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SB BILL NO. 53

INTRODUCED BY

Mark Sale

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "SPECIAL FUEL" AND OF "SPECIAL FUEL USER"; ELIMINATING CERTAIN LICENSING AND REPORTING REQUIREMENTS FOR VEHICLES OVER 26,000 POUNDS OPERATING INTRASTATE ONLY; MAKING THE TEMPORARY CASH COMPLIANCE BOND FOR A TEMPORARY OPERATING PERMIT AVAILABLE ONLY FOR VEHICLES OPERATING SOLELY INTRASTATE; CLARIFYING THAT CERTAIN DYED SPECIAL FUEL IS SUBJECT TO THE TAX ON SPECIAL FUEL; MAKING THE SELLER OF SPECIAL FUEL THAT IS SUBJECT TO TAX JOINTLY AND SEVERALLY LIABLE FOR THE TAX AND SUBJECT TO CIVIL PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-308, 15-70-321, AND 15-70-330, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

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

- (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business of farming or ranching and whose primary source of earned income is from the business of farming or ranching.
- (2) "Bond" means:
- (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or
- (b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

1 (3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
2 term does not mean special fuel delivered into the supply tank of a motor vehicle.

3 (4) "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel
4 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user
5 of the unique device.

6 (5) "Department" means the department of transportation.

7 (6) (a) "Distributed" means, at the time ~~that~~ special fuel is withdrawn, the withdrawal from a
8 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
9 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
10 the following:

11 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
12 tanks in this state;

13 (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at
14 the refinery or terminal; or

15 (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

16 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
17 distributed only by a person who is the holder of a valid distributor's license.

18 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
19 or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this
20 state.

21 (7) "Distributor" means:

22 (a) a person who engages in the business in this state of producing, refining, manufacturing, or
23 compounding special fuel for sale, use, or distribution;

24 (b) an importer who imports special fuel for sale, use, or distribution;

25 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses to
26 become licensed to assume the Montana state special fuel tax liability; and

27 (d) an exporter ~~as defined in this section.~~

28 (8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank
29 of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

30 (9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor

1 vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside
2 Montana for sale, use, or consumption outside Montana.

3 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
4 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
5 into this state from a point of origin outside of this state other than in the fuel supply tank of a motor
6 vehicle.

7 (11) "Importer" means a person who transports or arranges for the transportation of special fuel
8 into Montana for sale, use, or distribution.

9 (12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of
10 this state and that are operated in whole or in part by the combustion of special fuel.

11 (13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
12 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment,
13 or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and,
14 as applied to joint-stock companies and corporations, the officers.

15 (14) "Public roads and highways of this state" means all streets, roads, highways, and related
16 structures:

17 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any
18 political subdivision of the state;

19 (b) dedicated to public use;

20 (c) acquired by eminent domain; or

21 (d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any
22 political subdivision of the state.

23 (15) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
24 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except
25 liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and
26 highways within the state of Montana. The term special fuel includes all other types of additives when the
27 additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

28 (16) "Special fuel dealer" means:

29 (a) any person in the business of handling special fuel who delivers any part of the fuel into the
30 fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

1 (b) any person who sells special fuel at a location unattended by the dealer through an unattended
2 pump by use of a cardrol, keylock, or similar device; or

3 (c) any person who provides any facility, with or without attended services, from which more than
4 one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then
5 controlled by the dealer.

6 (17) "Special fuel user" means any person other than the U.S. government, a state, or a county,
7 incorporated city or town, or school district of this state who consumes in this state special fuel for the
8 operation of motor vehicles owned or controlled by the person upon the highways of this state.

9 (18) "Use", when the term relates to a special fuel user, means the consumption by a special fuel
10 user of special fuels in the operation of a motor vehicle on the highways of this state."

11
12 **Section 2.** Section 15-70-302, MCA, is amended to read:

13 **"15-70-302. Special fuel user's permits required -- exceptions.** (1) (a) A special fuel user shall
14 obtain a special fuel user's permit annually from the department, prior to the use of special fuel:

15 (i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross
16 vehicle weight or registered gross vehicle weight used in an interstate operation;

17 (ii) by a special fuel user awarded a contract in accordance with 15-70-321; or

18 (iii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

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

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

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

5
 6 **Section 3.** Section 15-70-308, MCA, is amended to read:

7 "**15-70-308. Temporary cash compliance bond.** (1) A special fuel user subject to the licensing
 8 requirements of this part may obtain a temporary 30-day operating permit by posting a \$100 cash
 9 compliance bond on each vehicle at any weigh station, or with any person authorized by the department
 10 to issue a cash compliance bond.

11 (2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day
 12 period, and otherwise complies with the requirements of this part, the \$100 payment received for the
 13 temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or
 14 the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the
 15 \$100 payment is forfeited to the state.

16 (3) The temporary permit is issued:

17 (a) subject to the same restrictions and requirements as the annual permit; and

18 (b) for intrastate operations only."

19
 20 **Section 4.** Section 15-70-321, MCA, is amended to read:

21 "**15-70-321. Tax on diesel special fuel and volatile liquids.** (1) The department shall, under the
 22 provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor
 23 vehicles a tax, as provided in subsection (2):

24 (a) for each gallon of undyed ~~diesel~~ special fuel or other volatile liquid, except liquid petroleum gas,
 25 of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to
 26 produce motor power to operate motor vehicles upon the public roads and highways ~~or streets within the~~
 27 of this state; and

28 (b) for each gallon of ~~diesel~~ special fuel or other volatile liquid, except liquid petroleum gas, of less
 29 than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor
 30 vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines,

1 used in connection with any work performed under any contracts pertaining to the construction,
 2 reconstruction, or improvement of any highway or street and their appurtenances awarded by any public
 3 agencies, including federal, state, county, municipal, or other political subdivisions; and

4 (c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered
 5 highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

6 (2) The tax imposed in subsection (1) is:

7 ~~(a) 24 cents per gallon beginning July 1, 1993;~~

8 ~~(b) 24 3/4 cents per gallon beginning January 1, 1994; and~~

9 ~~(c) 27 3/4 cents per gallon beginning July 1, 1994."~~

10
 11 **Section 5.** Section 15-70-330, MCA, is amended to read:

12 **"15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to
 13 file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed
 14 a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the
 15 rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure
 16 continues; ~~provided, however, that.~~ However, if any special fuel user establishes to the satisfaction of the
 17 department that the failure to file a return within the time prescribed was due to reasonable cause, the
 18 department shall waive the penalty provided by this section.

19 (2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under
 20 this part, ~~there must be added to the amount due and unpaid~~ interest at the rate of 1% per month or
 21 fraction of a month from the date on which the tax was due to the date of payment in full must be added
 22 to the amount due and unpaid.

23 (3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public
 24 roads and highways ~~or streets within the of this~~ state unless the fuel is subject to taxation under
 25 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful
 26 or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways ~~or~~
 27 ~~streets within the of this~~ state in violation of this subsection is a misdemeanor punishable by a fine not to
 28 exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second
 29 offense, and not to exceed \$2,000 for each subsequent conviction. Each use is a separate offense.

30 (b) The department shall adopt and enforce reasonable rules for the movement of off-highway

1 vehicles traveling from one location to another on public highways, public roads, or streets when using
2 dyed fuel or nontaxed fuel.

3 (3) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses
4 or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the
5 tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has
6 reason to know that the fuel will be used for a taxable purpose."

7

8 NEW SECTION. Section 6. Effective date -- retroactive applicability. [This act] is effective on
9 passage and approval, and [sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to
10 January 1, 1995.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0053, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

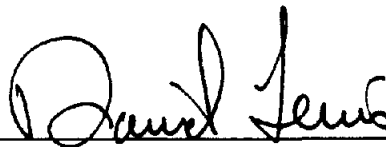
An act revising the definition of "Special Fuel" and of "Special Fuel User"; eliminating certain licensing and reporting requirements for vehicles over 26,000 pounds operating intrastate only; making the temporary cash compliance bond for a temporary operating permit available only for vehicles operating solely intrastate; clarifying that certain dyed special fuel is subject to the tax on special fuel; making the seller of special fuel that is subject to tax jointly and severally liable for the tax and subject to civil penalties under certain circumstances.

ASSUMPTIONS:

1. Passage of the bill will change the method of filing refunds from user returns to refund applications.
2. The intrastate carriers who are eligible for refunds will not apply for those refunds more often than they currently are filing their special fuel user returns.
3. No fuel tax revenue will be lost to the state. The 1993 regular legislative session passed HB539 which elevated the point of taxation on special fuel (diesel) to the distributor level.
4. The tax is now remitted at the distributor level, and intrastate carriers file tax returns with no tax liability. Passage of this bill would eliminate the need for over 5,985 intrastate carriers to license and file.
5. The reduction of workload associated with SB53 would allow a reduction of 1.00 FTE (grade 8) at a cost of \$20,288 in FY96 and \$20,296 in FY97 plus associated postage costs of \$2,633 each year. The reduction, which totals \$22,861 in FY96 and \$22,929 in FY97, is already proposed in the Executive Budget for the General Operations Program (PG 01).

FISCAL IMPACT:

None other than cited above.

 1-10-95

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



MACK COLE, PRIMARY SPONSOR DATE

Fiscal Note for SB0053, as introduced

SB 53

SB BILL NO. 53

1
2 INTRODUCED BY

Mark Cole

3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "SPECIAL FUEL" AND OF
6 "SPECIAL FUEL USER"; ELIMINATING CERTAIN LICENSING AND REPORTING REQUIREMENTS FOR
7 VEHICLES OVER 26,000 POUNDS OPERATING INTRASTATE ONLY; MAKING THE TEMPORARY CASH
8 COMPLIANCE BOND FOR A TEMPORARY OPERATING PERMIT AVAILABLE ONLY FOR VEHICLES
9 OPERATING SOLELY INTRASTATE; CLARIFYING THAT CERTAIN DYED SPECIAL FUEL IS SUBJECT TO
10 THE TAX ON SPECIAL FUEL; MAKING THE SELLER OF SPECIAL FUEL THAT IS SUBJECT TO TAX
11 JOINTLY AND SEVERALLY LIABLE FOR THE TAX AND SUBJECT TO CIVIL PENALTIES UNDER CERTAIN
12 CIRCUMSTANCES; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-308, 15-70-321, AND
13 15-70-330, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
14 APPLICABILITY DATE."
15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17

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

19 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

20 (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business
21 of farming or ranching and whose primary source of earned income is from the business of farming or
22 ranching.

23 (2) "Bond" means:

24 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
25 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
26 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
27 fuel user arising out of this part; or

28 (b) a deposit with the department by the special fuel user, under terms and conditions that the
29 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
30 insured by the federal deposit insurance corporation.

1 (3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
2 term does not mean special fuel delivered into the supply tank of a motor vehicle.

3 (4) "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel
4 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user
5 of the unique device.

6 (5) "Department" means the department of transportation.

7 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
8 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
9 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
10 the following:

11 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
12 tanks in this state;

13 (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at
14 the refinery or terminal; or

15 (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

16 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
17 distributed only by a person who is the holder of a valid distributor's license.

18 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
19 or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this
20 state.

21 (7) "Distributor" means:

22 (a) a person who engages in the business in this state of producing, refining, manufacturing, or
23 compounding special fuel for sale, use, or distribution;

24 (b) an importer who imports special fuel for sale, use, or distribution;

25 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses to
26 become licensed to assume the Montana state special fuel tax liability; and

27 (d) an exporter ~~as defined in this section.~~

28 (8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank
29 of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

30 (9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor

1 vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside
2 Montana for sale, use, or consumption outside Montana.

3 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
4 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
5 into this state from a point of origin outside of this state other than in the fuel supply tank of a motor
6 vehicle.

7 (11) "Importer" means a person who transports or arranges for the transportation of special fuel
8 into Montana for sale, use, or distribution.

9 (12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of
10 this state and that are operated in whole or in part by the combustion of special fuel.

11 (13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
12 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment,
13 or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and,
14 as applied to joint-stock companies and corporations, the officers.

15 (14) "Public roads and highways of this state" means all streets, roads, highways, and related
16 structures:

17 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any
18 political subdivision of the state;

19 (b) dedicated to public use;

20 (c) acquired by eminent domain; or

21 (d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any
22 political subdivision of the state.

23 (15) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
24 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except
25 liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and
26 highways within the state of Montana. The term special fuel includes all other types of additives when the
27 additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

28 (16) "Special fuel dealer" means:

29 (a) any person in the business of handling special fuel who delivers any part of the fuel into the
30 fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

1 (b) any person who sells special fuel at a location unattended by the dealer through an unattended
2 pump by use of a cardtrol, keylock, or similar device; or

3 (c) any person who provides any facility, with or without attended services, from which more than
4 one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then
5 controlled by the dealer.

6 (17) "Special fuel user" means any person other than the U.S. government, a state, or a county,
7 incorporated city or town, or school district of this state who consumes in this state special fuel for the
8 operation of motor vehicles owned or controlled by the person upon the highways of this state.

9 (18) "Use", when the term relates to a special fuel user, means the consumption by a special fuel
10 user of special fuels in the operation of a motor vehicle on the highways of this state."

11
12 **Section 2.** Section 15-70-302, MCA, is amended to read:

13 **"15-70-302. Special fuel user's permits required -- exceptions.** (1) (a) A special fuel user shall
14 obtain a special fuel user's permit annually from the department, prior to the use of special fuel;

15 (i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross
16 vehicle weight or registered gross vehicle weight used in an interstate operation;

17 (ii) by a special fuel user awarded a contract in accordance with 15-70-321; or

18 (iii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

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

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

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

5
 6 **Section 3.** Section 15-70-308, MCA, is amended to read:

7 "**15-70-308. Temporary cash compliance bond.** (1) A special fuel user subject to the licensing
 8 requirements of this part may obtain a temporary 30-day operating permit by posting a \$100 cash
 9 compliance bond on each vehicle at any weigh station, or with any person authorized by the department
 10 to issue a cash compliance bond.

11 (2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day
 12 period, and otherwise complies with the requirements of this part, the \$100 payment received for the
 13 temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or
 14 the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the
 15 \$100 payment is forfeited to the state.

16 (3) The temporary permit is issued;

17 (a) subject to the same restrictions and requirements as the annual permit; and

18 (b) for intrastate operations only."

19
 20 **Section 4.** Section 15-70-321, MCA, is amended to read:

21 "**15-70-321. Tax on ~~diesel~~ special fuel and volatile liquids.** (1) The department shall, under the
 22 provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor
 23 vehicles a tax, as provided in subsection (2):

24 (a) for each gallon of undyed ~~diesel~~ special fuel or other volatile liquid, except liquid petroleum gas,
 25 of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to
 26 produce motor power to operate motor vehicles upon the public roads and highways ~~or streets within the~~
 27 of this state; and

28 (b) for each gallon of ~~diesel~~ special fuel or other volatile liquid, except liquid petroleum gas, of less
 29 than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor
 30 vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines,

1 used in connection with any work performed under any contracts pertaining to the construction,
 2 reconstruction, or improvement of any highway or street and their appurtenances awarded by any public
 3 agencies, including federal, state, county, municipal, or other political subdivisions; and

4 (c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered
 5 highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

6 (2) The tax imposed in subsection (1) is:

7 ~~(a) 24 cents per gallon beginning July 1, 1993;~~

8 ~~(b) 24 3/4 cents per gallon beginning January 1, 1994; and~~

9 ~~(c) 27 3/4 cents per gallon beginning July 1, 1994."~~

10
 11 **Section 5.** Section 15-70-330, MCA, is amended to read:

12 **"15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to
 13 file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed
 14 a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the
 15 rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure
 16 continues; ~~provided, however, that.~~ However, if any special fuel user establishes to the satisfaction of the
 17 department that the failure to file a return within the time prescribed was due to reasonable cause, the
 18 department shall waive the penalty provided by this section.

19 (2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under
 20 this part, ~~there must be added to the amount due and unpaid~~ interest at the rate of 1% per month or
 21 fraction of a month from the date on which the tax was due to the date of payment in full must be added
 22 to the amount due and unpaid.

23 (3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public
 24 roads and highways or streets within the of this state unless the fuel is subject to taxation under
 25 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful
 26 or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways or
 27 streets within the of this state in violation of this subsection is a misdemeanor punishable by a fine not to
 28 exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second
 29 offense, and not to exceed \$2,000 for each subsequent conviction. Each use is a separate offense.

30 (b) The department shall adopt and enforce reasonable rules for the movement of off-highway

1 vehicles traveling from one location to another on public highways, public roads, or streets when using
2 dyed fuel or nontaxed fuel.

3 (3) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses
4 or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the
5 tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has
6 reason to know that the fuel will be used for a taxable purpose."

7
8 **NEW SECTION. Section 6. Effective date -- retroactive applicability.** [This act] is effective on
9 passage and approval, and [sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to
10 January 1, 1995.

11 -END-

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SB BILL NO. 53
INTRODUCED BY Mack Sale
BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "SPECIAL FUEL" AND OF "SPECIAL FUEL USER"; ELIMINATING CERTAIN LICENSING AND REPORTING REQUIREMENTS FOR VEHICLES OVER 26,000 POUNDS OPERATING INTRASTATE ONLY; MAKING THE TEMPORARY CASH COMPLIANCE BOND FOR A TEMPORARY OPERATING PERMIT AVAILABLE ONLY FOR VEHICLES OPERATING SOLELY INTRASTATE; CLARIFYING THAT CERTAIN DYED SPECIAL FUEL IS SUBJECT TO THE TAX ON SPECIAL FUEL; MAKING THE SELLER OF SPECIAL FUEL THAT IS SUBJECT TO TAX JOINTLY AND SEVERALLY LIABLE FOR THE TAX AND SUBJECT TO CIVIL PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-308, 15-70-321, AND 15-70-330, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

1 SENATE BILL NO. 53

2 INTRODUCED BY COLE

3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "SPECIAL FUEL" AND OF
6 "SPECIAL FUEL USER"; ELIMINATING CERTAIN LICENSING AND REPORTING REQUIREMENTS FOR
7 VEHICLES OVER 26,000 POUNDS OPERATING INTRASTATE ONLY; MAKING THE TEMPORARY CASH
8 COMPLIANCE BOND FOR A TEMPORARY OPERATING PERMIT AVAILABLE ONLY FOR VEHICLES
9 OPERATING SOLELY INTRASTATE; CLARIFYING THAT CERTAIN DYED SPECIAL FUEL IS SUBJECT TO
10 THE TAX ON SPECIAL FUEL; MAKING THE SELLER OF SPECIAL FUEL THAT IS SUBJECT TO TAX
11 JOINTLY AND SEVERALLY LIABLE FOR THE TAX AND SUBJECT TO CIVIL PENALTIES UNDER CERTAIN
12 CIRCUMSTANCES; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-308, 15-70-321, AND
13 15-70-330, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
14 APPLICABILITY DATE."

15

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

17

18 **Section 1.** Section 15-70-301, MCA, is amended to read:19 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

20 (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business
21 of farming or ranching and whose primary source of earned income is from the business of farming or
22 ranching.

23 (2) "Bond" means:

24 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
25 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
26 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
27 fuel user arising out of this part; or

28 (b) a deposit with the department by the special fuel user, under terms and conditions that the
29 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
30 insured by the federal deposit insurance corporation.

1 (3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
2 term does not mean special fuel delivered into the supply tank of a motor vehicle.

3 (4) "Cardrol" or "keylock" means any unique device intended to allow access to a special fuel
4 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user
5 of the unique device.

6 (5) "Department" means the department of transportation.

7 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
8 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
9 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
10 the following:

11 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
12 tanks in this state;

13 (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at
14 the refinery or terminal; or

15 (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

16 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
17 distributed only by a person who is the holder of a valid distributor's license.

18 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
19 or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this
20 state.

21 (7) "Distributor" means:

22 (a) a person who engages in the business in this state of producing, refining, manufacturing, or
23 compounding special fuel for sale, use, or distribution;

24 (b) an importer who imports special fuel for sale, use, or distribution;

25 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses to
26 become licensed to assume the Montana state special fuel tax liability; and

27 (d) an exporter ~~as defined in this section.~~

28 (8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank
29 of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

30 (9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor

1 vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside
2 Montana for sale, use, or consumption outside Montana.

3 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
4 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
5 into this state from a point of origin outside of this state other than in the fuel supply tank of a motor
6 vehicle.

7 (11) "Importer" means a person who transports or arranges for the transportation of special fuel
8 into Montana for sale, use, or distribution.

9 (12) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of
10 this state and that are operated in whole or in part by the combustion of special fuel.

11 (13) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
12 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment,
13 or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and,
14 as applied to joint-stock companies and corporations, the officers.

15 (14) "Public roads and highways of this state" means all streets, roads, highways, and related
16 structures:

17 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any
18 political subdivision of the state;

19 (b) dedicated to public use;

20 (c) acquired by eminent domain; or

21 (d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any
22 political subdivision of the state.

23 (15) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
24 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except
25 liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and
26 highways within the state of Montana. The term special fuel includes all other types of additives when the
27 additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

28 (16) "Special fuel dealer" means:

29 (a) any person in the business of handling special fuel who delivers any part of the fuel into the
30 fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

1 (b) any person who sells special fuel at a location unattended by the dealer through an unattended
2 pump by use of a cardtrol, keylock, or similar device; or

3 (c) any person who provides any facility, with or without attended services, from which more than
4 one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then
5 controlled by the dealer.

6 (17) "Special fuel user" means any person other than the U.S. government, a state, or a county,
7 incorporated city or town, or school district of this state who consumes in this state special fuel for the
8 operation of motor vehicles owned or controlled by the person upon the highways of this state.

9 (18) "Use", when the term relates to a special fuel user, means the consumption by a special fuel
10 user of special fuels in the operation of a motor vehicle on the highways of this state."
11

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

13 **"15-70-302. Special fuel user's permits required -- exceptions.** (1) (a) A special fuel user shall
14 obtain a special fuel user's permit annually from the department, prior to the use of special fuel:

15 (i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross
16 vehicle weight or registered gross vehicle weight used in an interstate operation;

17 (ii) by a special fuel user awarded a contract in accordance with 15-70-321; or

18 (iii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

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

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

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

5
 6 **Section 3.** Section 15-70-308, MCA, is amended to read:

7 **"15-70-308. Temporary cash compliance bond.** (1) A special fuel user subject to the licensing
 8 requirements of this part may obtain a temporary 30-day operating permit by posting a \$100 cash
 9 compliance bond on each vehicle at any weigh station, or with any person authorized by the department
 10 to issue a cash compliance bond.

11 (2) If the user files the bond required by 15-70-304, files a special fuel tax return for the 30-day
 12 period, and otherwise complies with the requirements of this part, the \$100 payment received for the
 13 temporary permit must be returned to the user. If the user fails to file the bond required by 15-70-304 or
 14 the special fuel tax return for the 30-day period or fails to comply with the requirements of this part, the
 15 \$100 payment is forfeited to the state.

16 (3) The temporary permit is issued:

17 (a) subject to the same restrictions and requirements as the annual permit; and

18 (b) for intrastate operations only."

19
 20 **Section 4.** Section 15-70-321, MCA, is amended to read:

21 **"15-70-321. Tax on diesel special fuel and volatile liquids.** (1) The department shall, under the
 22 provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor
 23 vehicles a tax, as provided in subsection (2):

24 (a) for each gallon of undyed diesel special fuel or other volatile liquid, except liquid petroleum gas,
 25 of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to
 26 produce motor power to operate motor vehicles upon the public roads and highways ~~or streets within the~~
 27 of this state; and

28 (b) for each gallon of diesel special fuel or other volatile liquid, except liquid petroleum gas, of less
 29 than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor
 30 vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines,

1 used in connection with any work performed under any contracts pertaining to the construction,
 2 reconstruction, or improvement of any highway or street and their appurtenances awarded by any public
 3 agencies, including federal, state, county, municipal, or other political subdivisions; and

4 (c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered
 5 highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

6 (2) The tax imposed in subsection (1) is:

7 ~~(a) 24 cents per gallon beginning July 1, 1993;~~

8 ~~(b) 24 3/4 cents per gallon beginning January 1, 1994; and~~

9 ~~(c) 27 3/4 cents per gallon beginning July 1, 1994."~~

10
 11 **Section 5.** Section 15-70-330, MCA, is amended to read:

12 "**15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to
 13 file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed
 14 a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the
 15 rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure
 16 continues; ~~provided, however, that.~~ However, if any special fuel user establishes to the satisfaction of the
 17 department that the failure to file a return within the time prescribed was due to reasonable cause, the
 18 department shall waive the penalty provided by this section.

19 (2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under
 20 this part, ~~there must be added to the amount due and unpaid~~ interest at the rate of 1% per month or
 21 fraction of a month from the date on which the tax was due to the date of payment in full must be added
 22 to the amount due and unpaid.

23 (3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public
 24 roads and highways ~~or streets within the of this~~ state unless the fuel is subject to taxation under
 25 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful
 26 or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways ~~or~~
 27 ~~streets within the of this~~ state in violation of this subsection is a misdemeanor punishable by a fine not to
 28 exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second
 29 offense, and not to exceed \$2,000 for each subsequent conviction. Each use is a separate offense.

30 (b) The department shall adopt and enforce reasonable rules for the movement of off-highway

1 vehicles traveling from one location to another on public highways, public roads, or streets when using
2 dyed fuel or nontaxed fuel.

3 (3) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses
4 or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the
5 tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has
6 reason to know that the fuel will be used for a taxable purpose."

7

8 NEW SECTION. Section 6. Effective date -- retroactive applicability. [This act] is effective on
9 passage and approval, and [sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to
10 January 1, 1995.

11

-END-