

1 HOUSE BILL NO. 39

2 INTRODUCED BY D. FERN

3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE TAXATION OF FUEL USED
6 FOR PUBLIC CONTRACTS; CLARIFYING THAT FUEL USED FOR PUBLIC CONTRACTS MUST BE FUEL ON
7 WHICH THE FUEL TAX HAS BEEN PAID; PROVIDING PENALTIES FOR USING UNTAXED FUEL FOR
8 PUBLIC CONTRACTS; AMENDING SECTIONS 15-70-403 AND 15-70-441, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

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

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13 **Section 1.** Section 15-70-403, MCA, is amended to read:

14 **"15-70-403. Gasoline and special fuel tax -- incidence -- rates.** (1) The incidence of the fuel tax is on
15 the distributor for the privilege of engaging in and carrying on business in this state. Each distributor shall pay to
16 the department of transportation a tax in an amount equal to:

17 (a) for each gallon of gasoline distributed by the distributor within the state and upon which the gasoline
18 tax has not been paid by any other distributor:

19 (i) 31.5 cents in fiscal years 2018 and 2019;

20 (ii) 32 cents in fiscal years 2020 and 2021;

21 (iii) 32.5 cents in fiscal year 2022; and

22 (iv) 33 cents in fiscal year 2023 and thereafter;

23 (b) for each gallon of special fuel distributed by the distributor within the state and on which the special
24 fuel tax has not been paid by any other distributor:

25 (i) 29.25 cents in fiscal years 2018 and 2019;

26 (ii) 29.45 cents in fiscal years 2020 and 2021;

27 (iii) 29.55 cents in fiscal year 2022; and

28 (iv) 29.75 cents in fiscal year 2023 and thereafter; and

29 (c) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,
30 which is allocated to the department as provided by 67-1-301.

1 (2) The gasoline tax provided for in subsection (1)(a) must be deposited as follows:

2 (a) the revenue from 23 cents of the tax less the allocations provided for in 60-3-201(1)(a) through (1)(d)
3 to the highway restricted account provided for in 15-70-126;

4 (b) the revenue from 4 cents of the tax less the allocations provided for in 60-3-201(1)(a) through (1)(d)
5 to the highway patrol administration state special revenue account established in 44-1-110; and

6 (c) the remaining revenue from the tax less the allocations provided for in 60-3-201(1)(a) through (1)(d)
7 to the bridge and road safety and accountability restricted account provided for in 15-70-127.

8 (3) The special fuel tax provided for in subsection (1)(b) must be deposited as follows:

9 (a) the revenue from 23 3/4 cents of the tax to the highway restricted account provided for in 15-70-126;

10 (b) the revenue from 4 cents of the tax to the highway patrol administration state special revenue account
11 established in 44-1-110; and

12 (c) the remaining revenue from the tax to the bridge and road safety and accountability restricted account
13 provided for in 15-70-127.

14 (4) Gasoline or special fuel may not be included in the measure of the distributor's tax if it is sold for
15 export unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

16 (5) Special fuel may not be included in the measure of the distributor's tax if it is dyed by injector at a
17 refinery or terminal for off-highway use.

18 (6) When no Montana fuel tax has been paid by a distributor or any other person, the department shall
19 collect or cause to be collected from the owners or operators of motor vehicles operating on the public roads and
20 highways of this state a tax equal to the tax rate provided for in subsection (1)(a) for gasoline and subsection
21 (1)(b) for dyed or undyed special fuel. The tax must be paid for each gallon of gasoline or special fuel as defined
22 in this part, or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American
23 petroleum institute) gravity test sold or used to produce motor power to operate motor vehicles on the public
24 roads and highways of this state.

25 (7) The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a vehicle that
26 is equipped with a feed delivery box if:

27 (a) the feed delivery box is permanently affixed to the vehicle;

28 (b) the vehicle is used exclusively for the feeding of livestock; and

29 (c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000 pounds.

30 (8) All special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I.

1 (American petroleum institute) gravity test sold or used in motor vehicles, motorized equipment, and the internal
 2 combustion of any engines, including stationary engines, and used in connection with any work performed under
 3 any contracts pertaining to the construction, reconstruction, or improvement of a highway or street and its
 4 appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political
 5 subdivisions, must be ~~undyed~~ dyed fuel on which Montana fuel tax has been paid.

6 (9) Material used for construction, reconstruction, or improvement in connection with work performed
 7 under a contract as provided in subsection (8) must be produced using fuel on which Montana fuel tax has been
 8 paid."

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10 **Section 2.** Section 15-70-441, MCA, is amended to read:

11 **"15-70-441. Dyed special fuel restrictions -- penalties.** (1) (a) A person may not use untaxed dyed
 12 special fuel in violation of 15-70-403(8) or (9) or to operate a motor vehicle on the public roads and highways of
 13 this state unless:

14 (i) the motor vehicle has a gross vehicle weight of greater than 12,000 pounds, exclusive of any towed
 15 units, is equipped with a feed delivery box that is permanently affixed to the vehicle, and is used solely for the
 16 feeding of livestock; or

17 (ii) the use is permitted pursuant to rules adopted under subsection ~~(2)(e)~~ (1)(c).

18 (b) (i) The purposeful or knowing use of untaxed dyed special fuel in a motor vehicle operating on the
 19 public roads and highways of this state in violation of 15-70-403(8) or (9) or this subsection (1) is subject to the
 20 civil penalty imposed under subsection (1)(b)(ii). Each use is a separate offense. The civil penalty may be in
 21 addition to criminal penalties imposed under 15-70-443.

22 (ii) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty
 23 not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation
 24 of the provisions of this section. A subsequent offense is subject to criminal penalties imposed under 15-70-443.

25 (c) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles
 26 traveling from one location to another on the public roads and highways of this state when using dyed special fuel
 27 or nontaxed fuel.

28 (2) The operator of the vehicle is liable for the tax imposed in 15-70-403. If the operator refuses or fails
 29 to pay the tax, in whole or in part, the seller of the dyed special fuel is jointly and severally liable for the tax
 30 imposed under 15-70-403 and for the penalties described in this section if the seller knows or has reason to know

1 that the fuel will be used for a taxable purpose."

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3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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