Legislative Analysis

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MOTOR CARRIER FUEL TAX ACT

House Bills 5768 and 5770
Sponsor: Rep. Richard Ball

House Bill 5769
Sponsor: Rep. Pam Byrnes
Committee: Transportation

Complete to 2-26-10

SUMMARY OF HOUSE BILLS 5768, 5769, & 5770 AS INTRODUCED

House Bill 5768 would amend Section 8 of the Motor Fuel Tax Act (2000 PA 403) to increase the tax rates on gasoline and diesel motor fuel.

House Bill 5769 would amend Section 2 of the Motor Carrier Fuel Tax Act (1980 PA 119) to increase the tax rate on diesel fuel consumed by interstate motor carriers in Michigan. The rates would be increased to equal those rates proposed in House Bill 5768.

House Bill 5770 would amend Section 10 of 1951 PA 51 (Act 51) to provide for the disposition of the additional revenue provided by the increased fuel tax rates proposed in House Bills 5768 and 5769.

The three bills are tie-barred to each other, meaning none can take effect unless all are enacted.

The bills are described in additional detail later.

BACKGROUND INFORMATION:

Motor Fuel Tax on Gasoline

House Bill 5768 would amend Section 8 of the Motor Fuel Tax Act to increase the current 19-cent per gallon tax to 23 cents per gallon (a 4-cent per gallon increase) effective March 1, 2010. The 23-cent per gallon rate would be effective through December 31, 2012 (34 months). Effective January 1, 2013, the rate would increase by an additional 4 cents per gallon, to 27 cents per gallon.

Each penny of the gas tax currently generates approximately <u>$43.8 million</u>. Assuming that current consumption remains unchanged, the proposed change in the gasoline tax rate would increase transportation revenue by <u>$175.2 million</u> per year during the 34 months of the initial four-cent increase. Starting in calendar year 2013, when the additional 4-cent increase would take effect, the bill would provide an additional <u>$350.4</u>

million per year in transportation revenue as compared to the current fiscal year baseline. [See note on revenue estimate methodology below.]

Motor Fuel Tax on Diesel
Two bills are needed to change diesel motor fuel tax rates, one bill to amend the Motor Fuel Tax Act and another bill to amend the Motor Carrier Fuel Tax Act. The Motor Fuel Tax Act effectively taxes motor fuel "at the pump," while the Motor Carrier Fuel Tax Act establishes an equivalent tax on diesel fuel consumed in Michigan by interstate motor carriers. The tax rates under each act have to be the same so that in-state and interstate motor carriers are taxed at identical rates.

House Bill 5768 would amend Section 8 of the Motor Fuel Tax Act, and **House Bill 5769** would amend Section 2 of the Motor Carrier Fuel Tax Act. Together the bills would increase the current 15-cent per gallon tax on diesel motor fuel to 21 cents per gallon (a 6-cent per gallon increase) effective March 1, 2010. The increase would be effective through December 31, 2012 (34 months). The rate would increase by another 6 cents per gallon, to 27 cents per gallon, effective January 1, 2013.

Each penny of the tax on diesel motor fuel currently generates approximately $7.7 million. Assuming that current consumption remains unchanged, the amendments would increase transportation revenue by $46.2 million per year during the 34 months of the first six-cent increase. Starting in calendar year 2013, when the additional 6-cent increase would take effect, the bills would provide an additional $92.4 million each year as compared to the current fiscal year baseline. [See note on revenue estimate methodology below.]

FISCAL IMPACT:

Summary
In the current fiscal year, constitutionally restricted transportation taxes will generate an estimated $1,809.4 million (i.e. $1.8 billion) for credit to the Michigan Transportation Fund (MTF). [1] The gasoline and diesel tax rate increases proposed in House Bills 5768 and 5769 would generate approximately $221.4 million per year in additional transportation revenue during the initial 34 month increase period. Starting in 2013, the bills would provide an additional $442.8 million annually as compared to the current fiscal year baseline. [See note on revenue estimate methodology below.]

The initial tax rate increase proposed in the bills would represent a 12.2% increase over the current fiscal year revenue baseline. The additional increase proposed for 2013 would represent a 24.4% increase from the current fiscal year baseline.

The distribution of this additional revenue to the Comprehensive Transportation Fund, to the State Trunkline Fund, to county road commissions, and to cities and villages is described below under the discussion of House Bill 5770.

[1] MTF revenue estimate for FY 2009-10 made the Michigan Department of Treasury, Office of Revenue and Tax Analysis, estimate dated 1/11/2010.

Note that in addition to the state restricted transportation revenue which the proposed tax rate increases would provide, the additional revenue could help the state secure additional federal revenue. The federal-aid highway program typically requires a 20% non-federal match. The Michigan Department of Transportation's 2010-2014 Five Year Transportation Program indicates that beginning in FY 2010-11 the department will not have sufficient State Trunkline Fund revenue to match all available federal revenue. The department anticipates that without additional state revenue, it will lose $475 million in federal aid in FY 2010-11 and a total of $2.1 billion over the final four years of the 2010-2014 Five Year Program.

Note that the anticipated loss in federal aid discussed in the department's Five Year Program document represents only federal aid related to state trunkline programs. Local road agencies and public transit agencies may have similar problems in providing matching funds for local federal aid projects. We do not currently have an estimate of how much federal aid local agencies may lose due to an inability to provide local matching funds.

To put the amount of federal aid available to the state in perspective, we note that federal aid to state transportation programs represents approximately one-third of state transportation appropriations. The actual amount of federal aid to the state has averaged approximately $1 billion per year over the last five years. Total federal aid highway program funds made available to Michigan for FY 2008-09, not counting federal American Recovery and Reinvestment Act (ARRA) funds, was $1.018 billion, of which $739.8 million was made available for state trunkline programs, and $278.5 million made available for local road agency projects.

Note on methodology used in estimates: It is understood that the proposed initial tax rate increase for both the gasoline tax and diesel fuel tax would be for a 34 month period that does not correspond to either the state fiscal year or to a calendar year. Our analysis uses the fuel tax revenue (and consumption) estimates for FY 2009-10 as developed by the Michigan Department of Treasury Office of Revenue and Tax Analysis (estimate dated 1/11/2010) and projects the fiscal impact of the proposed increases on an annualized basis in order to provide a standard baseline for comparison. We did not attempt to estimate possible changes in fuel consumption which might occur due to the changes economy, driver behavior, or vehicle fuel efficiency.

House Bill 5770

The bill would amend Section 10 of 1951 PA 51 (Act 51), the section of law which provides for the distribution of constitutionally restricted transportation revenue.

Under the current provisions of Act 51, constitutionally restricted transportation revenue, from motor fuel taxes and vehicle registration taxes, is credited to the Michigan Transportation Fund (MTF) and then distributed to other transportation funds and programs.

Reimbursement of "necessary expenses" – Section 10 of Act 51 currently requires the Legislature to appropriate funds from the MTF and from the Transportation Administration Collection Fund (TACF) for the *necessary expenses* incurred in the administration and enforcement of the Motor Fuel Tax Act, the *Motor Carrier Act*[2], and Sections 801 to 810 of the Michigan Vehicle Code. The section requires that the appropriation be based on "cost allocation methodology that reflects actual costs." These provisions effectively provide for the reimbursement of the Department of Treasury for costs associated with collecting motor fuel taxes, and the Department of State for the costs of collecting vehicle registration taxes.

House Bill 5770 adds language that prohibits use of revenue from any increase in fuel tax revenue after January 1, 2010 – in effect from the increases proposed in House Bills 5768 and 5769 – to pay for these necessary expenses. The bill permits the appropriation for necessary expense from other Motor Fuel Tax or Motor Carrier Fuel Tax collections. The proposed language would have no actual impact on the amount of reimbursement to the departments of State and Treasury, since those reimbursements are based on cost allocation methodology. The reimbursement would simply be made from "old" transportation fund revenue (the MTF and TACF) rather than "new" transportation fund revenue generated by the proposed fuel tax increases.

Note that the proposed increases in fuel taxes would not cause an increase in the amount of transportation fund reimbursement to the Department of State since that reimbursement is based on that department's actual cost of collecting vehicle registration taxes. The proposed increase in fuel taxes could increase the amount of MTF reimbursement to the Department of Treasury. The Department of Treasury's cost allocation method currently allocates to the MTF a share of the department's total tax collection cost based on the MTF's proportionate share of all revenue collected by the department. To the extent that fuel tax revenue increased as a percentage of total revenue, the allocation of common tax collection costs to the MTF could increase. The

[2] Section 10 of Act 51 (MCL 247.660) establishes the MTF and identifies the following taxes for deposit to the MTF: the Motor Fuel Tax Act (2000 PA 403), Sections 801 to 810 of the Michigan Vehicle Code (1949 PA 300), and the Motor Carrier Act (1933 PA 254). Section 10 of Act 51 prohibits the deposit of money to the MTF from any other source, including the state General Fund. The reference to the Motor Carrier Act appears to be an anachronism. No revenue from the Motor Carrier Act is currently credited to the MTF. The correct references would appear to be to both the Motor Carrier Fuel Tax Act (1980 PA 119) and the Streamlined Sales and Use Tax Revenue Equalization Act (2004 PA 175), each of which provides for specific taxes on motor fuels, and each of which provide revenue for credit to the MTF. The language of Section 10 which provides for the appropriation for the "necessary expenses" also includes reference to Motor Carrier Act, and does not reference either the Motor Carrier Fuel Tax Act or the Streamlined Sales and Use Tax Revenue Equalization Act.

current year appropriation from the MTF to the Department of Treasury for necessary expenses of fuel collection is $7.4 million.

***Creation of New Transportation Investment Fund* (TIF) –** The bill would direct revenue from the proposed fuel tax rate increases into a new "Transportation Investment Fund." The new fund would then distribute revenue to the Comprehensive Transportation Fund, to the State Trunkline Fund, to county road commissions, and to cities and villages in the same proportion as is currently established for the Michigan Transportation Fund under subsections f and j of Section 10 – 10% to the Comprehensive Transportation Fund, and of the 90% balance: 39.1% to the State Trunkline Fund, 39.1% to county road commissions, and 21.8% to cities and villages.

The bill would provide new reporting requirements as to the uses of the TIF revenue. In order for local units of government to provide a separate accounting for uses of TIF dollars, as opposed to their share of MTF revenue, they would likely have to establish separate TIF accounts within municipal, transit agency, or county road commission accounting systems. As a practical matter, municipal governments would have to establish, in addition to a major and local street fund accounts, separate accounts for TIF revenue. However, unlike MTF funds, the uses of TIF funds do not appear to be restricted by the bill and could apparently be used for any "transportation purpose."

Although the bill allocates the TIF balance, after the 10% deduction for the CTF, 39.1% to county road commissions, and 21.8% to cities and villages, the bill does not specify how the funds would be distributed between the state's 83 county road commissions and 533 cities and villages.

As noted above, this distribution of the additional revenue from the proposed fuel tax increases, through the new Transportation Investment Fund, is identical to what the distribution would have been if the new revenue had been distributed through the MTF as under provisions of current law. The only difference would appear to be with regard to uses of the TIF. TIF revenue distributed to county road commissions and cities and village is apparently restricted only by the general constitutional directive that such revenue be used for "transportation purposes."

Note on the Recreation Improvement Fund:
While House Bill 5770 would direct all revenue from the increases in motor fuel taxes proposed in House Bills 5768 and 5769 to the Transportation Investment Fund, those provisions would appear to be in conflict with provisions of the Michigan Natural Resources and Environmental Protection Act (MNREPA).

The MNREPA (1994 PA 451) establishes the Recreation Improvement Fund, as a state restricted fund for the support of certain programs within the Department of Natural Resources. Specifically, Section 71102 of the act (MCL 324.71102) establishes a privilege tax on gasoline and diesel fuel sold for watercraft, off-road-vehicles, and snowmobiles, and links the tax rate to the rates established in the Motor Fuel Tax Act: "*The privilege tax imposed on gasoline and undyed diesel fuel shall be paid to the* *department of treasury in the same manner, at the same time, and at the same rate per gallon as the tax levied under the motor fuel tax act.*"

Rather than force service stations to keep track of sales to non-motor vehicles, in Section 71103 of the act there is simply a "legislative finding" that 2% of gasoline sales are for watercraft, off-road-vehicles, and snowmobiles. Section 71106 requires the Department of Treasury to credit 2% of gasoline tax revenue, as derived from the Motor Fuel Tax, to the Recreation Improvement Fund.

As a result of the above noted sections, 2% of gasoline tax revenue currently collected at 19 cents per gallon is credited to the Recreation Improvement Fund, with the remaining 98% going to the Michigan Transportation Fund.

The 2% gas tax earmark represents approximately $16.5 million in revenue for the Recreation Improvement Fund in the current fiscal year. We estimate that the increases in gasoline tax revenue proposed in House Bill 5768 would increase the amount directed to the Recreation Improvement Fund as follows: For the first 34-month period of increase <u>$3.5 million per year;</u> for the period after the additional increase gasoline taxes effective January 1, 2013, an additional <u>$7.0 million per year</u>.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Transportation Investment Fund
Analysis of Proposed Fuel Tax Increase and Distribution
Under House Bills 5768, 5769, 5770

	FY 2009-10	Impact of Proposed 34 Month Fuel Tax Increase (Annualized)	Impact of Proposed Fuel Tax Increase Effective 1/1/2013 (Annualized)
Gross MTF Revenue under Current Law	1,809,425,000		
Net MTF Revenue for distribution under Current Law [1]	1,672,761,300		
Proposed increase in gasoline tax		175,200,000	350,400,000
Proposed increase in diesel tax		46,200,000	92,400,000
Total revenue increase [2]		**$221,400,000**	**$442,800,000**
To the Comprehensive Transportation Fund			
Distribution Percent		10.00%	10.00%
Distribution Amount	$152,177,300	$22,140,000	$44,280,000
Balance for Distribution		**$199,260,000**	**$398,520,000**
To the State Trunkline Fund			
Distribution Percent (of balance after CTF distribution)		39.10%	39.10%
Distribution Amount	**$621,166,200**	**$77,910,660**	**$155,821,320**
To County Road Commissions			
Distribution Percent (of balance after CTF distribution)		39.10%	39.10%
Distribution Amount	**$577,457,500**	**$77,910,660**	**$155,821,320**
To Cities and Villages			
Distribution Percent (of balance after CTF distribution)		21.80%	21.80%
Distribution Amount	**$321,960,300**	**$43,438,680**	**$86,877,360**

Notes:

1. This represents the amount of MTF revenue available for distribution after various administrative and programmatic "off the top" deductions. The figure includes Local Program Fund, 3-cent earmark of gas tax to road agencies, and earmarks for STF debt service and STF bridges.

2. This is the estimated increase in transportation revenue from fuel tax increases proposed in HB 5768 and HB 5769. This estimate does not consider any additional revenue which might be credited to the Recreation Improvement Fund. House Bill 5770 directs the additional revenue to a new Transportation Investment Fund for redistribution as shown above.

FY 2009-10 revenue amounts based on Michigan Department of Treasury Office of Revenue and Tax Analysis estimate dated 1/10/2010.