

DIESEL MOTOR FUEL TAXES/ACT 51 AMENDMENTS



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FISCAL ANALYSIS

HOUSE BILL 5733 AS INTRODUCED

Sponsor: Rep. Judson Gilbert
House Committee: Transportation

COMMITTEE ANALYSIS - 2/27/02

Analyst(s): William Hamilton

HOUSE BILL 5734 AS INTRODUCED

Sponsor: Rep. Keith Stallworth
House Committee: Transportation

HOUSE BILL 5735 AS INTRODUCED

Sponsor: Rep. Doug Hart
House Committee: Transportation

HOUSE BILL 5736 AS INTRODUCED

Sponsor: Rep. Larry Julian
House Committee: Transportation

SUMMARY

House Bills 5735 and 5734 would amend the two statutes which authorize the taxation of diesel fuel used in motor vehicles: the Motor Fuel Tax Act, and the Motor Carrier Fuel Tax Act. These two bills would change the tax rates under both acts, change the definition of "motor carrier" subject to the Motor Carrier Fuel Tax Act, and change the method of collecting both taxes. HB 5733 would amend Public Act 51 of 1951 to change the distribution of revenue collected under the two acts. HB 5736 would amend the Use Tax Act to make that tax applicable to diesel fuel consumed in Michigan. The four bills are tie-barred to each other.

Summary/Fiscal Impact

On February 21, 2002, a package of four bills was introduced in the Michigan House of Representatives. Among other things, the bills would affect both the taxation of diesel motor fuel and the distribution of revenue collected from diesel motor fuel taxes. The bills are discussed below in what we believe is a logical order - rather than in their numerical sequence.

House Bills 5735 and 5734 would amend the two statutes which authorize the taxation of diesel fuel used in motor vehicles: the Motor Fuel Tax Act, and the Motor Carrier Fuel Tax Act. These two bills would change the tax rates under both acts, change the definition of "motor carrier" subject to the Motor Carrier Fuel Tax Act, and change the method of collecting both taxes. HB 5733 would amend Public Act 51 of 1951 to change the distribution of revenue collected under the two acts. HB 5736 would amend the Use Tax Act to make that tax applicable to diesel fuel consumed in Michigan. The four bills are tie-barred to each other.

Diesel Motor Fuel Taxes - Revenue and Distribution

- ❖ We estimate that the HB 5735 and HB 5734 amendments to the two diesel motor fuel tax statutes would, taken together, increase state-restricted transportation revenue by \$35.2 million in the first year of implementation.
- ❖ HB 5733 would amend Act 51 to distribute revenue collected from the two motor fuel diesel taxes as follows:
 - 85% of 4/19 of total diesel fuel tax revenue to a new Commercial Highway Fund (CHF) dedicated to construction and preservation of state trunkline highways and bridges on the National Highway System. We estimate this earmark would generate approximately \$31.2 million to the CHF in the first year of implementation.
 - 15% of 4/19 of total diesel tax revenue to the critical bridge fund for the reconstruction or rehabilitation of bridges on federal aid system roads ("on-system" bridges). The Michigan Department of Transportation is eligible to receive up to 38.4% of critical bridge funds. The department has elected not to compete with local road agencies for critical bridge program funds - it is effectively a 100% local program. To the extent that this policy is continued, the funds from this earmark would represent an estimated \$5.5 million increase in local revenue in the first year of implementation.

The remaining 15/19 of revenue collected from the two diesel motor fuel taxes, approximately \$137.5 million, would be credited to the Michigan Transportation Fund (MTF) and distributed according to the current Act 51 distribution formula.

- ❖ HB 5736 would increase Use Tax revenue by an estimated \$4.5 million. This additional revenue would be distributed in accordance with the current constitutional and statutory distribution of Use Tax revenue: 1/3 to the School Aid Fund (\$1.5 million), and 2/3 to the General Fund (\$3.0 million.).

Other Proposed Changes

In addition to the above changes related to diesel motor fuel tax revenue and distribution, the bill package would make the following changes:

- ❖ HB 5735 would raise the tax on LP gas (when used as a motor fuel) from 15 to 19 cents per gallon. We estimate the increased tax rate would generate \$300,000 in additional state-restricted transportation revenue. This revenue would be credited to the MTF and distributed in accordance with current Act 51 formula.
- ❖ Enacting section 1 of HB 5735 would repeal Section 91 from the Motor Fuel Tax Act. Section 91 currently provides for the licensing of "fuel vendors" - a term defined in the Act as "a person who receives, stores, or distributes gasoline or diesel fuel for resale within this state."
- ❖ HB 5735 would amend Section 92 of the Motor Fuel Tax Act by changing references to "retail diesel dealer" to "retail *marine* diesel dealer". Under current law a "retail diesel dealer" is defined as "a person who sells or distributes diesel fuel to an end user in this state." The bill does not provide a definition of the term "retail marine diesel dealer."
- ❖ HB 5733 would remove language added to Act 51 by PA 79 of 1997 which required that certain grants from the MTF to other state departments be phased out by September 30,2000.
- ❖ HB 5733 would authorize the State Transportation Commission to enter into interest rate exchanges or swaps, hedges, or similar agreements with respect to its bonds and notes in the same manner as provided in the revised Municipal Finance Act.
- ❖ Enacting section 1 of HB 5733 would repeal section 9a of Act 51, a section added by PA 308 of 1998, which established an Act 51 Funding Study Committee.

Note that the revenue estimates discussed above for HBs 5735, 5734, and 5736 are based on calendar year 2000 diesel fuel sales and usage data supplied by the Michigan Department of Treasury, Office of Revenue And Tax Analysis (ORTA) - 2000 being the last full year for which data was available. The estimate also assumes that taxpayer behavior would not significantly change as a result of the proposed changes to statute. The estimates for the HB 5733 earmarking of diesel tax revenue also consider ORTA's December 20,2001 estimate of total diesel fuel revenue.

House Bills 5733, 5734, 5735, and 5736 Taxation of Diesel Fuel Used in Motor Vehicles Amendments to Public Act 51 of 1951

The balance of this memo describes in greater detail how the Motor Fuel Tax Act and the Motor Carrier Fuel Tax Act are applied in current law. The memo then discusses the changes to the two fuel tax statutes proposed in House Bills 5735 and 5734, as well as the proposed amendment to the Use Tax Act proposed in HB 5736. The changes to Act 51 proposed in HB 5733 are also discussed in additional detail.

The Motor Fuel Tax Act (Public Act 403 of 2000, MCL 207.1001 et seq.¹)

This act imposes an excise tax on motor fuels. The act imposes both a 19-cent per gallon tax on gasoline, and a 15-cent per gallon tax on diesel fuel purchased in Michigan.² Section 8 (6) indicates that the intent of the act is "to require persons who operate a motor vehicle on the public roads or highways of this state to pay for the privilege of using those roads or highways."

The way the Motor Fuel Tax is applied to *gasoline* sales is fairly straightforward: the tax on gasoline is collected by the state from gasoline suppliers - not from retail gas stations. The suppliers pass on the 19-cent per gallon tax to the retailers who in turn pass it on to the customers at the gas pump. Even though the gas tax is effectively 19 cents per gallon "at the pump", it is actually remitted to the Michigan Department of Treasury by gasoline suppliers.³

The way the Motor Fuel Tax is applied to diesel fuel - the subject of HB 5735 - is not so simple:

The Motor Fuel Tax on diesel fuel purchased in Michigan is 15 cents. However, the act currently provides for a 6 cent per gallon discount for motor vehicles subject to the Motor Carrier Fuel Tax Act (MCFT) - described further below. *Motor carriers* are motor vehicles with 3 or more axles and/or in excess of 26,000 lbs. gross vehicle weight, i.e., large trucks. For diesel-powered cars and light trucks the Motor Fuel Tax on diesel fuel is 15 cents per gallon. But for motor carriers, the effective rate "at-the-pump" is actually 9 cents per gallon - 15 cents less the 6-cent discount.

How is the Motor Fuel Tax on Diesel Fuel applied and collected?

The Michigan Department of Treasury issues diesel decals, at no cost, to qualified motors carriers. These decals enable motor carriers to claim the 6-cent per gallon discount when they purchase diesel fuel from a retailer, such as a truck stop. At the time of sale, the motor carrier operator asks the truck stop cashier for the motor carrier discount and gives the cashier the vehicle license plate number. Presumably, the truck stop cashier should also see the diesel decal before giving the motor carrier operator the 6-cent discount. Note that out-of-state carriers with International Fuel Tax Act (IFTA) decals are also entitled to the 6-cent per gallon discount at the pump.

The pump price of diesel fuel reflects the entire 15-cent per gallon Diesel Fuel Tax. But when motor carrier operators receive the 6-cent discount from the truck stop cashier, they are effectively paying only 9 cents per gallon of Motor Fuel Tax. This 9-cent tax is actually remitted - just like the gasoline

1. This tax was originally imposed by PA 150 of 1927. The statute was recodified in 2000.

2. The act also imposes a 15-cent per gallon tax on LP gas used as a motor fuel. HB 5735 would also increase the tax on LP gas. The bill's effect on the taxation of LP gas is discussed on page 11 of this memo.

3. PA 225 of 1992 (SB 843) changed the collection point for the Motor Fuel Tax from the retail or wholesale level to the supplier (refinery) level for all of the gasoline excise tax, and for part of the excise tax on diesel fuel. At that time the Michigan Department of Transportation estimated that this would reduce the number of gasoline tax collection points for from over 2,000 to approximately 50. The department also estimated that increased compliance would increase state-restricted transportation revenue by as much as \$20 million annually.

tax - at the supplier level.

Diesel-powered cars and light trucks are not entitled to the 6-cent discount; they pay the full 15-cent per gallon tax at the pump. Of this 15 cent per gallon tax for non-motor carriers, 9 cents is collected at the supplier level - again just like the gasoline tax. But the additional 6 cents - the difference between what motor carriers and non-motor carriers pay - is remitted to the Department of Treasury by retail outlets - such as truck stops.

To restate the way the Motor Fuel Tax is remitted to the Michigan Department of Treasury:

- ❖ All of the 19-cent per gallon Motor Fuel Tax on *gasoline* is collected at the *supplier* level.
- ❖ 9 cents of the Motor Fuel Tax on *diesel fuel* is collected at *supplier* level.
- ❖ The additional 6 cents per gallon of the Motor Fuel Tax on *diesel fuel*, collected from non-motor carriers, is collected at the *retail* level, i.e., from the service station or truck stop.

Motor Carrier Fuel Tax Act (PA 119 of 1980, MCL 308.211 et seq.)

This act is described in its title as a "privilege tax for the use of public roads and highways of this state by motor carriers." It imposes a tax on motor carriers based on diesel fuel *consumed* in the state of Michigan. *Motor carriers* are motor vehicles with 3 or more axles and/or in excess of 26,000 lbs. gross vehicle weight, i.e., large trucks.⁴

The tax rate under the act is 21 cents per gallon on motor fuel consumed on public roads in the state. The number of gallons consumed in Michigan can be based on actual records of mileage and average miles per gallon, or in the absence of records, the act presumes a consumption rate of 4 miles per gallon. Motor carriers are required to file a return, and pay the tax due, quarterly.⁵

Although the MCFT tax rate is 21 cents per gallon, the act provides for two credits that effectively lower the rate:

The act provides for a credit equal to the tax paid under the Motor Fuel Tax Act - effectively 9 cents per gallon for motor carriers. This credit is treated as a prepayment of the MCFT on the motor carriers' quarterly tax return.

The act also provides for a refund of 6 cents per gallon of the sales tax paid on diesel fuel purchased in Michigan. Note that if the price of fuel is more than a dollar per gallon, the actual sales tax, at 6%, will be more than 6 cents. But the act allows only this 6-cent "sales tax refund" regardless of the actual tax paid. For Michigan *intrastate* motor carriers this credit is netted against the tax due on a single form. *Interstate* motor carriers must file a separate supplemental tax return with the Department of Treasury in order to obtain this sales tax refund.⁶

4. To be precise, the act defines a motor carrier as "a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state." The act further defines a "qualified commercial motor vehicle" as having 3 or more axles and/or weighing more than 26,000 pounds - either alone or in a combination of vehicles. For this analysis we use the term "motor carrier" to encompass both "motor carrier" and "qualified commercial motor vehicle."

5. There are separate tax forms for intrastate and interstate motor carriers. Intrastate motor carriers file a single return - Michigan Department of Treasury form No. 3161. Interstate motor carriers report the tax under International Fuel Tax Agreement (IFTA) forms (numbers IFTA 100 or IFTA 101) and must file a separate Michigan form,

6. The supplemental form is Michigan Department of Treasury form No. 3240, "Supplemental Motor Carrier Tax Report."

When motor carriers purchase diesel fuel in Michigan, they pay a 9-cent per gallon Motor Fuel Tax "at the pump." Then, after application of the Motor Fuel Tax credit, the motor carrier pays a 12-cent per gallon Motor Carrier Fuel Tax on fuel consumed in Michigan (21 cents less the 9 cent credit equals 12 cents). After claiming the 6 cent "sales tax refund", the operator will have paid a total of 15 cents per gallon in motor fuel taxes - the 9 cent Motor Fuel Tax, plus the 12 cent Motor Carrier Fuel Tax, less the 6 cent sales tax refund. Note that in addition to these motor fuel taxes, the motor carrier who purchased fuel in Michigan will also pay a 6 percent sales tax on the fuel purchase price.

The credits which may be claimed against the 21 cent per gallon Motor Carrier Fuel Tax (the 9 cent Motor Fuel Tax credit, and the 6 cent sales tax refund) only apply for motor fuel purchased in the state of Michigan. Under current law, a motor carrier who purchased fuel outside Michigan but drove only in Michigan would be liable for the entire 21 cent per gallon tax. Conversely, a motor carrier who purchased fuel in Michigan but drove almost exclusively outside Michigan would have very little tax liability under the Michigan Motor Carrier Fuel Tax, and could claim a refund of both Motor Fuel Tax paid and the 6 cent per gallon sales tax credit.

Purchasing fuel in one state or province and driving almost exclusively in another state or province is a relatively frequent occurrence when industries, and the motor carriers that supply them, are located near state or provincial borders, (e.g. Chicago, Detroit, Gary, Port Huron, Sarnia, Toledo, Windsor).

Motor Fuel Taxes - Summary

Diesel-powered cars and light trucks pay only one diesel fuel tax - the Motor Fuel Tax at a rate of 15 cents per gallon "at the pump."

Motor carriers who purchase fuel in Michigan pay two taxes:

The Motor Fuel Tax at an effective rate of 9 cents per gallon "at the pump".

The Motor Carrier Fuel Tax at an effective rate of 6 cents per gallon of fuel used in Michigan - after credit of the 9-cent prepayment "at-the-pump", and the 6-cent sales tax refund.

The two taxes combine to equate to 15 cents per gallon - for motor carriers who buy and consume fuel in Michigan.

Motor carriers who purchase fuel outside of Michigan but drive in Michigan pay the full 21 cents per gallon Motor Carrier Fuel Tax for Michigan miles driven.

Both motor carriers and non-motor carriers also pay the 6% state sales tax on the price of fuel purchased in Michigan.

All revenue from both the Motor Fuel Tax and the Motor Carrier Fuel Tax is constitutionally dedicated to transportation. Currently, all revenue collected from both taxes is deposited to the Michigan Transportation Fund (MTF) where it is appropriated for state and local road programs, and state and local public transportation programs, in accordance with PA 51 of 1951. See Appendix 4 for a table showing the current MTF distribution.

State Sales Tax:

In addition to the motor fuel taxes described above, the state levies a 6% sales tax on sales of motor fuel purchased in Michigan. The tax is levied on the pump price - including federal excise taxes but excluding state excise taxes. According to the Michigan Department of Treasury, Office of Revenue and Tax Analysis, Michigan is one of only eight states to levy a sales tax on motor fuels. This is, to some extent, the reason for Michigan's fairly complex system of diesel fuel taxation.

It had been argued that including sales tax on fuel sales put Michigan service stations and truck stops - particularly those near the state's borders - at a competitive disadvantage with businesses in neighboring states. The increase in state sales tax in 1994, from 4 cents to 6 cents, aggravated this problem. As a result, the Motor Carrier Fuel Tax Act was amended by PA 584 of 1997 (SB 746) to include the 6-cent "Sales Tax Refund". This refund is available only to motor carriers who purchase fuel in Michigan; it was intended to offset the state sales tax and make Michigan fuel prices more competitive with those in neighboring states.

PA 584 also raised the Motor Carrier Fuel Tax from 9 cents to 21 cents per gallon and eliminated the annual diesel fuel decal fee.

**Changes to Diesel Fuel Taxes
House Bills 5735, 5734, and 5736
Bullet Point Summary**

House Bill 5735 would amend the Motor Fuel Tax Act. The bill would:

- ❖ Raise the tax rate from 15 to 19 cents per gallon - beginning October 1, 2002. This would make the tax rate for the diesel and gasoline excise taxes the same.
- ❖ Eliminate the discount for motor carriers. Both motor carriers and non-motor carriers would pay the same rate "at-the-pump" - 19 cents per gallon.
- ❖ Make fuel suppliers the only collection point for both the gasoline and diesel excise tax. Currently only 9 cents of the diesel excise tax is collected at the supplier level; 6 cents of the tax is collected at the retail level.
- ❖ Raise the excise tax for LP gas (when used as motor fuel) from 15 to 19 cents per gallon.
- ❖ Repeal Section 91 from the Motor Fuel Tax Act. Section 91 provides for the licensing of "fuel vendors" - a term defined in the Act as "a person who receives, stores, or distributes gasoline or diesel fuel for resale within this state." Enacting section 1 of the bill would repeal this section.
- ❖ Amend Section 92 of the Motor Fuel Tax Act by changing references to "retail diesel dealer" to "retail *marine* diesel dealer." Under current law a "retail diesel dealer" is defined as "a person who sells or distributes diesel fuel to an end user in this state." The bill does not provide a definition of the term "retail marine diesel dealer."

House Bill 5734 would amend the Motor Carrier Fuel Tax Act. The bill would:

- ❖ Exempt *intrastate* truckers from the authority of the act. Truckers who operated exclusively in Michigan would no longer be considered motor carriers; they would be treated just like diesel-powered cars and light trucks are now. The bill limits the definition of motor carrier "to a person who operates a qualified commercial motor vehicle in Michigan and at least one other state or Canadian province..." Truckers who operated exclusively in Michigan would simply pay the 19-cent per gallon Motor Fuel Tax "at the pump". They would not have to file quarterly tax returns under the Motor Carrier Fuel Tax Act.
- ❖ Reduce the tax from 21 cents per gallon to 19 cents - beginning October 1, 2002. The bill retains the Motor Fuel Tax credit for fuel purchased in Michigan; if the motor carrier purchased fuel in Michigan the 19-cent per gallon Motor Fuel Tax paid "at-the-pump" would be credited against any Motor Carrier Fuel Tax due
- ❖ Eliminate the 6-cent sales tax refund.

House Bill 5736 would amend the Use Tax Act. The bill would:

- ❖ Make all diesel fuel consumed in the state of Michigan by *interstate motor carriers* subject to the Use Tax Act - beginning October 1, 2002. Under current law, some diesel motor fuel is exempt under the exclusions provided under Section 4(d) of the Use Tax Act.
- ❖ Allow a credit against Use Tax for Sales Tax paid on diesel fuel purchased in the state.
- ❖ Provide for collection of the Use Tax through the International Fuel Tax Agreement (IFTA).
- ❖ Base the amount of Use Tax on the statewide average retail price of a gallon of self-serve diesel - as determined quarterly by the Michigan Department of Treasury - rounded up to the nearest 1/10 of a cent.

Changes to Diesel Fuel Taxes House Bills 5735, 5734, and 5736 Major Fiscal Impacts

House Bills 5735 and 5734

We estimate that the HB 5735 and HB 5734 amendments to the two diesel motor fuel tax statutes would, taken together, increase state-restricted transportation revenue by \$35.2 million in its first year of implementation. We believe that increased revenue would be a result of several factors:

Increased tax rates - HB 5735 would increase the diesel excise tax under the Motor Fuel Tax Act from 15 to 19 cents per gallon. Although HB 5734 would lower the Motor Carrier Diesel Tax Act rate from 21 to 19 cents per gallon, it would eliminate the 6-cent sales tax credit. This effectively increases the tax rate for motor carriers who purchase fuel in Michigan.

Increased compliance - Michigan's current system for taxing diesel fuel is clearly very complex. One could argue that one of the results of this complexity is poor compliance. There is evidence to suggest a high incidence of tax evasion under the current system. It is apparently fairly easy to evade paying the full tax obligation under the current tax laws with small risk of detection and prosecution.

There is some evidence to suggest that many *intrastate* motor carriers - those doing business only in Michigan - apply for the diesel discount decals but never file a Motor Carrier Fuel Tax form. This failure to file a MCFT return was noted in a recent performance audit of the Michigan Department of Treasury, Motor Fuel, IFTA/Motor Carrier, Tobacco Taxes and Registration Division, by the Office of Auditor General.⁷ The audit indicated that as of March 31, 2000 there were 9,043 intrastate motor carriers in the state licensed by the Division. As of August 2000, there were 2,497 Michigan motor carriers who were delinquent in filing MCFT returns for the quarter ending December 31, 1999, and 2,867 delinquent intrastate motor carriers for the period ending March 31, 2000.

This would suggest that a significant number of motor carriers use the diesel decal in order to get the 6-cent discount at the pump, but never file to pay the additional 12 cents tax due under the MCFT. These operators would end up paying only 9 cents "at the pump." They may forgo their claim to the 6-cent sales tax discount in order to avoid paying the additional 12 cents due under the MCFT; these motor carriers would still be ahead by 6 cents per gallon.

HBs 5735 and 5734 would eliminate this method of tax evasion. HB 5734 would exempt intrastate motor carriers from the Motor Carrier Fuel Tax, and HB 5735 would end the diesel discount. As a result, for intrastate truckers the entire Motor Fuel Tax would be collected "at the pump."⁸

Reduction in Collection Points - Under current law diesel taxes are collected at a number of different points. Part of the Motor Fuel Tax is collected at the supplier level - just as gasoline excise tax is. Part of the Motor Fuel Tax is collected at the retail level by service stations and truck stops. And part of the tax collection process involves the completion of MCFT or IFTA returns by thousands of individual motor carriers who are required to file.

7. This audit is dated October 2001 and is referenced as audit number 27-220-00. A copy of this audit is available from the Office of Auditor General's web site at <http://www.state.mi.us/audgen/comprpt/docs/r2722000.pdf>.

8. The bills would have a similar effect on collection of the taxes from interstate motor carriers - to the extent that these carriers purchase fuel in Michigan. There would be greater assurance of collecting the entire fuel tax up front - "at the pump" - from interstate motor carriers and less risk of tax evasion through a failure to file an IFTA return. However, unlike intrastate carriers, interstate carriers have the option of purchasing fuel outside of Michigan.

Together the two bills would make fuel suppliers the sole collection point for the Motor Fuel Tax on diesel fuel - just like gasoline. This would reduce the number of collection points for the Motor Fuel Tax from thousands of service stations and truck stops to a relatively small number of suppliers. Reducing the collection points for the tax should increase the ability of Treasury to assess, audit, and collect the Motor Fuel Tax.

In addition, by eliminating intrastate motor carriers from the authority of the Motor Carrier Fuel Tax Act, HB 5734 would exempt over 9,000 intrastate carriers from filing MCFT returns.

House Bill 5736

We estimate that HB 5736 would increase Use Tax revenue by \$4.5 million in its first year of implementation. This additional revenue would be distributed in accordance with the current constitutional and statutory distribution of Use Tax revenue: 1/3 to the School Aid Fund (\$1.5 million), and 2/3 to the General Fund (\$3.0 million.). The increase is due to the fact that motor carriers consume more diesel fuel in the state than is sold in the state. If, for some reason, more fuel were purchased in the state than consumed in the state, GF and SAF would receive less than they do under current law (because motor carriers would be able to credit more against their IFTA returns than the amount of Use Tax due under the revised MCFT Act).

Note that the revenue estimates discussed above for HBs 5735, 5734, and 5736 are based on calendar year 2000 diesel fuel sales and usage data supplied by the Michigan Department of Treasury, Office of Revenue And Tax Analysis (ORTA) - 2000 being the last full year for which data was available. The estimate also assumes that taxpayer behavior would not significantly change as a result of the proposed changes to statute. The estimates for the HB 5733 earmarks of diesel tax revenue also consider ORTA's December 20,2001 estimate of total diesel fuel revenue.

Changes to Transportation Tax Distribution
House Bill 5733
Amendment to Public Act 51 of 1951

House Bill 5733

HB 5733 would amend Public Act 51 of 1951 to distribute revenue collected from the two motor fuel diesel taxes as follows:

- 85% of 4/19 of total diesel fuel tax revenue to a new Commercial Highway Fund (CHF) dedicated to construction and preservation of state trunkline roads and bridges on the National Highway System⁹. We estimate this earmark would generate approximately \$31.2 million to the CHF in the first year of implementation.
- 15% of 4/19 of total diesel tax revenue to the critical bridge fund for the reconstruction or rehabilitation of bridges on federal aid system roads ("on-system" bridges). The Michigan Department of Transportation is eligible to receive up to 38.4% of critical bridge funds. The department has elected not to compete with local road agencies for critical bridge program funds - it is effectively a 100% local program. To the extent that this policy is continued, the funds from this earmark would represent an estimated \$5.5 million increase in local revenue in the first year of implementation.

The remaining 15/19 of revenue collected from the two diesel motor fuel taxes, approximately \$137.5 million, would be credited to the Michigan Transportation Fund (MTF) and distributed according to the current Act 51 distribution formula.

9. For additional information on the National Highway System see <http://www.fhwa.dot.gov/hep10/nhs/index.html>

Other Fiscal Impacts

In addition to the above changes related to diesel motor fuel tax revenue and distribution, the bill package would make following other changes:

- ❖ HB 5735 would raise the tax on LP gas (when used as a motor fuel) from 15 to 19 cents per gallon. We estimate the increased tax rate would generate \$300,000 in additional state-restricted transportation revenue. This revenue would be credited to the MTF and distributed in accordance with current Act 51 formula.
- ❖ Enacting section 1 of HB 5735 would repeal Section 91 from the Motor Fuel Tax Act. Section 91 currently provides for the licensing of "fuel vendors" - a term defined in the Act as "a person who receives, stores, or distributes gasoline or diesel fuel for resale within this state."
- ❖ HB 5735 would amend Section 92 of the Motor Fuel Tax Act by changing references to "retail diesel dealer" to "retail *marine* diesel dealer." Under current law a "retail diesel dealer" is defined as "a person who sells or distributes diesel fuel to an end user in this state." The bill does not provide a definition of the term "retail marine diesel dealer"¹⁰.
- ❖ HB 5733 would remove language added to Act 51 by PA 79 of 1997 which required that certain grants from the MTF to other state departments be phased out by September 30,2000.
- ❖ HB 5733 would authorize the State Transportation Commission to enter into interest rate exchanges or swaps, hedges, or similar agreements with respect to its bonds and notes in the same manner as provided in the revised Municipal Finance Act.
- ❖ Enacting section 1 of HB 5733 would repeal section 9a of Act 51, a section added by PA 308 of 1998, which established an Act 51 Funding Study Committee.

Executive Budget

Note: The Executive Budget recommendations for FY 2002-03 include an additional \$44.0 million in revenue from "a comprehensive package of diesel tax and collection simplification reforms." The amount used in the Executive Budget is \$8.8 million more than the \$35.2 million we concluded would result from the statutory changes noted above.

ORTA has indicated that the additional \$8.8 million would be realized from improved compliance as a result of the institution of a new electronic reporting system. It is our understanding that those improvements relate to installing computer-based systems for monitoring the movement of motor fuels - both gasoline and diesel fuel - through the distribution process (refineries, pipelines, distributors). ORTA estimates that the first year of implementation would realize an additional \$1.95 million from improved collection of gasoline excise taxes, and \$6.85 million related to improved collection of diesel fuel excise tax.

Our analysis of the bills affecting diesel fuel taxes addressed only the fiscal impact due to legislative changes. We did not assess the fiscal impact of proposed changes in the Michigan Department of Treasury's collection processes - process changes that can be effected independently of changes in statute. The House Fiscal Agency has not independently confirmed the ORTA's \$8.8 million estimate of increased revenue as a result of those changes.

10. HB 5735 would take diesel fuel vendors and retail dealers out of the collection process - by moving the collection point back to the supplier. As a result, HB 5735 would eliminate the need for licensing diesel fuel vendors and retail dealers - other than marine dealers.

Appendix 1:

Diesel Tax Revenue

The following table shows actual revenue collections from the two diesel taxes for the fiscal years 1996-97 through 2000-01 and estimated revenues (according to a ORTA's December 20,2001 Transportation revenue estimate.) for fiscal years 2001-02 and 2002-03. These estimates assume current tax rates.

Fiscal Year Ending 9/30/	Motor Fuel Tax (Diesel Fuel)	Motor Carrier Fuel Tax	Total
1997	76,792,700	6,878,700	83,671,400
1998	80,840,000	37,340,900	118,180,900
1999	86,093,200	48,418,500	134,511,700
2000	88,249,600	55,186,900	143,436,500
2001	83,599,600	50,492,000	134,091,600
2002 Est.	83,800,000	51,200,000	135,000,000
2003 Est.	84,000,000	55,000,000	139,000,000

At the effective rate of 15 cents per gallon, revenue equates to approximately \$9 million per penny of tax.

Revenue From Motor Fuel Tax on LP Gas

The following table shows actual revenue collections from the tax on LP gas for the fiscal years 1996-97 through 2000-01 and estimated revenues (according to a ORTA's December 20,2001 Transportation revenue estimate) for fiscal years 2001-02 and 2002-03. These estimates assume current tax rates.

Fiscal Year Ending 9/30/	Motor Fuel Tax (LP Gas)
1997	1,051,100
1998	1,019,000
1999	798,300
2000	1,039,900
2001	966,100
2002 Est.	950,000
2003 Est.	970,000

Revenue from these two taxes is constitutionally restricted for transportation purposes. Revenue from the taxes is currently credited to the Michigan Transportation Fund for appropriation in accordance with Public Act 51 of 1951.

Appendix 2:

The following table compares taxation of diesel fuel under current law with provisions of HBs 5735, 5734, and 5736,

	Current Law	House Bills 5735, 5734, 5736
Diesel Powered Cars & Light Trucks (Not Motor Carriers)	MFT - 15 cents per gallon at the pump MCFT - No tax Net = 15 cents per gallon fuel tax Plus 6% sales tax 6 cents collected at retail 9 cents collected from supplier	MFT - 19 cents per gallon at the pump MCFT - No tax Net = 19 cents per gallon in fuel tax Plus 6% sales tax All 19 cents collected from suppliers.
Michigan Motor Carriers Fuel Purchased in Mich. Miles Driven in Mich.	MFT - 9 cents per gallon at the pump MCFT - 12 cents after credit for MFT paid, less 6 cent sales tax refund Net = 15 cents per gallon in fuel tax Plus 6% sales tax 9 cents collected from supplier	MFT - 19 cents per gallon at the pump MCFT - No tax No 6 cent sales tax refund Net = 19 cents per gallon in fuel tax Plus 6% sales tax All 19 cents collected from suppliers. Truckers that operated exclusively in Michigan would no longer be <i>motor carriers</i> and would not be subject to MCFT.
Motor Carriers (Interstate) Purchased Fuel in Mich. Miles Driven in Mich.	MFT - 9 cents per gallon at the pump MCFT - 21 cents per gallon due on Michigan miles Less 9 cent per gallon credit for MTF Less 6 cent sales tax refund Net = 15 cents per gallon in fuel tax Plus 6% sales tax	MFT - 19 cents per gallon at the pump MCFT - 19 cents per gallon due on Michigan miles Less 19 cents per gallon credit for MTF No 6 cent sales tax refund Net = 19 cents per gallon in fuel tax Plus 6% use tax less credit for 6% sales tax paid at the pump. Collected by IFTA
Motor Carriers Purchased Fuel Outside Mich. Miles Driven in Mich.	MFT - No tax due. MCFT - 21 cents per gallon for miles driven in Michigan Net = 21 cents per gallon in fuel tax No 6% sales tax	MFT - No tax due. MCFT - 19 cents per gallon for miles driven in Michigan Net = 19 cents per gallon in fuel tax 6% use tax Collected by IFTA

Appendix 3:

Would the Increase in Fuel Taxes at the Pump Affect Interstate Trucker's Purchase Decisions?

Would Interstate Truckers be More or Less Likely to Purchase Fuel at Michigan Truck Stops?

An interstate motor carrier's primary tax liability is under the Motor Carrier Fuel Tax Act. Motor Fuel Taxes paid "at-the-pump" are treated as a prepayment of MCFT taxes. The increased diesel tax rate "at the pump" should make no difference to the interstate trucker who can credit that tax dollar-for-dollar against his MCFT tax on his quarterly IFTA return.

The bill package would make the tax rates identical for interstate truckers who purchased fuel in the state and those who simply drove across the state without purchasing fuel. There would be no apparent advantage to purchasing fuel out-of-state since the tax burden would be the same - purchasing in-state or out-of-state.

There was some evidence to suggest that the sales tax refund - which had been instituted to off-set the state sales tax - has not been a factor in interstate truckers' decision to purchase fuel in Michigan. The previously referenced Office of Auditor General audit of the Michigan Department of Treasury indicated that many motor carriers were not aware of the availability of the current 6-cent "sales tax refund." That many motor carriers do not claim the credit suggests that it is not a significant factor in enticing motor carriers to purchase fuel in Michigan.

**Appendix 4:
Michigan Transportation Fund Distribution under Current Law**

Revenue from motor fuel taxes and vehicle registration fees is constitutionally dedicated to transportation. The distribution of revenue from those taxes to various transportation programs is governed by Public Act 51 of 1951. The following table shows the distribution of a \$1 million incremental increase in MTF revenue - after deductions of statutory earmarks - in accordance with the current provisions of Act 51.

Act 51 Michigan Transportation Fund Distribution After Statutory Earmarks		
10% to Comprehensive Transportation Fund (CTF)	The CTF is dedicated for Public Transportation - primarily capital and operating assistance to public transit agencies	\$100,000
35% of total to the State Trunkline Fund (STF) (39.1% of MTF balance)	The STF supports construction and maintenance of state trunkline highways and administration of the Michigan Department of Transportation.	\$350,000
35% of total to county road commissions (39.1% of MTF balance)	For repair and maintenance of the county road system.	\$350,000
20% of total to cities and villages (21.8% of MTF balance)	For repair and maintenance of city and village streets.	\$200,000