

HOUSE BILL NO. 556  
INTRODUCED BY B. MCCHESENEY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A SPECIAL FUEL USER TO USE DYED SPECIAL FUEL FOR CERTAIN CONSTRUCTION PROJECTS; PROVIDING FOR THE ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR THE SUSPENSION OR REVOCATION OF A TEMPORARY PERMIT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REFUSE, UNDER CERTAIN CONDITIONS, TO ISSUE A TEMPORARY PERMIT OR A SPECIAL FUEL USER PERMIT TO A SPECIAL FUEL USER; IMPOSING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 15-70-302 AND 15-70-372, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Use of dyed special fuel allowed for certain projects -- temporary permit -- tax and penalty imposed for unauthorized use -- grounds for refusal -- rules.**

(1) A special fuel user who obtains a special fuel user's permit under 15-70-302 may use dyed special fuel as provided in this section.

(2) (a) A special fuel user may use dyed special fuel when used in nonlicensed motorized equipment, off-highway vehicles, or internal combustion engines, including stationary engines, that are used in connection with any work performed under a contract or subcontract for a private, nonhighway construction project. The special fuel user may use dyed special fuel supplied by the owner or operator of the project or may purchase dyed special fuel.

(b) The special fuel user shall notify the department that:

(i) the special fuel user intends to use dyed special fuel in performance of a contract or subcontract specified in subsection (2)(a);

(ii) the special fuel user intends to use at least ~~50,000~~ 75,000 gallons annually in the performance of the contract or subcontract as evidenced in the contract, subcontract, or other documentation;

(iii) DYED special fuel will not be used in motor vehicles, ~~motorized~~ OFF-HIGHWAY VEHICLES, equipment, or internal combustion engines that are not directly used in the performance of the contract or subcontract.

(3) (a) When the department ~~verifies~~ CERTIFIES that the use of dyed special fuel will be used as provided in this section, the department ~~shall~~ MAY issue a temporary permit to use dyed special fuel ~~to the special fuel user for the period~~ IN OFF-HIGHWAY VEHICLES AND INTERNAL COMBUSTION ENGINES, INCLUDING STATIONARY ENGINES, FOR

THE DURATION of the contract or subcontract. The department may extend the duration of the temporary permit upon request of the special fuel user AND THE EXTENSION OF THE PROJECT.

(b) A special fuel user that is issued a temporary permit under this section shall make the original or a reproduced copy of the permit available for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(4) The special fuel user shall, within 30 days of the completion of the contract, report the following on a form provided by the department:

(a) the number of gallons of dyed special fuel used on the project;

(b) the amount of fuel, if any, provided by the owner or operator of the project to the special fuel user;

and

(c) the amount of dyed special fuel purchased, if any, by the special fuel user for use on the project; AND

(D) ALL DYED SPECIAL FUEL REPORTED IN A RETURN FILED IN ACCORDANCE WITH THE REQUIREMENTS OF 15-70-325.

~~———(5) A special fuel user is not required to use at least 50,000 gallons annually on the project if the special fuel user shows reasonable cause for using less than 50,000 gallons on the project.~~

~~(6)~~(5) If the department determines that the special fuel user purposely overstated the number of gallons to be used on the project, the department may revoke the permit issued under this section.

~~(7)~~(6) (a) A special fuel user that uses dyed special fuel for purposes other than those allowed under this section shall pay the tax imposed under 15-70-321 on the unauthorized use of the special fuel and is subject to penalty and interest imposed under 15-70-330 and to the civil penalties imposed under 15-70-372.

(b) If a special fuel user uses dyed special fuel for an unauthorized purpose, the department may suspend the temporary permit for a period not exceeding 30 days for the first violation. For a second violation, the department shall revoke the temporary permit. During the period of suspension, the special fuel user is required to use special fuel on which the state special fuel tax has been paid.

~~(8)~~(7) If the department revokes a temporary permit issued under this section to a special fuel user, the department may refuse to issue a temporary permit or a special fuel user permit to the special fuel user in the same manner as provided in 15-70-305.

(8) A SPECIAL FUEL USER THAT IS ISSUED A TEMPORARY PERMIT UNDER SUBSECTION (1) SHALL KEEP THE FOLLOWING RECORDS:

(A) ALL DYED SPECIAL FUEL RECEIPTS FOR THE PROJECT;

(B) THE LOCATION OF THE FIXED OR MOBILE FACILITY WHERE THE DYED SPECIAL FUEL IS STORED AND WITHDRAWN FOR THE PROJECT;

(C) THE DATE OF ANY FUEL DISBURSEMENT;

(D) THE NUMBER OF GALLONS WITHDRAWN;

(E) THE BEGINNING AND ENDING METER READINGS OR OTHER MEANS OF DETERMINING THE QUANTITY OF DYED SPECIAL FUEL WITHDRAWN;

(F) THE IDENTIFICATION NUMBER, HOUR METER, OR UNIT NUMBER OF THE OFF-HIGHWAY VEHICLE, EQUIPMENT, OR INTERNAL COMBUSTION ENGINE THAT THE DYED SPECIAL FUEL WAS USED IN; AND

(G) THE PURPOSE OF THE WITHDRAWAL IF THE FUEL IS WITHDRAWN BY THE SPECIAL FUEL USER FOR ANY OTHER PURPOSE.

(9) The department may adopt rules for the administration and enforcement of this section.

**Section 2.** Section 15-70-302, MCA, is amended to read:

**"15-70-302. Special fuel user's permits required -- exceptions.** (1) (a) A special fuel user shall obtain a special fuel user's permit annually from the department prior to the use of special fuel:

- (i) by a special fuel user awarded a contract or subcontract in accordance with 15-70-321; or
- (ii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department motor carrier services enforcement officers and motor carrier services patrol officers. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the

agreement.

(4) ~~A~~ Except as provided in [section 1], a special fuel user who obtains a permit under subsection (1) may use only fuel on which state fuel tax has been paid."

**Section 3.** Section 15-70-372, MCA, is amended to read:

**"15-70-372. Civil penalties.** (1) Except as provided in subsection (2), the department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

(2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation of the provisions of [section 1] and 15-70-330(3)."

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 1].

NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 6. Applicability.** [This act] applies to contracts entered into after June 30, 2007.

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