

# HOUSE BILL REPORT

## HB 1427

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### As Reported By House Committee On:

Transportation Policy & Budget

**Title:** An act relating to special fuel tax.

**Brief Description:** Updating special fuel tax provisions.

**Sponsors:** Representatives Radcliff, Mitchell, Robertson, Buck, Cairnes, Ballasiotes, L. Thomas, Sterk, Thompson, DeBolt, Mielke, Smith, Johnson and Dunn; by request of Legislative Transportation Committee.

### Brief History:

#### Committee Activity:

Transportation Policy & Budget: 2/13/97, 3/6/97 [DPS].

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## HOUSE COMMITTEE ON TRANSPORTATION POLICY & BUDGET

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives K. Schmidt, Chairman; Hankins, Vice Chairman; Mielke, Vice Chairman; Mitchell, Vice Chairman; Blalock, Assistant Ranking Minority Member; Cooper, Assistant Ranking Minority Member; Backlund; Buck; Cairnes; Chandler; DeBolt; Gardner; Hatfield; Murray; O'Brien; Radcliff; Scott; Skinner; Sterk; Wood and Zellinsky.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Fisher, Ranking Minority Member; Constantine and Romero.

**Staff:** Roger Horn (786-7839).

**Background:** In a 1994 report the Federal Highway Administration estimated that fuel tax was being evaded on 3 to 7 percent of gasoline gallons and 15 to 25 percent of diesel gallons in the United States. Since September 1995, a task force convened by the Legislative Transportation Committee (LTC) has been studying the magnitude of fuel tax evasion in Washington and developing recommendations to address the issue. The task force concluded that there is a significant evasion of fuel taxes occurring in Washington. Based on increased revenues from changes in fuel tax laws and increased enforcement by the federal government and other states, the task force estimated that Washington may be able to recover \$15 to \$30 million per year in evaded taxes through implementation of similar measures. The law changes

implemented elsewhere included moving the point of collection for motor vehicle fuel (gasoline) and special fuel (primarily diesel) taxes to a higher point on the fuel distribution chain and implementing a dyed diesel program. A proviso in Engrossed Substitute House Bill 2343, the 1996 supplemental transportation budget bill, required the task force to develop legislation to move the point of taxation for diesel fuel to the bulk transfer/terminal system.

Washington imposes a tax of 23 cents per gallon on motor vehicle fuel or special fuel used for on-road purposes. In addition, counties are authorized to collect a local option fuel tax equal to 10 percent of the state amount. No county has enacted this tax. The Department of Licensing (DOL) is responsible for the collection of these motor fuel taxes. These motor fuel taxes are paid to the DOL by fuel distributors who purchase untaxed fuel from refineries or terminals (suppliers) and then sell the fuel, with taxes included, to subsequent buyers. There are 550 licensed special fuel distributors in Washington.

Special fuel used for off-road purposes is exempt from the special fuel tax, but is subject to the retail sales and use tax. Users of special fuel are eligible to receive a license from the DOL that allows them to purchase their fuel into bulk storage tanks without fuel tax applied. A holder of a reporting special fuel user license is authorized to use bulk fuel either on or off-road. At the end of their tax period, which may be quarterly or yearly depending on their estimated tax liability, the user reports the amount of fuel that was used for on-road purposes and pays fuel tax (less sales tax previously paid) on those gallons. Special fuel users who certify they have no diesel-powered vehicles licensed for on-road use are issued a special license under which they are not required to report to the DOL. About 5,700 persons hold reporting special fuel user licenses, and nearly 21,000 hold nonreporting special fuel user licenses.

The federal government imposes taxes of 18.3 cents per gallon on gasoline and 24.3 cents per gallon on diesel fuel. On January 1, 1994, the federal government implemented two measures designed to reduce fuel tax evasion: 1) collection of gasoline and diesel fuel taxes at the terminal rack rather than at the distributor level; and 2) a dyed diesel program. The terminal rack is the platform or bay at which fuel from a refinery or terminal is delivered into trucks, railcars or vessels. Under the dyed diesel program, fuel that contains red dye may be purchased tax-free, but may only be used off road. Taxes must be paid at the time of purchase of clear diesel fuel. However, the federal government requires distributors to sell clear diesel fuel tax-free to agricultural customers who certify the fuel will only be used on a farm for farming purposes, and then apply for a refund. The Internal Revenue Service (IRS) randomly checks the fuel tanks of diesel-powered vehicles for dyed diesel. A minimum fine of \$1,000 is assessed for the on-road use of dyed diesel fuel.

Special fuel dealers are required to purchase a bond equivalent to three times their monthly fuel tax liability, up to a maximum of \$50,000. The minimum bond is \$500. After five years the bond amount is reduced to twice the monthly tax liability.

**Summary of Substitute Bill:** Effective January 1, 1998, special fuel taxes are imposed at the time of removal of special fuel from a terminal rack in Washington. The refiner, terminal operator, or party owning the fuel at the time of removal is required to collect taxes on the fuel and transmit them to the DOL. For special fuel that was removed from a terminal rack in another state and imported into Washington, the importer is liable for paying the fuel tax. Special fuel purchased from a supplier for export out of Washington is not taxed. Special fuel suppliers, distributors, exporters, importers and blenders must be licensed with the DOL.

An applicant for a special fuel importer or exporter license must be licensed or registered for special fuel tax purposes in the states or countries in which the applicant intends to purchase or sell the special fuel, if licensing is required therein.

Dyed diesel fuel is exempt from the special fuel tax. A person may not operate a vehicle on a public road in this state with dyed special fuel in the vehicle's fuel supply tank, unless the use is authorized by the federal internal revenue code. The dyed special fuel must meet the dyed fuel requirements of the U.S. Environmental Protection Agency and the IRS. The penalty for using dyed diesel fuel to operate a vehicle upon the highways of the state is \$10 for each gallon of dyed special fuel placed into the vehicle's supply tank or \$1,000, whichever is greater. The penalties are deposited into the motor vehicle fund. Officers of the Washington State Patrol or other Commercial Vehicle Safety Alliance-certified officers are authorized to collect special fuel samples to check for the presence of dye.

Special fuel user licensing and reporting requirements are deleted. Special fuel users are not permitted to purchase clear diesel fuel into bulk storage without payment of the special fuel tax.

Farmers, logging companies, and construction companies are eligible to purchase clear special fuel from card lock facilities directly into nonhighway equipment or portable slip tanks for nonhighway use without payment of the special fuel tax. These users must receive special authorization from the DOL. Only distributors who own and operate card lock facilities may choose to sell fuel in this manner, but are not so required. The distributor must pay tax to the supplier of the special fuel and apply for a refund on the fuel purchased under the special authorization.

The DOL is required to pay interest of 1 percent per month on special fuel tax refunds if the refund is issued more than 30 business days after the request for refund was received.

Distributors are required to remit special fuel taxes to the supplier of the fuel no later than two business days before the last day of the month following the month in which the fuel was purchased. The supplier must remit the taxes to the state within five state business days after the second to last business day of the month in which the distributor payments were due.

A special fuel distributor who makes timely payment may deduct an administrative discount of 0.6 percent of the taxes due. A special fuel supplier who makes timely payment may deduct an administrative discount of 0.2 percent. A special fuel supplier who also acts as distributor may deduct an administrative discount of 0.6 percent.

A person may receive a refund of fuel taxes that were paid on clear special fuel that was inadvertently mixed with dyed special fuel.

The maximum bond required of licensees is increased to \$100,000.

Provisions are made for the transition to collection of special fuel taxes at the terminal rack. Special fuel distributors and users must determine their inventory as of the effective date of the bill (January 1, 1998). The amount of fuel in inventory must be reported by the last day of February 1998. A distributor may spread payment of the tax due over a 12-month period, paying a minimum of one-twelfth of the amount due each month beginning with February 1998. Special fuel users must pay the tax due on fuel in inventory on the date that their next report and payment would have been due under their prior filing frequency.

Interstate trucking companies registered under the International Fuel Tax Agreement (IFTA) that were buying fuel in bulk under a special fuel user license prior to January 1, 1998, are entitled to take a 5 percent credit against the special fuel tax liability reported for the fourth quarter of 1997. In addition, the trucking company may spread payment of the tax due over a 12-month period, paying a minimum of one-twelfth of the amount due each month.

The Department of Revenue is given the responsibility for collection of the county-imposed, local option fuel tax, including both motor vehicle and special fuel taxes.

The DOL, in cooperation with the fuel tax advisory committee, must develop and submit to the LTC by December 31, 1997 (1) draft legislation to shift the point of taxation for motor vehicle fuel to the terminal rack; and (2) recommendations for improving special fuel and motor vehicle fuel record keeping and tax reporting requirements.

The DOL is given authority to enter into cooperative agreements with other states or Canadian provinces to address mutual issues pertaining to fuel tax administration, collection and enforcement.

The DOL is given authority to require any person engaged in the business of selling, purchasing, distributing, storing or transporting special fuel to submit periodic reports regarding the distribution of such fuel.

**Substitute Bill Compared to Original Bill:** Farmers, logging companies, and construction companies are allowed, with special authorization, to purchase clear special fuel from card lock facilities for nonhighway purposes without paying fuel tax. The DOL is required to pay interest of 1 percent per month on refunds that are issued more than 30 business days after the request was received. Special fuel suppliers who also serve as distributors may deduct an administrative discount of 0.6 percent of taxes collected.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 1998.

**Testimony For:** The state has lost hundreds of millions of dollars to tax evasion. Tax cheats unfairly compete with honest distributors and service station owners. The state and local governments need more gas tax revenue to invest in road preservation and improvement. The bill would generate revenue equivalent to a quarter cent of gas tax.

**Testimony Against:** The bill may hurt small distributors. It should be limited to addressing special fuel users. The collection allowance sets a bad precedent. It is unfair to give an allowance to some persons affected by the bill but not others. Some users may incur a large up-front liability. Interstate truckers would be paying tax on fuel that is used outside the state.

**Testified:** Jerry Blanton, Fuel Tax Evasion Study Oversight Committee (pro); Jim Wadsworth, Department of Licensing (pro/with concerns); Mike Sciacca, Washington Oil Marketers Association; Paul Dennis, Dennis Petroleum (pro); Helga Morgenstern, Department of Transportation (pro/with concerns); Greg Hanon, Western States Petroleum Association (pro/with concerns); Roy Wiseman, TOSCO Corporation (pro); Doug Burdick, Chevron (pro); Chris Cheney, Hop Growers of Washington (concerns); Tom Frick, Washington Association of Wheat Growers (concerns); Dan Coyne, Washington State Council of Farmer Cooperatives (pro/with concerns); John Woodring, Washington Trucking Association (concerns); Mark Couey, Washington State Patrol (pro); and Tony Reinhard, Washington Oil Marketers Association (con).