

HOUSE BILL NO. 341

Introduced: 01/18/83

Referred to Committee on Taxation: 01/18/83

Hearing: 1/26/83

Report: 01/27/83, Do Not Pass

Bill Killed: 01/28/83

1 House BILL NO. 341
 2 INTRODUCED BY Shy

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING
 5 ADMINISTRATION OF THE GASOLINE TAX LAW UNDER THE SAME
 6 PROCEDURES AS THE SPECIAL FUELS TAX LAW; AMENDING SECTIONS
 7 7-14-301, 7-14-304, 15-70-301 THROUGH 15-70-308, 15-70-311
 8 THROUGH 15-70-314, 15-70-322 THROUGH 15-70-333, 17-5-507,
 9 60-3-201, AND 60-3-202, MCA; REPEALING SECTIONS 15-70-201
 10 THROUGH 15-70-232, MCA; AND PROVIDING AN APPLICABILITY
 11 DATE."

12
 13 WHEREAS, the administration of Montana's gasoline
 14 license tax for more than half a century has required the
 15 payment of the tax at the time of manufacture or importation
 16 with each successor in the distribution sequence reimbursing
 17 his predecessor until the retailer collects the tax from the
 18 consumer; and

19 WHEREAS, this system requires hundreds of small
 20 business people to tie up thousands of dollars in tax
 21 payments for weeks or months until the product is delivered
 22 to the consumer and his payment is received; and

23 WHEREAS, the administration of Montana's special fuels
 24 tax law avoids placing this burden upon the people engaged
 25 in distribution of motor fuels by requiring collection of

1 the tax only from the ultimate consumer.

2 THEREFORE, the intention of this act is to require the
 3 state of Montana to collect its gasoline tax in the same
 4 manner as it collects the special fuels tax. To accomplish
 5 that end, this act repeals the basic gasoline license tax
 6 and amends the special fuels use tax to incorporate the
 7 gasoline tax within its provisions under a new highway fuel
 8 tax law.

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 15-70-301, MCA, is amended to read:

12 "15-70-301. Definitions. As used in this part, the
 13 following definitions shall apply:

14 (1) "Aviation dealer" means any person in this state
 15 engaged in the business of selling aviation gasoline, either
 16 from a wholesale or retail outlet.

17 (2) "Aviation gasoline" means gasoline or any other
 18 liquid fuel by whatsoever name such liquid fuel may be known
 19 or sold, compounded for use in and sold for use in aircraft,
 20 including but not limited to any and all such gasoline or
 21 liquid fuel meeting or exceeding the minimum specifications
 22 prescribed by the United States for use by its military
 23 forces in aircraft.

24 ~~††~~(3) "Bond" means:

25 (a) a bond duly executed by a ~~spectat~~ highway fuel

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dealer or special highway fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of such special highway fuel dealer or special highway fuel user arising out of this part; or

(b) a deposit with the department by the special highway fuel dealer or special highway fuel user, under such terms and conditions as the department of revenue may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2)(4) "Department" means the department of revenue.

(5) "Gasohol" means all products commonly or commercially known or sold as gasohol, produced and sold in Montana for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products.

(6) "Gasoline" includes all products commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the

purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include any special fuel as defined in subsection (13).

(7) "Highway fuel" means gasoline or any special fuel as defined in subsection (13).

(8) "Highway fuel dealer" means any person in the business of handling highway fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him or any person who provides any facility, with or without attended services, from which more than one highway fuel user obtains highway fuel for use in the fuel supply tank of a motor vehicle not then controlled by such dealer. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(9) "Highway fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state highway fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(3)(10) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(4)(11) "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or

corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

~~(5)~~⁽¹²⁾ "Public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been or shall be built and maintained with appropriated funds of the United States and which have been or shall be built and maintained with funds of the state of Montana or any political subdivision thereof or which have been or shall be dedicated to public use or have been acquired by eminent domain or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

~~(6)~~⁽¹³⁾ "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

~~(7)~~ "Special fuel dealer" means any person in the business of handling special fuel who delivers any part

~~thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him or any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by such dealer. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.~~

~~(8)~~ "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

~~(9)~~⁽¹⁴⁾ "Use" means either the receipt, delivery, or placing of special fuels highway fuel by a special highway fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while such vehicle is within this state or the consumption by a special highway fuel user of special fuels highway fuel in propulsion of a motor vehicle on the highways of this state."

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

"15-70-302. Special Highway fuel dealer's licenses and special highway fuel user's permits required -- exceptions.

(1) It shall be unlawful for any person to act as a special

1 ~~highway~~ fuel dealer in this state unless such person is the
2 holder of an uncanceled fuel dealer's license issued to him
3 by the department.

4 (2) Every ~~special highway~~ fuel user shall obtain
5 annually from the department, prior to the use of such
6 ~~special highway~~ fuel for the propulsion of a motor vehicle
7 or vehicles in this state, a ~~special highway~~ fuel user's
8 permit and shall at all times display the original or a
9 reproduced copy of the permit in each such vehicle or
10 vehicles operated by him upon the highways as herein defined
11 which shall be exhibited for inspection on request of any
12 checking station officer, Montana highway patrol officer,
13 authorized employee of the department, or any other law
14 enforcement officer. The ~~special highway~~ fuel user shall be
15 responsible for reproducing clear and legible copies of the
16 permit.

17 (3) A ~~special highway~~ fuel user's permit is not
18 required of any person whose sole use of ~~special highway~~
19 fuel is for the propulsion of a privately operated passenger
20 automobile provided the person purchases ~~special highway~~
21 fuel, tax paid, from a licensed ~~special highway~~ fuel dealer
22 in this state. For purposes of this exemption, a privately
23 operated passenger vehicle does not include a motor vehicle
24 used for the transportation of persons for hire or for
25 compensation or designed, used, or maintained primarily for

1 transportation of property.

2 (4) Any out-of-state user who operates a ~~special~~ ~~fuel~~
3 ~~motor~~ vehicle solely for recreation or for religious,
4 charitable, educational, or other eleemosynary purposes
5 shall secure a ~~special highway~~ fuel user's courtesy vehicle
6 permit. The permit shall not be transferable and shall be
7 valid for 90 days. Permits will be issued at no cost to the
8 user by the department, scale house personnel, and gross
9 vehicle weight patrol crews. The department may require the
10 user who has fuel capacity in excess of 30 gallons to file a
11 report and pay the tax on fuel used in Montana on which the
12 tax has not been paid."

13 Section 3. Section 15-70-303, MCA, is amended to read:

14 "15-70-303. Application for license or permit. (1)
15 Application for a ~~special highway~~ fuel dealer's license or a
16 ~~special highway~~ fuel user's permit shall be made to the
17 department unless otherwise provided herein.

18 (2) The application shall be filed upon a form
19 prepared and furnished by the department. The application
20 shall contain such information as the department deems
21 necessary."

22 Section 4. Section 15-70-304, MCA, is amended to read:

23 "15-70-304. Bonding, release of surety, and additional
24 bond. (1) Except as herein provided, no ~~special highway~~ fuel
25 dealer's license or ~~special highway~~ fuel user's permit shall

1 may be issued to any person or continued in force unless
 2 such person has furnished bond, as defined in 15-70-301 and
 3 in such form as the department may require, to secure its
 4 compliance with this part and the payment of any and all
 5 taxes, interest, and penalties due and to become due
 6 hereunder. Upon application, the department may waive the
 7 bond requirement of any resident ~~special~~ highway fuel user
 8 who establishes to the reasonable satisfaction of the
 9 department that the tax as herein provided is not delinquent
 10 or that interest or penalties are not accrued under the
 11 provisions of this part. Upon application, the department
 12 shall waive the bond requirement of any public contractor
 13 licensed under Title 15, chapter 50, who has posted a
 14 performance bond conditioned on payment of all lawful taxes
 15 with the contracting entity.

16 (2) The total amount of the bond or bonds required of
 17 any ~~special~~ highway fuel dealer shall be equivalent to twice
 18 his estimated monthly tax payments and the total amount of
 19 the bond or bonds required of any ~~special~~ highway fuel user
 20 shall be equivalent to twice his estimated quarterly tax
 21 payments as hereinafter provided, determined in such manner
 22 as the department may deem proper; provided, however, that
 23 the total amount of the bond or bonds shall never be less
 24 than \$5,000 for any ~~special~~ highway fuel user awarded a
 25 contract in accordance with 15-70-321 or less than \$500 for

1 any other ~~special~~ highway fuel user and not less than \$1,000
 2 for a ~~special~~ highway fuel dealer.

3 (3) Any surety on a bond furnished by a ~~special~~
 4 highway fuel dealer or ~~special~~ highway fuel user as provided
 5 herein shall be released and discharged from any and all
 6 liability to the state accruing on such bond after the
 7 expiration of 30 days from the date upon which such surety
 8 shall have lodged with the department a written request to
 9 be released and discharged, but this provision shall not
 10 operate to relieve, release, or discharge the surety from
 11 any liability already accrued or which shall accrue before
 12 the expiration of the 30-day period. The department shall,
 13 promptly upon receiving any such request, notify the ~~special~~
 14 highway fuel dealer or ~~special~~ highway fuel user who
 15 furnished the bond, and unless the ~~special~~ highway fuel
 16 dealer or ~~special~~ highway fuel user shall, on or before the
 17 expiration of the 30-day period, file a new bond in
 18 accordance with the requirements of this section or make a
 19 deposit in lieu thereof as provided in 15-70-301(1), the
 20 department forthwith shall cancel the ~~special~~ highway fuel
 21 dealer's license or ~~special~~ highway fuel user's permit.

22 (4) The department may require a ~~special~~ highway fuel
 23 dealer or ~~special~~ highway fuel user to give a new or
 24 additional surety bond or to deposit additional securities
 25 of the character specified in 15-70-301(1) if, in its

1 opinion, the security of the surety bond theretofore filed
2 by such ~~special highway~~ fuel dealer or ~~special highway~~ fuel
3 user or the market value of the properties deposited as
4 security by such ~~special highway~~ fuel dealer or ~~special~~
5 ~~highway~~ fuel user shall become impaired or inadequate, and
6 upon failure of the ~~special highway~~ fuel dealer or ~~special~~
7 ~~highway~~ fuel user to give such new additional surety bond or
8 to deposit additional securities within 30 days after being
9 requested so to do by the department, said department
10 forthwith shall cancel his license."

11 Section 5. Section 15-70-305, MCA, is amended to read:
12 "15-70-305. Issuance of license or permit -- grounds
13 for refusal -- hearing. (1) Upon receipt of the application
14 and bond in proper form, the department shall issue to the
15 applicant a license or permit to act as a ~~special highway~~
16 fuel dealer or ~~special highway~~ fuel user; provided, however,
17 the department may refuse to issue a ~~special highway~~ fuel
18 dealer's license or a ~~special highway~~ fuel user's permit to
19 any person:

20 (a) who formerly held a license or permit which, prior
21 to the time of filing application, has been revoked for
22 cause;

23 (b) who is not the real party in interest and where
24 the license or permit of the real party in interest has been
25 revoked for cause prior to the time of filing such

1 application; or

2 (c) upon other sufficient cause being shown.

3 (2) Before such refusal, the department shall grant
4 the applicant a hearing and shall grant him at least 10
5 days' written notice of the time and place thereof.

6 (3) Each ~~special highway~~ fuel dealer's license or
7 ~~special highway~~ fuel user's permit shall be valid until
8 suspended or revoked for cause or otherwise canceled.

9 (4) No ~~special highway~~ fuel dealer's license or
10 ~~special highway~~ fuel user's permit shall be transferable."

11 Section 6. Section 15-70-306, MCA, is amended to read:
12 "15-70-306. Revocation, suspension, and cancellation.

13 (1) The department may revoke the license or permit of any
14 ~~special highway~~ fuel dealer or ~~special highway~~ fuel user or
15 any ~~special highway~~ fuel vehicle permit for reasonable
16 cause. Before revoking such license or permit, the
17 department shall notify the licensee or permittee of its
18 intention so to do, by either certified or registered mail
19 addressed to his last-known address shown in the files of
20 the department, requiring him to appear before the
21 department on a day and hour specified in such notice not
22 more than 30 days or less than 10 days from date of such
23 notice and show cause, if any he has, why the license or the
24 permit or each of them should not be revoked; provided,
25 however, that at any time prior to and pending such hearings,

1 the department may in the exercise of reasonable discretion
2 suspend such license or permit.

3 (2) Upon revocation by the department of any such
4 license or permit, the holder thereof shall immediately
5 surrender the same to the department for cancellation."

6 Section 7. Section 15-70-307, MCA, is amended to read:

7 "15-70-307. Surrender of permit upon use
8 discontinuance. The department shall cancel any license to
9 act as a ~~special~~ highway fuel dealer or any ~~special~~ highway
10 fuel user permit immediately upon surrender thereof by the
11 holder."

12 Section 8. Section 15-70-308, MCA, is amended to read:

13 "15-70-308. Temporary cash compliance bond. (1) A
14 ~~special~~ highway fuel user subject to the licensing
15 requirements of this part may obtain a temporary 30-day
16 operating permit by posting a \$100 cash compliance bond on
17 each vehicle at any weigh station, or with any person
18 authorized by the department of highways to issue a cash
19 compliance bond.

20 (2) If the user files the bond required by 15-70-304,
21 files a ~~special~~ highway fuel tax return for the 30-day
22 period, and otherwise complies with the requirements of this
23 part, the \$100 payment received for the temporary permit
24 must be returned to the user. If the user fails to file the
25 bond required by 15-70-304 or the ~~special~~ highway fuel tax

1 return for the 30-day period or fails to comply with the
2 requirements of this part, the \$100 payment is forfeited to
3 the state.

4 (3) The temporary permit is issued subject to the same
5 restrictions and requirements as the annual permit."

6 Section 9. Section 15-70-311, MCA, is amended to read:

7 "15-70-311. ~~Special~~ Highway fuel user's temporary trip
8 permits -- nonresident agricultural harvesting equipment
9 ~~special~~ highway fuel permit. (1) Any person operating a
10 ~~special-fuel-powered motor~~ vehicle upon the public roads and
11 highways of this state who fails or neglects to carry in the
12 vehicle a valid ~~special~~ highway fuel vehicle permit, as
13 provided by 15-70-302, shall be required to purchase a
14 ~~special~~ highway fuel user's temporary trip permit. The
15 permits will be issued by scale house personnel, gross
16 vehicle weight patrol crews, Montana highway patrolmen, and
17 such other enforcing agents as the department of revenue may
18 prescribe by order or rule.

19 (2) Any nonresident upon entering the state with
20 agricultural harvesting equipment powered by ~~special~~ highway
21 fuel and operating upon the public roads and highways of
22 this state who fails or neglects to carry in or on equipment
23 a valid ~~special~~ highway fuel vehicle permit, as provided by
24 15-70-302, shall be required to purchase a nonresident
25 agricultural harvesting equipment ~~special~~ highway fuel

1 permit. The permit will be issued by scale house personnel,
2 gross vehicle weight patrol crews, Montana highway
3 patrolmen, and such other enforcing agents as the department
4 may prescribe by order or rule."

5 Section 10. Section 15-70-312, MCA, is amended to
6 read:

7 "15-70-312. Fees for temporary permits -- duration of
8 temporary permits. (1) The temporary ~~special~~ highway fuel
9 permits shall cost the ~~special-fuel~~ motor vehicle user a fee
10 of \$30. The permit shall be valid for a period of time not
11 to exceed 72 hours and will be automatically void should the
12 vehicle leave the state of Montana during the 72-hour
13 period.

14 (2) A temporary ~~special~~ highway fuel permit for a
15 nonresident operating agricultural harvesting equipment
16 shall cost \$30 per unit for a period beginning July 1 and
17 ending October 31. The permit shall not be transferable. A
18 unit shall be defined as:

19 (a) one truck suitable for hauling produce;

20 (b) one harvesting machine; and

21 (c) pickup trucks and any other accessory vehicles.

22 (3) All fees collected shall be remitted to the
23 department or deposited directly in the earmarked revenue
24 fund for the department of highways."

25 Section 11. Section 15-70-313, MCA, is amended to

1 read:

2 "15-70-313. Department to furnish forms. ~~Special~~
3 Highway fuel temporary permits, nonresident temporary
4 permits, remittance forms, and any other necessary papers
5 for the accounting and enforcement of 15-70-311 through
6 15-70-314 shall be furnished by the department."

7 Section 12. Section 15-70-314, MCA, is amended to
8 read:

9 "15-70-314. Penalty for operation without temporary
10 permit -- compliance bond -- policy continued. (1) Any
11 unlicensed user of ~~special-fuel~~ motor vehicles operating
12 within the state of Montana without making application for
13 said temporary permit and paying the specified fee shall be
14 guilty of committing a misdemeanor and upon conviction be
15 fined \$50.

16 (2) Nothing contained herein shall affect the existing
17 policy of accepting a compliance bond to be retained for use
18 by the department and to be imposed at the discretion of the
19 enforcing agency."

20 NEW SECTION. Section 13. Tax on gasoline. (1) The
21 department shall, under rules adopted by it, collect or
22 cause to be collected:

23 (a) from the owners or operators of aircraft a tax in
24 an amount equal to 1 cent for each gallon of aviation
25 gasoline when actually sold or used as fuel for aircraft,

which shall be allocated to the department of commerce as provided by 67-1-301; and

(b) from the owners or operators of motor vehicles 8 cents for each gallon of gasoline:

(i) when actually sold or used as fuel for propelling motor vehicles upon the public highways or streets within the state; or

(ii) when used in motor vehicles, motorized equipment, and the internal combustion of engines, including stationary engines, used in connection with work performed under contracts pertaining to the construction, reconstruction, or improvement of any highway or street and its appurtenances awarded by public agencies, including federal, state, county, municipal, or other political subdivisions.

(2) Gasohol shall be subject to gasoline license taxes in accordance with the following schedule:

(a) beginning April 1, 1979, gasohol shall be taxed at the rate of 2 cents per gallon;

(b) beginning April 1, 1985, gasohol shall be taxed at the rate of 4 cents per gallon;

(c) beginning April 1, 1987, gasohol shall be taxed at the rate of 6 cents per gallon.

(3) If at any time the gasoline license tax is lower than the current applicable tax on gasohol, the lower tax rate shall be adopted for gasohol.

Section 14. Section 15-70-322, MCA, is amended to read:

"15-70-322. Tax on use of special fuels. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways equivalent to the lawful tax levied on motor fuel under 15-70-321. Said tax, with respect to all special fuel delivered by a ~~special~~ highway fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such ~~special~~ highway fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a ~~special~~ highway fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter provided. The United States, Montana and all other states, and the counties, incorporated cities and towns, and school districts of this state are exempt from the levy and imposition of this tax."

Section 15. Section 15-70-323, MCA, is amended to read:

"15-70-323. ~~Special Highway~~ fuel dealer's and ~~special~~ highway fuel user's records. (1) Every ~~special highway~~ fuel dealer, ~~special every highway~~ fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing ~~special highway~~ fuel in this state shall keep such records, receipts, and invoices and other pertinent papers with respect thereto as the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) Said records, receipts, invoices, and other pertinent papers shall be required to be kept for a period of at least 5 years from the date on which the return to which they relate was required to have been made."

Section 16. Section 15-70-324, HCA, is amended to read:

"15-70-324. Examination of records. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any ~~special highway~~ fuel dealer or ~~special highway~~ fuel user or any person dealing in, transporting, or storing ~~special highway~~ fuel as defined in this part and to investigate the character of the disposition which any person makes of such ~~special highway~~ fuel in order to ascertain and determine whether all excise taxes due

hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they shall be furnished to the department for review and shall be accompanied by the ~~special highway~~ fuel dealer or ~~special highway~~ fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing unless the result of said examination is the payment of a tax deficiency.

(3) For the purpose of enforcing the provisions of this part, the fact that a ~~special highway~~ fuel dealer or a ~~special highway~~ fuel user has placed or received ~~special highway~~ fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such ~~special highway~~ fuel has been delivered by the ~~special highway~~ fuel dealer or ~~special highway~~ fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the ~~special highway~~

1 fuel tax law of any other state, the District of Columbia,
2 the United States, its territories and possessions, or the
3 provinces of the Dominion of Canada, forward to such
4 officials any information which it may have relative to the
5 receipt, storage, delivery, sale, use, or other disposition
6 of ~~special~~ highway fuel by any ~~special~~ highway fuel dealer
7 or ~~special~~ highway fuel user, provided such other state or
8 states furnish like information to this state."

9 Section 17. Section 15-70-325, MCA, is amended to
10 read:

11 "15-70-325. Returns. (1) For the purpose of
12 determining the amount of his liability for the tax herein
13 imposed, each ~~special~~ highway fuel dealer shall file with
14 the department a monthly tax return and each ~~special~~ highway
15 fuel user shall file with the department, on forms
16 prescribed by said department, a quarterly tax return.

17 (2) Upon annual application, the department shall
18 waive the filing of a quarterly tax return of any ~~special~~ highway
19 fuel user who establishes that such user's annual
20 tax liability is or will be \$100 or less.

21 (3) Such user shall make an annual report and return
22 to the department on forms prescribed by said department, on
23 or before January 31 of each year. Should the department
24 determine that a user filing annual returns as herein
25 provided is delinquent in making reports and payments, it

1 shall require such person to file quarterly returns as
2 herein provided. Such return, annual or quarterly, shall
3 contain a declaration by the person making the same to the
4 effect that the statements contained are true and are made
5 under penalties of perjury, which declarations shall have
6 the same force and effect as a verification. The return
7 shall show such information as the department may reasonably
8 require for the proper administration and enforcement of
9 this part.

10 (4) If a ~~special~~ highway fuel dealer or user is also a
11 wholesale distributor of ~~special~~ highway fuel at a location
12 where ~~special~~ highway fuel is delivered into the supply tank
13 of a motor vehicle and if separate storage is provided
14 thereat from which ~~special~~ highway fuel is delivered or
15 placed into fuel supply tanks of motor vehicles, the return
16 to the department need not include inventory control data
17 covering bulk storage from which wholesale distribution of
18 ~~special~~ highway fuel is made.

19 (5) The ~~special~~ highway fuel dealer or ~~special~~ highway
20 fuel user shall file the return on or before the last day of
21 the next succeeding calendar month following the period to
22 which it relates; provided, however, that for good cause the
23 department may grant a taxpayer a reasonable extension of
24 time for filing but not to exceed 30 days."

25 Section 18. Section 15-70-326, MCA, is amended to

1 read:

2 "15-70-326. Computation. The tax imposed by this part
3 shall be computed as follows:

4 (1) With respect to ~~special~~ highway fuel used by the
5 seller thereof as a ~~special~~ highway fuel dealer, by
6 multiplying the tax rate per gallon provided in this part by
7 the number of gallons of ~~special~~ highway fuel delivered or
8 placed by him into the supply tank or tanks of a motor
9 vehicle;

10 (2) With respect to ~~special~~ highway fuel as to which
11 the tax has not been paid to a ~~special~~ highway fuel dealer
12 in this state and which has been consumed by the purchaser
13 thereof as a ~~special~~ highway fuel user, by multiplying the
14 tax rate per gallon provided in this part by the number of
15 gallons of ~~special~~ highway fuel consumed by him in the
16 propulsion of motor vehicles on the highways of this state."

17 Section 19. Section 15-70-327, MCA, is amended to
18 read:

19 "15-70-327. Payment -- deductions. The tax return
20 shall be accompanied by remittance covering the tax due
21 hereunder on account of the use as defined in 15-70-301 of
22 ~~special~~ highway fuels during the preceding period. A
23 licensed ~~special~~ highway fuel dealer is allowed a deduction
24 equal to 1% of the first 6 cents per gallon of the taxes
25 paid by the dealer under 15-70-321 as an allowance for

1 shrinkage, spillage, and evaporation of ~~special~~ highway
2 fuels and other losses beyond the dealer's control."

3 Section 20. Section 15-70-328, MCA, is amended to
4 read:

5 "15-70-328. Credits. (1) Any licensed ~~special~~ highway
6 fuel user or licensed ~~special~~ highway fuel dealer who has
7 paid a ~~special~~ highway fuel tax either directly or to the
8 vendor from whom it was purchased shall receive credit in
9 the amount of any tax paid on ~~special~~ highway fuel exported
10 for use outside of this state or for any use off the public
11 roads and highways of this state or for any overpayment of
12 ~~special~~ highway fuel taxes not due to the state. ~~Special~~
13 Highway fuel carried from this state in the fuel tank of a
14 motor vehicle is deemed to be exported from this state.

15 (2) Any licensed ~~special~~ highway fuel user who
16 purchases a temporary ~~special~~ highway fuel permit and
17 thereafter applies for a ~~special~~ highway fuel vehicle permit
18 for the same vehicle in less than 11 days after the
19 temporary permit is issued shall receive credit in the
20 amount of the temporary permit fee."

21 Section 21. Section 15-70-329, MCA, is amended to
22 read:

23 "15-70-329. Procedures for credits. (1) Should a
24 licensed ~~special~~ highway fuel user or licensed ~~special~~
25 highway fuel dealer desire to receive refund of ~~special~~

1 ~~highway~~ fuel taxes or of the temporary permit fee, the user
2 or dealer shall make a signed and written request to the
3 department requesting those amounts then due. Any amount
4 determined to be creditable by the department under
5 15-70-328 shall first be credited on any amounts then due
6 and payable from the ~~special~~ ~~highway~~ fuel dealer or ~~special~~
7 ~~highway~~ fuel user to whom the refund is due, and the
8 department shall then certify the balance to the credit of
9 the dealer or user. A warrant shall be drawn upon the state
10 treasurer for the amount of such claim, and same shall be
11 paid in the same manner as other claims against the state
12 are paid.

13 (2) In case any ~~special~~ ~~highway~~ fuel user or ~~special~~
14 ~~highway~~ fuel dealer fails or neglects to file a request for
15 refund of ~~special~~ ~~highway~~ fuel taxes within 12 months from
16 the date his ~~special~~ ~~highway~~ fuel license became canceled,
17 the department shall be under no obligation to make a
18 refund."

19 Section 22. Section 15-70-330, MCA, is amended to
20 read:

21 "15-70-330. Penalties for refusal or failure to file
22 return or pay tax when due. (1) In case of any ~~special~~
23 ~~highway~~ fuel dealer or ~~special~~ ~~highway~~ fuel user who refuses
24 or fails to file a return required by this part within the
25 time prescribed by 15-70-103 and 15-70-325, there is hereby

1 imposed a penalty of \$25 or a sum equal to 10% of the tax
2 due, whichever is greater, together with interest at the
3 rate of 1% on the tax due for each calendar month or
4 fraction thereof during which such refusal or failure
5 continues; provided, however, that if any such ~~special~~
6 ~~highway~~ fuel dealer or ~~special~~ ~~highway~~ fuel user shall
7 establish to the satisfaction of the department that his
8 failure to file a return within the time prescribed was due
9 to reasonable cause, the department shall waive the penalty
10 provided by this section.

11 (2) Where a ~~special~~ ~~highway~~ fuel dealer or a ~~special~~
12 ~~highway~~ fuel user files a return but fails to pay in whole
13 or in part the tax due hereunder, there shall be added to
14 the amount due and unpaid interest at the rate of 1% per
15 month or fraction thereof from the date such tax was due to
16 the date of payment in full thereof."

17 Section 23. Section 15-70-331, MCA, is amended to
18 read:

19 "15-70-331. Deficiency. If it be determined by the
20 department that the tax reported by any ~~special~~ ~~highway~~ fuel
21 dealer or ~~special~~ ~~highway~~ fuel user is deficient, it shall
22 proceed to assess the deficiency on the basis of information
23 available to it and there shall be added to this deficiency
24 interest at the rate of 1% per month or fraction thereof
25 from the date the return was due."

Section 24. Section 15-70-332, MCA, is amended to read:

"15-70-332. Determination if no return made. (1) If any ~~special~~ highway fuel dealer or ~~special~~ highway fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a ~~special~~ highway fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the ~~special~~ highway fuel dealer or ~~special~~ highway fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be."

Section 25. Section 15-70-333, MCA, is amended to read:

"15-70-333. Fraudulent return. If any ~~special~~ highway fuel dealer or ~~special~~ highway fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this part, there shall be added to the amount of deficiency

determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction thereof on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law."

Section 26. Section 7-14-301, MCA, is amended to read:

"7-14-301. Local option motor fuel excise tax authorized. (1) The people of a county by initiative may impose a motor fuel excise tax, in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads. The initiative must specify the tax is to be collected by the department of revenue.

(2) Such a motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of such an initiative.

(3) ~~Every distributor shall pay the~~ The motor fuel excise tax must be paid to the agency specified in the initiative as provided in subsection (1). When the tax is collected by the department of revenue, each ~~distributor~~ highway fuel dealer and each highway fuel user shall render a monthly statement to the department of all gasoline ~~distributed delivered into the supply tanks of motor vehicles for highway use~~ distributed delivered into the supply tanks of motor vehicles for highway use during the preceding calendar month

1 in the county in which it is sold to the ultimate consumer
2 and such other information as the department may reasonably
3 require in order to administer the motor fuel excise tax.

4 (4) The information, recordkeeping, and examination of
5 records provisions of Title 15, chapter 70, apply to this
6 part.

7 ~~(5) The department of revenue collecting the tax~~
8 ~~authorized under subsection (1) shall establish procedures~~
9 ~~to provide a refund to a person who has paid the excise tax~~
10 ~~but who can substantiate that the motor fuel was purchased~~
11 ~~for a use other than on public highways, streets, and roads.~~

12 ~~(6) [5] In this part, the terms "distributor",~~
13 ~~"gasoline", "import", "motor vehicle", "person", and "use"~~
14 ~~have the meanings ascribed to them in 15-70-201 15-70-301."~~

15 Section 27. Section 7-14-304, MCA, is amended to read:

16 "7-14-304. Lien for delinquent tax -- Interest and
17 penalty -- statute of limitations. (1) The lien provisions
18 of ~~15-70-211 15-70-334~~ apply to all delinquent motor fuel
19 excise taxes, penalties, and interest due from a distributor
20 under this part. Such a lien has the same force and effect
21 as a lien for delinquent gasoline ~~license~~ highway fuel tax
22 imposed under Title 15, chapter 70, part 2 3.

23 (2) Penalties and interest for any delinquent motor
24 fuel excise tax are the same as provided for the gasoline
25 ~~license~~ highway fuel tax under Title 15, chapter 70, part 2

1 3.

2 (3) Any action to recover a delinquent motor fuel
3 excise tax must be initiated within 3 years from the due
4 date of the return or the date of filing the return,
5 whichever period expires later. Upon discovery of fraud, an
6 action must be initiated within 3 years of the discovery."

7 Section 28. Section 17-5-507, MCA, is amended to read:

8 "17-5-507. State pledge of gasoline tax -- use. (1)

9 The state pledges and appropriates and directs to be
10 credited as received to the sinking fund account, as herein
11 defined, that portion of the net proceeds from the
12 collection of gasoline taxes which may from time to time be
13 needed to comply with the principal and interest and reserve
14 requirements stated in subsection (2) of this section. The
15 pledge and appropriation herein made shall be and remain at
16 all times a first and prior charge upon all money received
17 as net proceeds from the collection of gasoline taxation.
18 The term "net proceeds", as used herein, means all funds on
19 hand in the treasury of the state as of any date, derived
20 from the collection of the license tax imposed on gasoline
21 distributors by ~~15-70-204 [section 13]~~, enacted by section
22 3, Chapter 369, Laws of 1969, as amended by section 1,
23 Chapter 202, and by section 2, Chapter 204, Laws of 1971,
24 and by section 90, Chapter 516, Laws of 1973, or by any
25 subsequent enactment, less the amount of all refunds of such

1 taxes for which applications have been made pursuant to law
2 but which have not yet been paid or rejected. The term
3 "sinking fund account", as used herein, means a separate
4 highway subfund which is created within the sinking fund
5 established by 17-2-102 and shall be segregated by the
6 treasurer from all other money in that or any other fund in
7 the treasury and used only to pay highway bonds and interest
8 thereon when due, so long as any such bonds or interest
9 remain unpaid.

10 (2) Money in the sinking fund account shall be used:
11 first, to pay interest and principal when due on highway
12 bonds; second, to accumulate a reserve in the amount
13 required below, for the further security of such payments;
14 and third, to maintain this reserve in an amount at least
15 equal, after each interest and principal payment, to the
16 maximum amount of interest and principal which will become
17 due on all such bonds which are then outstanding in any
18 subsequent fiscal year.

19 (3) Money at any time received in the sinking fund
20 account in excess of the principal, interest, and reserve
21 requirements stated in subsection (2) shall be transferred
22 by the treasurer to the earmarked revenue fund, highway
23 account. If the balance at any time on hand in the sinking
24 fund account is not sufficient for compliance with
25 subsection (2), the treasurer shall credit to said account

1 an amount sufficient to restore said balance from the next
2 receipts of net proceeds from the collection of gasoline
3 taxes."

4 Section 29. Section 60-3-201, HCA, is amended to read:

5 "60-3-201. Distribution and use of proceeds of
6 ~~gasoline-dealers'-license~~ highway fuel tax. (1) All money
7 received in payment of license taxes under the ~~Distributor's~~
8 ~~Gasoline-License-Tax-Act~~ except these amounts paid out of
9 the department of revenue's ~~suspense~~ ~~account~~ ~~for~~ ~~gasoline~~
10 ~~tax-refund~~ Title 15, chapter 70, part 3, shall be used and
11 expended as provided in this section. So much of that money
12 on hand at any time as may be needed to pay highway bonds
13 and interest thereon when due and to accumulate and maintain
14 a reserve therefor, as provided in laws and in resolutions
15 of the state board of examiners authorizing such bonds,
16 shall be deposited in the highway bond account in the
17 sinking fund established by 17-2-102. Subject to that
18 provision, 9/10 of 1% of all money shall be deposited in the
19 state park account and 1/2 of 1% of all money shall be
20 deposited in a snowmobile account in the earmarked revenue
21 fund. The remainder of the money shall be used by the
22 department of highways on the federal-aid highways in this
23 state selected and designated under Title 23, U.S.C., and on
24 highways leading from each county seat in the state to the
25 federal highway system of federal-aid roads where the county

1 seat is not on the system and on the other roads which have
2 been or may be authorized by the laws of Montana and for
3 collection of the license taxes and the enforcement of the
4 Montana highway code under Article VIII, section 6, of the
5 constitution of this state.

6 (2) The department shall, in expending this money,
7 carry forward construction from year to year, using the
8 money expended through the matching up of federal-aid
9 allotments to Montana upon the federal highway system in the
10 various parts of the state in accordance with 60-3-204
11 through 60-3-206. Nothing in this title conflicts with Title
12 23, U.S.C., and the rules by which it is administered.

13 (3) The department may enter into cooperative
14 agreements with the national park service and the federal
15 highway administration for the purpose of maintaining
16 national park approach roads in Montana.

17 (4) Money credited to the state park account in the
18 earmarked revenue fund shall be used only for the creation,
19 improvement, and maintenance of state parks where
20 motorboating is allowed ~~except for the payment of refunds~~
21 ~~under 15-70-221 through 15-70-226~~. The legislature finds
22 that of all the fuel sold in the state for consumption in
23 internal combustion engines, not less than 9/10 of 1% is
24 used for propelling boats on waterways of this state.

25 (5) Money credited to the snowmobile account may be

1 used only to develop and maintain facilities open to the
2 general public at no admission cost and to promote
3 snowmobile safety. For the 2 years following July 1, 1977,
4 15% of the amount deposited in the snowmobile fund each year
5 shall be used to promote snowmobile safety. Thereafter, 10%
6 of the amount deposited in the snowmobile fund shall be used
7 to promote snowmobile safety. The legislature finds that of
8 all fuels sold in this state for consumption in internal
9 combustion engines, not less than 1/2 of 1% is used for
10 propelling snowmobiles on public lands of this state."

11 Section 30. Section 60-3-202, MCA, is amended to read:

12 "60-3-202. Funding highway system maintenance. For the
13 purpose of funding the increased cost of maintaining the
14 state highway system as designated in 60-2-105, 1/4 cent per
15 gallon of the ~~special fuel tax collected under 15-70-321 and~~
16 ~~1/4-cent-per-gallon-of-the-gasoline-license highway fuel tax~~
17 collected under ~~15-70-204 Title 15, chapter 70, part 3,~~ are
18 allocated therefor."

19 NEW SECTION. Section 31. Repealer. Sections 15-70-201
20 through 15-70-232, MCA, are repealed.

21 NEW SECTION. Section 32. Applicability. This act
22 applies to fuel tax collections on and after July 1, 1984.

23 NEW SECTION. Section 33. Transition. The department
24 of revenue has the authority to make rules to implement on
25 July 1, 1984, collection of gasoline taxes under the

1 procedures now used to collect special fuels taxes, or by
2 such other system the department considers appropriate, and
3 to administer gasoline tax and special fuels tax laws as a
4 unified procedure thereafter. Until July 1, 1984,
5 collection of gasoline and special fuels taxes will be
6 accomplished under the law and the department rules that
7 were in effect on September 30, 1983.

8 NEW SECTION. Section 34. Codification instruction.
9 Section 13 is intended to be codified as an integral part of
10 Title 15, chapter 70, part 3, and the provisions of Title
11 15, chapter 70, part 3, apply to section 13.

-End-

STATE OF MONTANA

REQUEST NO. 181-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 20, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 341 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 341 requires administration of the gasoline tax law under the same procedures as the special fuels tax law; and provides an applicability date.

ASSUMPTIONS:

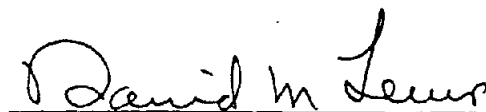
- 1) Current law expenditures (FY 83 salaries).
 - 2 FTE - administration and collection of gasoline license tax - FY total \$37,404.
 - 2 FTE - processing gasoline refunds - FY total \$30,500.
- 2) Proposed law expenditures (FY 83 salaries)
 - 6 additional full-time auditors, 3 FTE in processing section, 3 FTE in collection section, additional travel expenses - FY total \$253,000.
- 3) FY 83 salary expenditures remain the same for the biennium.
- 4) Number of taxpayers filing returns
 - Current Law - 70 distributors.
 - Proposed Law - 12,000 retailers and highway fuel users.
- 5) The increase in the number of taxpayers could result in the loss of revenue due to the increased difficulty of collecting the tax. The magnitude cannot be estimate.

FISCAL IMPACT:Total Revenue:

The revenue decrease cannot be estimated. However, in view of the large number of additional taxpayers, some increased difficulty in enforcing the law and consequent loss in revenue is anticipated.

	<u>FY 84</u>	<u>FY 85</u>
<u>Total Expenditures:</u>		
Under Current Law	\$ 68,000	\$ 68,000
Under Proposed Law	253,000	253,000
Estimated Increase	<u>\$185,000</u>	<u>\$185,000</u>

FISCAL NOTE 7:2/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-25-83