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**BILL ANALYSIS**

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House Bill 5751 (Substitute H-3 as reported without amendment)

Sponsor: Representative Philip LaJoy

House Committee: Agriculture

Senate Committee: Technology and Energy

**CONTENT**

The bill would amend the Motor Fuel Tax Act to do the following:

- Allow a licensed supplier temporarily to claim a deduction of three cents per gallon for diesel containing at least 5% biodiesel and seven cents per gallon for gasoline containing at least 70% ethanol.
- Require the State Treasurer to make an annual determination of the difference between the amount of revenue collected under the bill and the amount that would have been collected under existing tax provisions.
- Require the Legislature to appropriate the amount of the difference to the Michigan Transportation Fund (MTF).
- Provide that a person who imported into Michigan or withdrew diesel fuel that contained at least 5% biodiesel or gasoline that was at least 70% ethanol from a rack would be considered a supplier and would have to comply with the Act's license and reporting requirements.
- Provide that a facility that manufactured motor fuel and disbursed it from a rack would qualify as a terminal would be subject to the Act's license and reporting requirements.

The deduction would no longer be effective 10 years after the bill's effective date, or on the date the State Treasurer certified that the total cumulative rate differential was greater than \$2.5 million, whichever was earlier. If the Legislature did not annually appropriate the amount determined as the rate differential to the MTF within 60 days after the certification, the deduction would no longer be effective.

The bill is tie-barred to House Bill 5755, which would amend the Motor Fuels Quality Act to extend to diesel and specified alternative fuels regulations concerning the quality, testing, storage, manufacture, delivery, and sale of gasoline; require distributors and retail dealers of diesel and alternative fuels to obtain a license for each retail outlet; and require firms selling hydrogen in Michigan to register with and be approved by the Michigan Department of Agriculture.

MCL 207.1008

Legislative Analyst: Julie Koval

**FISCAL IMPACT**

The bill would reduce by an indeterminate amount fuel tax receipts on gasoline containing at least 70% ethanol, commonly referred to as "E70". All fuel tax revenue is deposited in the Michigan Transportation Fund, pursuant to the State Constitution. Annual revenue to the MTF would be reduced based on the amount of E70 sold in Michigan. Currently, there are no data to indicate the amount of E70 sold in Michigan, although there are nine wholesale distributors of E85 (fuel containing at least 85% ethanol) in Michigan, and eight fueling stations are operating in the State. One manufacturing plant for ethanol is already operational, with a capacity of 63 million gallons, and four more are in various stages of construction. Under the bill, all E70 fuel sold in Michigan would be effectively taxed at 12 cents per gallon, as opposed to 19 cents per gallon. The MTF revenue reduction would grow as E70 sales increased.

Similarly, the bill would reduce MTF deposits associated with the proposed tax imposed on diesel fuel containing at least 5% biodiesel, commonly referred to as "B5". Under the bill, all B5 would be effectively taxed at 12 cents per gallon, as opposed to 15 cents per gallon. Currently, there are no reliable data to indicate the amount of B5 sold in Michigan, although estimates range from 750,000 gallons to 3.0 million gallons; therefore, the impact on the MTF is indeterminate. Assuming the existing E85 stations sell 100,000 gallons of qualified fuel per year, and using a mid-point on the biodiesel, the bill initially would reduce MTF revenue by approximately \$115,000 per year. As indicated below, the maximum reduction under the bill would be \$2.5 million, although that impact would be cumulative.

Under Public Act 51 of 1951, which governs the Michigan Transportation Fund, MTF revenue is distributed in the following manner, after certain statutory deductions: 10% to the Comprehensive Transportation Fund, 35% to the State Trunkline Fund, 35% to county road commissions, and 20% to city and village road agencies. Any reduction to MTF revenue resulting from this bill would be allocated by the same percentages.

The bill would cap the *cumulative* MTF revenue reduction resulting from the deduction for E70 and B5 at \$2.5 million. The tax deduction would no longer be effective 10 years after the bill's effective date or when the \$2.5 million cap was reached, whichever was earlier. It is unknown when or if the cap would be reached.

The bill would require the Legislature annually to appropriate to the MTF the amount of lost fuel tax revenue resulting from the tax deduction. The bill does not specify how this appropriation would be funded, but does indicate that the deduction would not be effective if the appropriation were not made. It is important to note that current restrictions in Section 10 of Public Act 51 of 1951 (MCL 247.660) prevent the MTF from receiving deposits from other funds. Therefore, the appropriation provision contained in the bill appears to conflict with current statutory language restricting MTF deposits. This provision, combined with the bill's language rendering the deduction ineffective if the appropriation were not made, would appear to render the deduction immediately ineffective and result in the deduction having no fiscal impact.

The reimbursement provisions and the effective date of the deduction also would appear to have potential timing problems. The bill does not provide a date by which the loss to the MTF would have to be certified (only requiring that a determination and appropriation be made annually), and regardless of what date would be specified, the Legislature would not know how much to appropriate until after the deduction had already been effective. However, the bill indicates the deduction would not be effective unless the Legislature made the appropriation (assuming that the previous problem, that the MTF cannot accept the transfer, was not an issue). It is unclear how administration of the tax would be expected to proceed if the tax deduction were allowed for a fiscal year and the Legislature then failed to make the appropriation. For example, it is not clear whether taxpayers would be expected to pay the tax late, whether the deduction would expire and simply not continue, and/or whether the MTF simply would absorb any revenue loss.

The bill would require people to acquire additional licenses and to comply with other requirements of the Act, as applicable. The additional revenue would depend on how many new licenses would be required.

This estimate is preliminary and will be revised as new information becomes available.

Date Completed: 6-2-06

Fiscal Analyst: David Zin