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BILL ANALYSIS

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House Bill 5477 (Substitute H-2 as passed by the House)
Sponsor: Representative Rob VerHuelen
House Committee: Transportation and Infrastructure
Senate Committee: Infrastructure Modernization

Date Completed: 5-20-14

CONTENT

The bill would amend the Motor Fuel Tax Act to provide for excise taxes on gasoline fuel and diesel fuel that would be adjusted annually based on 1) a percentage of the respective fuel's average wholesale market price and 2) criteria establishing limits on rates and rate changes.

The bill would set the gasoline fuel tax at 19 cents per gallon and the diesel fuel tax at 15 cents a gallon through September 30, 2014, and would not include any separate provisions regarding ethanol or biodiesel blends. Currently, the fuel tax on gasoline is 19 cents per gallon, and the fuel tax on diesel fuel is 15 cents per gallon.

Gasoline that is at least 70% ethanol and diesel fuel that contains at least 5% biodiesel generally is taxed at 12 cents per gallon. The Act provides for reimbursement with regard to the reduced rate, requires allocations to the Michigan Transportation Fund due to the differential in revenue collected for these fuels compared to "normal" gasoline and diesel fuel, and defines biodiesel and ethanol. Under the bill, these provisions would be deleted.

On October 1 of each year, the Department of Treasury would have to determine the rate of taxation on gasoline and diesel fuel. The Department would determine these rates by multiplying the average wholesale price of the respective fuel by 6%, and rounding up to the nearest 1/10 of one cent.

("Average wholesale gasoline price" would mean the statewide average wholesale price of gasoline as determined by the Department based upon a 12-month rolling average of the gasoline wholesale price. For each rate in effect for a particular year, the 12-month rolling average period would end on the last day of the month that was three months prior to the effective date of the most recently set tax rate.

"Wholesale gasoline price" would mean the price per gallon of unleaded regular gasoline charged by a licensed supplier to a purchaser at the time of removal from a terminal across the rack, as determined by the Department. The term would not include the tax imposed under the bill, prepaid State sales tax, Federal excise tax, any other Federal motor fuel tax, or an environmental protection regulatory fee pursuant to the Natural Resources and Environmental Protection Act.

"Average wholesale diesel fuel price" and "wholesale diesel fuel price" would have the same definitions as their gasoline counterparts described above, but would refer to diesel fuel instead of gasoline. Rather than refer to "unleaded regular gasoline", the bill would refer to "undyed number two ultra-low sulfur diesel fuel".)

The tax rates would be subject to a rate ceiling and a rate floor, as well as limitations on annual increases. "Rate ceiling" would mean a cents per gallon upper limit on the tax rate determined by the Department and imposed on gasoline under the bill's provisions. "Rate floor" would mean a cents per gallon lower limit on the tax rate by the Department imposed on gasoline and diesel fuel under the bill's provisions. Beginning the effective date of the bill, "rate ceiling" would mean 32.5 cents, and "rate floor" would mean 19 cents.

Beginning October 1, 2015, the determined tax rate on either gasoline or diesel fuel could not exceed the prior year's rate of that fuel by the lesser of the following: 1) one cent; 2) 5%; and 3) the inflation rate. ("Inflation rate" would mean the percentage change between the most recent calendar year index and the index for the calendar year immediately preceding the most recent calendar year, as determined by the Department. "Index" would mean the national highway construction cost index or, if the Federal Highway Administration ceases to publish the index, the published index that most closely measures inflation in the costs of highway construction, as determined by the Department.)

(The definition of "rate floor" presents a conflict with respect to diesel fuel. It would have the effect of increasing the tax on diesel from 15 cents per gallon through September 30, 2014, to 19 cents per gallon on October 1, 2014. However, rate increase limits would be based on the prior year's rate, and the prior year rate for diesel through September 30, 2014, would have been 15 cents per gallon. Under that limitation, 16 cents per gallon would be the maximum allowable rate beginning October 1, 2014 (based on increase limits of the lesser of one cent, 5%, or the inflation rate).)

The bill also would require liquefied petroleum gas (LPG) to be taxed at the same rate as diesel fuel beginning October 1, 2014. Currently, the tax rate on LPG is 15 cents per gallon.

The Department would have to publish notice of gasoline and diesel fuel tax rates not later than 30 days before the rate became effective. The rate determination would be presumed to be correct and could be set aside only if an administrative tribunal or court found the Department's determination to be clearly erroneous.

MCL 207.1002 et al

FISCAL IMPACT

The bill would result in an increase in revenue at the State and local levels.

Approximately 4.28 billion gallons of gasoline are expected to be purchased in 2014 in the State. At 19 cents per gallon, the gasoline tax will generate approximately $813.2 million in revenue in FY 2013-14. Based on SFA estimates, according to the formula in the bill, 6% of the average price of wholesale gasoline would equate to approximately 17 cents per gallon as of October 1, 2014. Since this would be below the rate floor of 19 cents, the tax rate would remain at 19 cents a gallon for FY 2014-15.

Approximately 860 million gallons of diesel fuel are expected to be purchased in 2014 in the State. At 15 cents per gallon, the diesel fuel tax will generate approximately $129.0 million in revenue in FY 2013-14. Given the conflict noted above, it is unclear what the diesel fuel rate would be as of October 1, 2014. At a rate of 16 cents per gallon, assuming a one-cent increase limitation, there would be an increase of $8.6 million for FY 2014-15. At a rate of 19 cents per gallon, assuming the rate floor of 19 cents was an exception to the one-cent limitation, the bill would generate $34.4 million in revenue.

The bill would tie LPG tax rates to diesel fuel. Current projections for FY 2014-15 indicate that sales of LPG will reach approximately 2.7 million gallons, and the tax on LPG is expected to generate approximately $400,000. Again, it is unclear what the rate of diesel fuel would be as of October 1, 2014. At a rate of 16 cents per gallon, the bill would generate roughly $27,000 in additional revenue for FY 2014-15. At a rate of 19 cents per gallon, the bill would generate roughly $106,000 in revenue.

Upon an increase in the average wholesale price of gasoline or diesel fuel, the revenue from these taxes would increase accordingly. The funds generally would be allocated to the Michigan Transportation Fund, which appropriates funds to Michigan Department of Transportation, local road authorities, and the Comprehensive Transportation Fund, as well as other transportation-related funds.

It should be noted that it under the terms of the bill, while there is a limit on increasing the gasoline and diesel tax rates, there is no limit on a reduction. Therefore, a spike in the price of gasoline could potentially take years to become fully realized with respect to tax increases. A significant drop in the price of gas could significantly and negatively affect revenue derived from these taxes, depending on the rate and the rate floor at the time

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