear whether taxpayers would be expected to pay the tax late, whether the deduction would expire and simply not continue, and/or

whether the MTF simply would absorb any revenue loss.

The bill would require people to acquire additional licenses and to comply with other requirements of the Act, as applicable. The additional revenue would depend on how many new licenses would be required.

This estimate is preliminary and will be revised as new information becomes available.

House Bill 5755 (H-1)

The bill would result in increased costs in excess of \$800,000 annually to the Michigan Department of Agriculture associated with the establishment and enforcement of fuel standards for certain fuels. This estimate was provided by the Department and does not include any capital investment associated with laboratory conversions/modifications required to regulate certain fuels. These additional costs would have to be borne by existing resources as the bill would not provide for any new revenue.

Fiscal Analyst: Bruce Baker
David Zin

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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.