Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

TAX RATE DIFFERENTIAL FOR ALTERNATIVE FUELS: AMENDMENTS TO MOTOR FUEL TAX ACT AND MOTOR CARRIER FUEL TAX ACT

House Bill 5661
Sponsor: Rep. Jeff Mayes

House Bill 5662
Sponsor: Rep. Neal Nitz
Committee: Agriculture

Complete to 2-5-08

A SUMMARY OF HOUSE BILLS 5661 AND 5662 AS INTRODUCED 1-22-08

House Bills 5661 and 5662 would amend the Motor Carrier Fuel Tax Act (Public Act 119 of 1980) and the Motor Fuel Tax Act (Public Act 403 of 2000), respectively, to create a lower tax rate for certain alternative motor fuels (ethanol and biodiesel). These bills are similar to bills which were enacted in the 2005-2006 legislative session: Senate Bill 1074, enacted as Public Act 268 of 2006, and Senate Bill 1362 enacted as Public Act 346 of 2006. For reasons explained below, the lower tax rate created in those acts is no longer in effect. Under House Bills 5661 and 5662, the alternative fuel tax rate reduction that was first established in 2006 would restart 45 days after the bills' effective date.

BACKGROUND INFORMATION:

Senate Bill 1074 of the 2005-06 legislative session amended the Motor Fuel Tax Act to create a 7-cent tax rate differential between gasoline and ethanol (i.e. gasoline containing at least 70 percent ethanol), and a 3-cent tax rate differential between diesel motor fuel and biodiesel (i.e. diesel fuel containing at least 5 percent biodiesel). Under provisions of the bill, effective September 1, 2006, ethanol was to be taxed at 12 cents per gallon, rather than the 19 cent-per-gallon rate levied on gasoline motor fuel. Biodiesel was also to be taxed at 12 cents per gallon rather than at the 15-cent per gallon diesel motor fuel tax rate. Senate Bill 1362 created a similar tax differential for biodiesel motor fuel in the Motor Carrier Fuel Tax Act.

Revenue from both the Motor Fuel Tax Act and the Motor Carrier Fuel Tax Act is credited to the Michigan Transportation Fund (MTF) established under Public Act 51 of 1951. MTF revenue is dedicated for state and local transportation programs. Both Senate Bill 1074 and Senate Bill 1362 required the legislature to annually appropriate to the MTF (presumably from the state General Fund) the amount of revenue lost because of the reduced tax rate. If the appropriation were not made, the bills provided that the reduced tax rate would end beginning the first calendar year after the fiscal year in which the appropriation should have been made.

On December 12, 2007, the State Treasurer certified that the revenue loss to the MTF as a result of the reduced tax rates for ethanol and biodiesel, for the 8-month period September 1, 2006 (the effective date of Senate Bills 1074 and 1362) through May 1, 2007, was $776,827. However, this amount was not appropriated to the MTF by the end of calendar year 2007. Because the appropriation was not made by the end of 2007, the alternative fuel tax rate reduction program ended on January 1, 2008.

Provision of the Bills

Although the authority to levy a lower alternative fuel tax ended on January 1, 2008, language establishing the tax rate differential for ethanol and biodiesel remains in the Motor Carrier Fuel Tax Act and the Motor Fuel Tax Act; the language is simply no longer effective. As a result, the language establishing the alternative fuel tax rates is not shown as amending language in the bills. House Bills 5661 and 5662 would simply restart the clock to provide new authority **"*45 days after the 2008 amendatory act that amended this section.*"**

The reduced tax rates for ethanol and biodiesel would continue until: (1) 10 years after September 1, 2006 (i.e. September 1, 2016), or (2) the first day of the first month that is not less than 90 days after the State Treasurer certifies that the cumulative rate differential due to the alternative fuel tax from September 1, 2006 is greater than $6.0 million. The alternative fuel tax rate reduction would also end beginning January of any fiscal year for which the appropriation from to the MTF has not been made by the first day of the fiscal year – with the exception of the FY 2007-08 fiscal year.

In effect, the alternative fuel tax rate reduction would restart 45 days after the effective date of the bills.

The primary difference between the current bills and Senate Bills 1074 and 1362 of the 2005-06 session is in the total cumulative difference provided for under the bills. The bills would limit the cumulative revenue loss to $6.0 million. Senate Bills 1074 and 1362 of the 2005-06 session had provided that a cumulative revenue loss of $2.5 million would cause the program to sunset.

Although the motor fuel taxes imposed by the Motor Fuel Tax Act are collected from fuel suppliers, they are reflected in the pump price of fuel. Motorists who purchase fuel in Michigan effectively pay motor fuel taxes "at the pump." However, interstate motor carriers, who may use Michigan roads but never purchase fuel in Michigan, pay motor fuel taxes through quarterly International Fuel Tax Agreement (IFTA) filings authorized under the Motor Carrier Fuel Tax Act. The Motor Carrier Fuel Tax Act equates miles driven in Michigan with gallons consumed, either based on documented average miles per gallon, or, in the absence of records, based on the presumption of one gallon of fuel consumption per each four miles driven. The total gallons consumed in Michigan are taxed under the Motor Carrier Fuel Tax Act at the same rate as the Motor Fuel Tax Act – currently 15 cents per gallon for diesel motor fuel.

The Motor Fuel Tax and the Motor Carrier Fuel Tax Act work together; when a motor carrier files a quarterly IFTA report, he/she claims credit for the fuel tax already paid at the pump (if any) under the Motor Fuel Tax Act.

While it may be relatively easy for the Michigan Department of Treasury to identify whether fuel distributed by suppliers is ethanol or biodiesel and thus subject to the lower tax rate, it is not clear how the department will determine whether interstate motor carriers are consuming regular diesel or biodiesel while driving in Michigan.

FISCAL IMPACT:

House Bills 5661 and 5662 would reduce state revenue to the extent that the bills establish lower motor fuel tax rates for certain alternative motor fuels. The House Fiscal Agency analysis of Senate Bill 1074 of the 2005-06 session indicated that the Michigan Department of Treasury's estimate of "the initial revenue loss" was $100,000. The actual revenue loss for the 8-month period September 1, 2006 (the effective date of Senate Bills 1074 and 1362) through May 1, 2007, was $776,827, as certified by the State Treasurer.

The Michigan Department of Treasury indicates that of the $776,827 revenue loss, $684,003 related to the tax differential on biodiesel, and $92,824 related to the tax differential on ethanol. The diesel amount equates to approximately 22.8 million gallons of biodiesel sold as motor fuel. The ethanol amount equates to approximately 1.3 million gallons of ethanol sold as motor fuel.

Revenue from both the Motor Fuel Tax Act and the Motor Carrier Fuel Tax Act is credited to the Michigan Transportation Fund (MTF) established under Public Act 51 of 1951 for state and local transportation programs. The maximum amount of the potential revenue loss under the bills would be $6.0 million. Because the bills provide for the reimbursement of the MTF for the revenue loss, the actual revenue reduction would come from another source, presumably the state General Fund.

The provisions of the bills which require the legislature to make an annual appropriation to the MTF of the amount of the rate differential are in conflict with provisions of Section 10 of Act 51 which identify the revenue sources for credit to the MTF and which prohibit the deposit of other monies from any other source, including the state General Fund, into the MTF.

The Michigan Department of Treasury indicates that it has not done an analysis to determine the extent to which reduced tax rates on alternative fuels impact purchase decisions.

Fiscal Analyst: William E. Hamilton