



H.B. 458

125th General Assembly
(As Introduced)

Rep. Grendell

BILL SUMMARY

- Delays, for one year, the second and third in a series of three 2¢-per-gallon increases in the state motor fuel tax.
- Extends for one year the scheduled reductions in the fuel use tax surcharge.
- Delays for one year the scheduled changes in the distribution of motor fuel tax revenue to local governments from the Gasoline Excise Tax Fund.
- Authorizes county auditors to test the quality of motor fuel.
- Creates the temporary Gasoline Practices Oversight Commission to review petroleum delivery and distribution in Ohio, gasoline prices and availability, and related matters, and to report to the General Assembly.

CONTENT AND OPERATION

Delay motor fuel tax increase

(R.C. 5728.06, 5735.23, 5735.29, 5735.291, and 5735.292)

The bill delays, for one year, two of the three scheduled increases in the state's motor fuel taxes. H.B. 87 of the 125th General Assembly increased the total fuel tax rate on July 1, 2003, by 2¢ per gallon, from 22¢ to 24¢ per gallon. H.B. 87 also scheduled two more 2¢-per-gallon increases: one to take effect July 1, 2004, resulting in a total rate of 26¢, and another scheduled to take effect July 1, 2005, resulting in a total rate of 28¢. But the third increase will not take effect if the Director of Transportation finds that 95% of the federal fuel tax revenue collected in Ohio is returned to Ohio for basic highway programs and that Ohio no

longer receives a net loss of federal fuel tax revenue because of federal tax incentives for ethanol- or alcohol-based fuels.

The bill delays the July 1, 2004, tax rate increase until July 1, 2005, and delays the possible July 1, 2005, increase to July 1, 2006.

The bill also delays other provisions of the motor fuel tax law that are coordinated with the second and third tax rate increases. One such provision affects the fuel use tax, which is levied on fuel purchased outside Ohio but used in Ohio. The use tax rate currently is 27¢ per gallon, which represents a 3¢ surcharge over the current 24¢ base tax rate levied on fuel distributed for sale in Ohio. (The base rate is affected by the 2¢ per year increases explained above.) Currently, the surcharge is scheduled to be reduced to 2¢ on July 1, 2004, at the same time the 24¢ base rate is scheduled to be increased to 26¢, which would result in a fuel use tax rate of 28¢ on July 1, 2004, until July 1, 2005. The bill extends this reduction by one year, until July 1, 2006. The fuel use tax surcharge also is currently scheduled to be reduced again on July 1, 2005, by 2¢, at the same time the third 2¢ increase is scheduled for the base rate.¹ The net result would be a fuel use tax rate equal to the base fuel tax rate, which would be 28¢ per gallon. The bill delays this second reduction in the surcharge by one year, so that it would not take effect until July 1, 2006. The contingency for the second surcharge reduction remains in place, but is not operative until July 1, 2006.

Another delayed provision affects the distribution of revenue arising from the scheduled fuel tax increases among counties, townships, and municipal corporations from the Gasoline Excise Tax Fund. Currently, a certain portion of that revenue is designated for distribution to those local governments. Currently, one-eighth of the net revenue is being distributed to local governments from the Fund. However, for the annual distribution cycle beginning August 15, 2004, one-sixth of the net revenue is scheduled to be distributed to local governments from the Fund. The bill delays this increase in the portion distributed to local governments until August 15, 2005. Similarly, beginning with the August 15, 2005, annual distribution cycle and continuing thereafter, 3/16 of the net revenue is scheduled to be distributed to local governments from the Fund. The bill delays that increase until August 15, 2006.

Finally, current law provides that, beginning August 15, 2004, specific amounts are to be deducted from the balance of money in the State and Local Government Highway Distribution Fund that otherwise would be distributed monthly to municipalities (\$248,625), townships (\$87,750), and counties

¹ *The scheduled July 2005 reduction in the fuel use tax will not take effect if the findings mentioned above are not made.*

(\$248,625) and credited instead to the Highway Operating Fund. The bill delays these monthly deductions and alternative creditings until August 15, 2005.

County fuel quality testing

(R.C. 319.56 and 1327.50(T))

The bill authorizes county auditors to establish motor fuel quality testing programs (for gasoline and diesel fuel) modeled on the uniform laws and regulations of the National Institute of Standards and Technology ("Handbook 130") and incorporating standards developed by the American Society for Testing and Materials (ASTM). Specifically, the bill permits a county auditor, or a designee, to do one or more of the following:

- Inspect and test motor fuel sold, distributed, or used in the county;
- Inspect locations in the county where a retailer sells (or offers for sale) any motor fuel to determine whether the retailer is in compliance with the testing program;
- Inspect any location where a retailer sells (or offers for sale) motor fuel, where a refiner refines or imports motor fuel, or where a distributor receives and distributes motor fuel. Inspections of such locations may be done upon the complaint of any person or upon the county auditor's own initiative.

Sampling

Motor fuel retailers, refiners, and distributors have to provide samples of fuel to the county auditor (or designee) immediately upon the county auditor's or designee's request, and in the quantity requested by the auditor or designee. The county auditor or designee must provide the container, and the county auditor or designee must draw or otherwise take the sample. The sample fuel must be provided without charge.

Testing

The county auditor or designee must test the drawn samples to determine whether the fuel complies with standards developed by the American Society for Testing and Materials Committee D02 on petroleum products and lubricants.²

² *ASTM Committee D02 is a technical committee of the ASTM with jurisdiction over petroleum products and lubricants. At the ASTM's website, it is described as overseeing the promulgation of standard specifications, classifications, test methods, practices, guides, and terminology for various petroleum products and lubricants.*

Test results must be provided to the fuel retailer, refiner, or distributor. Results must be documented separately from fuel quantity testing results.

If the testing shows that a fuel sample is below the tolerance established in the quality standards, the bill requires the fuel retailer, refiner, or distributor to "take actions to ensure the fuel is brought into compliance with the standards." The bill does not establish any deadline for these actions or prescribe a penalty for failure to take those actions.

Training of designated fuel inspectors

If a county auditor designates another person to conduct fuel quality testing, the designee must complete training before conducting any inspections. The training must be provided by the Director of Agriculture, another state, an Ohio state institution of higher education, an institution of higher education holding a certificate of authorization from the Board of Regents, or a private firm that is approved and monitored by the County Auditors Association of Ohio. The bill requires the Director of Agriculture to establish and provide training in fuel quality testing.

County auditor's current duties--weights and measures

Under current law, county auditors are responsible for enforcing the state's laws governing devices used to weigh and measure things in commerce, including motor fuel dispensing equipment. (See R.C. 319.55 to 319.60 and 1327.46 to 1327.49.)

Ohio Gasoline Practices Oversight Commission

(Section 3 of the bill)

Creation and composition

The bill creates the Ohio Gasoline Practices Oversight Commission, consisting of ten members. The President of the Senate and Speaker of the House of Representatives must each appoint three persons from their respective houses, with not more than two from each house being members of the same political party. The Governor, Attorney General, Auditor of State, and Consumers' Counsel must each appoint one person. (Section 3(A) of the bill.)

Officers, quorums, and vacancies

The Commission must elect from among its members a chairperson and vice-chairperson and must appoint a secretary, who need not be a member. Six members constitute a quorum, and the affirmative vote of six members is

necessary for any action the Commission takes. A vacancy does not impair the rights of a quorum to exercise all Commission rights and perform all Commission duties. A vacancy must be filled in the same manner as the original appointment. (Section 3(A) of the bill.)

Duties

The Commission must (1) examine and review the existing infrastructure that delivers and distributes petroleum products to and within Ohio, (2) examine the availability of petroleum products, current gasoline pricing practices, alternative fuels for motor vehicles, and government laws, rules, and regulations that affect the supply, delivery, and distribution of petroleum products generally, and gasoline in particular, to and within Ohio, and (3) conduct hearings on the issues identified in those examinations. After the hearings, the Commission must formulate and recommend a state gasoline policy to ensure (a) consumer confidence in Ohio's gasoline supply and delivery infrastructure and (b) a continuing and affordable supply of motor vehicle fuel within Ohio to the benefit of all Ohioans. (Section 3(B) of the bill.)

Investigatory power

The bill grants the Commission, in the discharge of its duties, authority throughout Ohio to administer oaths, issue subpoenas compelling the attendance of witnesses and testimony, and depose witnesses who are state residents. If a subpoena is not complied with or a witness refuses to testify on matters for which there can be lawful interrogation, any prosecuting attorney, on the Commission's application, must bring a contempt proceeding, presumably in a court of common pleas. (Section 3(C) of the bill.)

Reports and termination date

The Commission must issue an interim report to the General Assembly not later than 60 days after the bill's effective date and issue updated quarterly reports thereafter. Its final report must be issued during the final quarter of 2005, and the Commission will cease to exist on December 31, 2005. (Section 3(D) of the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-08-04	p. 1757

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