

HOUSE BILL REPORT

EHB 1964

As Passed House:

January 29, 2024

Title: An act relating to enhancing prorated and fuel tax collections by improving taxpayer compliance, providing additional enforcement mechanisms, and protecting confidential taxpayer information.

Brief Description: Enhancing prorated and fuel tax collections by improving taxpayer compliance, providing additional enforcement mechanisms, and protecting confidential taxpayer information.

Sponsors: Representatives Ramos, Robertson, Reeves and Hackney; by request of Department of Licensing.

Brief History:

Committee Activity:

Transportation: 1/15/24, 1/17/24 [DP].

Floor Activity:

Passed House: 1/29/24, 92-4.

Brief Summary of Engrossed Bill

- Grants the Department of Licensing (DOL) broad authority to enforce fuel tax requirements.
- Requires the DOL to establish a prorated and fuel tax discovery team to detect and investigate fuel tax and proportional registration violations, with authority to seek search warrants, issue subpoenas, perform inspections, and investigate and assess alleged civil violations.
- Makes a person other than a licensee who is engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel, and who fails to submit required tax reports to the DOL, subject to civil and criminal penalties.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires a fuel licensee who has a fuel license revoked to submit an application for reinstatement, and to resolve all outstanding violations, noncompliance items, and debts owed, prior to issuance of a new license.
- Exempts fuel tax reports submitted to the DOL from public inspection and copying, subject to certain specified exceptions.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 26 members: Representatives Fey, Chair; Donaghy, Vice Chair; Paul, Vice Chair; Timmons, Vice Chair; Barkis, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Low, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Berry, Bronoske, Chapman, Cortes, Doglio, Duerr, Entenman, Griffey, Hackney, Klicker, Mena, Nance, Orcutt, Ramel, Ramos, Schmidt, Volz and Wylie.

Minority Report: Without recommendation. Signed by 3 members: Representatives Dent, Goehner and Walsh.

Staff: Jennifer Harris (786-7143).

Background:

International Fuel Tax Agreement and Proportional Vehicle Registration.

The International Fuel Tax Agreement (IFTA) is a motor fuel tax cooperative agreement with other states and provinces for the administration, collection, and enforcement of each state's motor fuel taxes on motor fuel used by motor carriers. The International Registration Plan (IRP) is a cooperative agreement with other states and provinces that enables fleets that operate in interstate commerce to register vehicles in one home location and pay apportioned licensing fees based on the distance driven in each jurisdiction, which the Department of Licensing (DOL) refers to as proportional registration. The IFTA licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state, are liable for and must pay the fuel tax on fuel used to operate motor vehicles on highways in the state.

The DOL is required to issue license plates that indicate a vehicle is registered in Washington in accordance with the IRP once a complete application is submitted and all required fees and taxes have been paid. The DOL may deny, suspend, or revoke the IRP-compliant license plate of a registrant who formerly had his or her credentials revoked for cause when the cause has not been corrected, has certain unsatisfied state debts, or has been prohibited from operating as a motor carrier by the Federal Motor Carrier Safety Administration or the Washington State Patrol (WSP) when the cause has not been

corrected. Prior to denial, suspension, or revocation, the DOL must grant the applicant, registrant, or owner an informal hearing and provide at least 10 days written notice of the time and place of the hearing.

If a registrant is delinquent in the payment of an obligation, the DOL may provide notice of the amount due in person or by mail to the person who has possession or control of credits from previous overpayments, has personal or real property belonging to the person, or owes debts to the person. If a person fails to answer the notice within 20 days after receipt of it, a court may render judgment by default against the person. The notice and order by a court to withhold and deliver constitutes a continuing lien on property of the person.

Motor Vehicle and Aircraft Fuel Taxes.

Requirements.

An excise tax is imposed on fuel licensees at the time of the first taxable event in the state, including when fuel is removed from a terminal at the rack or from a refinery and when fuel enters into the state for sale, consumption, use, or storage, subject to certain exceptions. Licensees of IFTA or individuals operating motor vehicles under other reciprocity agreements entered into with the state are required to pay the motor vehicle fuel tax. An aircraft fuel tax is imposed on distributors of aircraft fuel on aircraft fuel sold, delivered, or used in the state.

A person may operate or maintain a motor vehicle with dyed special fuel in the fuel supply tank only if the use is authorized by the Internal Revenue Code and the person is either the holder of a dyed special fuel user license or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the person is the holder of a dyed special fuel user license.

A person having dyed special fuel in the fuel supply tank of a motor vehicle being used in a manner not exempt from the motor vehicle fuel tax or who maintains dyed special fuel in bulk storage for an intended sale or use in violation of its eligible uses is subject to a civil penalty of \$10 for each gallon of dyed special fuel placed into the supply tank, or \$1,000, whichever is greater. The WSP or other commercial vehicle safety alliance–certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle to detect the presence of dye or other chemical compound.

Application for a fuel license must be made to the DOL and must meet all requirements and be made in a manner prescribed by the DOL. The DOL may refuse to issue, or to suspend or revoke, a fuel license of any licensee or applicant who formerly held a license suspended or revoked for cause, has an unsatisfied state debt, misrepresented or concealed a material fact in obtaining or reinstating a license, or for other specified reasons. Prior to refusal to issue, or suspension or revocation of a license, the DOL must grant the applicant a hearing and provide at least 20 days written notice of the time and place of the hearing.

Every person importing, manufacturing, refining, transporting, blending, or storing fuel must keep a complete record of all fuel purchased or received and of all fuel sold, delivered, or used. All IFTA licensees and dyed special fuel users authorized to use dyed special fuel on highways in vehicles licensed for highway operation must maintain detailed mileage records on an individual vehicle basis. In the absence of detailed mileage records, motor vehicle fuel consumption must be calculated using the mileage basis determined by the DOL. The DOL may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel to submit periodic reports to the DOL with information on the disposition of the fuel.

Civil Penalties.

If a person fails to pay taxes due by the time allowed, the person must pay a penalty of 10 percent of the taxes owed. If a licensee establishes by a fair preponderance of evidence that the failure to pay was due to a reasonable cause and was not intentional or willful, the DOL may waive the penalty. If a person acts as a licensee without first securing the required license, all fuel tax liability incurred is immediately due. The DOL must assess the person a penalty of 100 percent of the tax, in addition to requiring payment of the tax owed. A licensee may petition for a reassessment within 30 days after service on the licensee of the assessment, after which time, the amount assessed becomes final. The DOL must reconsider the assessment requested in a petition that is filed, and if requested, must grant an informal hearing and provide 10 days notice of the time and place of the hearing.

If a person fails to pay taxes due, including interest and penalties owed, a lien will be placed on property belonging to or acquired by the person. When a person fails to pay taxes due, including interest and penalties, the DOL is authorized to provide notice of the delinquency by mail. A person who receives notice of delinquency, which constitutes a continuing lien on property of the person, must satisfy the debt within 20 days of receipt of the notice. If a person fails to answer the notice within the time allowed, a court may make a judgement by default against the person.

Any licensee who has a fuel license revoked must pay a \$100 penalty prior to being issued a new license.

Enforcement and Criminal Offenses.

The DOL may examine the records and equipment of a person distributing, transporting, storing, or using fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. The DOL may initiate and conduct investigations as are reasonably necessary to establish the existence of any alleged violations of noncompliance. For the purposes of an investigation or proceeding, the DOL may subpoena witnesses and require the production of records deemed relevant or material.

It is unlawful for a person to evade a fuel tax or related fee; commit fraud or make a false representation on a fuel tax license application, refund application, or tax return; or display or possess a fuel license with knowledge that it is fraudulent or that it has been suspended or revoked.

When the WSP has good reason to believe that motor vehicle fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured, the WSP may prepare an affidavit describing the place or thing to be searched to present to a judge, and the judge is required to issue a search warrant to seize the fuel and conveyance and arrest the person in possession or who has control of the fuel and conveyance.

When enforcing provisions of the aircraft fuel tax, the DOL may call on the WSP or any peace officer in the state to aid in enforcement.

Public Disclosure Exemption for Tax Information.

Agencies are required to make public records available for public inspection and copying unless the record falls within a specific exemption. Tax information provided to the Department of Revenue is considered confidential and privileged and may not be disclosed, subject to certain exceptions.

Summary of Engrossed Bill:

Civil Penalties.

An IRP-compliant license plate may be denied, suspended, or revoked immediately. This act constitutes notice of an adverse action. Upon receipt of this notice, the applicant, registrant, or owner must be granted 30 days to request a review by the DOL of the action. If no request is received by the DOL, the action becomes final, subject to appeal to superior court. If a registrant is delinquent in the payment of an obligation, the DOL may provide notice of the amount due in person or by mail, as well as through electronic service.

For purposes of the per gallon penalty calculation for unlawful use or intended sale or use of dyed special fuel, the DOL may make an assessment based on the calculated capacity of the bulk storage used, which is presumed correct unless evidence is provided to support that a lower quantity of fuel be used for the assessment.

The DOL is granted authority to inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle to detect the presence of dye or other chemical compound. The DOL may also inspect, collect, and secure samples of special fuel in any bulk storage device transported on the highways of the state. For multiple violations of the unlawful use or intended sale or use of dyed special fuel within five years, the penalty for a single violation (the greater of \$10 per gallon or \$1,000) is increased by multiplying it by one plus the number of preceding violations within this period.

A person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering motor vehicle fuel who is required to submit periodic reports to the DOL with information on the disposition of the fuel, and who fails to do so, is subject to civil and criminal penalties. If a person other than a licensee fails, neglects, or refuses to file a required motor vehicle fuel tax report, or files a false or fraudulent report, the DOL must assess a penalty of \$100 plus \$0.05 per gallon not properly reported or falsely reported. The person may petition for a reassessment within 30 days after service of the assessment. If the person establishes by a fair preponderance of evidence that the failure to pay was due to reasonable cause and was not intentional or willful, the DOL may waive the penalty.

If a petition for fuel tax reassessment is filed by a licensee or other person within 30 days, the DOL must grant a review if one is requested.

The DOL must offer a review before a refusal to issue, suspend, or revoke a fuel license become final. Refusals, suspensions, and revocations become final 30 days after notice is served on the licensee or applicant of the intention to refuse, suspend, or revoke a license. In addition to paying a penalty, a fuel licensee who has a fuel license revoked must submit an application for reinstatement and resolve all outstanding violations, noncompliance items, and debts owed related to fuel tax collections prior to issuance of a new license. A person required to have an IFTA license found operating without one is subject to an assessment of \$500, in addition to other penalties prescribed by law.

When a person fails to pay taxes due, inclusive of interest and penalties, the DOL is authorized to provide notice of the delinquency by electronic service.

Enforcement and Criminal Offenses.

The DOL has enforcement authority for fuel tax requirements and may request that the WSP, or any peace officer in the state, aid in the enforcement of fuel tax laws and regulations. The DOL is required to establish a prorate and fuel tax discovery team to detect and investigate fuel tax and proportional registration violations with authority to seek search warrants, issue subpoenas, perform inspections, and investigate and assess alleged civil violations of fuel tax and proportional registration laws. The DOL must adopt rules necessary to establish the prorate and fuel tax discovery team.

It is unlawful for a person to:

- knowingly display or cause the permit to be displayed, or possess, a fictitious or altered IFTA decal or license;
- fail to display or improperly display a valid IFTA decal associated with a valid IFTA license;
- operate a motor vehicle without having obtained an IFTA license; or
- offer for sale as taxed fuel, fuel that the seller knows or has reason to know is

untaxed.

When the DOL has good reason to believe that motor vehicle fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured, the DOL, in consultation with the WSP, may prepare an affidavit describing the place or thing to be searched and present it to a judge, and the judge must issue a search warrant to seize the fuel and conveyance and arrest the person in possession or who has control of the fuel and conveyance.

Public Disclosure Exemption for Tax Information.

Fuel tax reports submitted to the DOL are exempt from public inspection and copying. This exemption does not restrict the DOL from providing summary or aggregate data where the taxpayer's right to privacy or unfair competitive disadvantage can reasonably be protected; does not prevent the DOL from data sharing agreements with federal, state, or local agencies; and does not restrict sharing information with law enforcement for purposes of investigation or enforcement.

The DOL may apply for and obtain a superior court order approving and authorizing a subpoena where the application adequately specifies the records, documents, or testimony requested, and declares under oath the lawful purposes of the investigation within the DOL's authority under fuel tax laws. The DOL may not disclose tax return or tax information obtained in response to a subpoena, except as permitted by law.

Program Evaluation.

The DOL is required to evaluate the revenue impacts and costs of implementing and maintaining the prorate and fuel tax discovery team and to report the results of the evaluation to the Transportation Committees of the Legislature by November 1, 2028.

Severability.

If any provision of the act or its application is held invalid, the remainder of the act or other applications of it are not affected.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony:

(In support) Everyone pays taxes and hates doing it, but everyone does it and expects others

to pay their fair share. The DOR collects most taxes, but the DOL collects transportation taxes and fees. Fuel tax is the backbone of the transportation budget, but collections are not coming in as expected. Part of the issue is lower taxpayer compliance.

This is a DOL agency request bill. The DOL does not have the powers that the DOR does for enforcement of tax laws. The bill would put in place a team of six staff members to track down individuals who are not paying their fuel tax and to protect the privacy of individuals providing information to the DOL. The bill would also authorize the DOL to undertake civil investigations, which are particularly important for investigating unlicensed activity. In addition, the bill streamlines the enforcement appeals process.

Fuel tax is not paid by customers at gas stations. When a refinery distributes fuel, it is the person taking possession of it at the refinery that pays the fuel tax. Fuel can also be brought into the state on trucks, and fuel tax is required to be paid when it is transported into the state for sale or use in the state. Fuel tax collections operate on the honor system, subject to auditing. Gas stations can sell fuel with the price of fuel tax included in what a customer pays and then withhold payment of the tax.

The DOL estimates that \$16 million will be collected per biennium with the changes made in the bill, which is equivalent to 0.5 percent of biennial fuel tax collections. When tax enforcement was strengthened in law in Colorado, the state collected more in fuel taxes than it anticipated it would. The additional revenue can be used for preservation and maintenance and can repair a lot of potholes.

(Opposed) None.

Persons Testifying: Representative Bill Ramos, prime sponsor; and Beau Perschbacher, Washington Department of Licensing.

Persons Signed In To Testify But Not Testifying: None.