

# HOUSE BILL REPORT

## HB 2816

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**As Reported by House Committee On:**  
Transportation

**Title:** An act relating to fuel taxes on exported fuel.

**Brief Description:** Concerning fuel taxes on exported fuel.

**Sponsors:** Representatives Morris, Moeller, Chase, Kessler, Jacks and Nelson.

**Brief History:**

**Committee Activity:**

Transportation: 1/28/10, 2/8/10 [DPS].

**Brief Summary of Substitute Bill**

- Establishes a fuel tax credit of 35 cents per gallon against the Washington's 37.5 cent fuel tax rate resulting in a 2.5 cent fuel tax for fuel exported to other states. If the importing state's fuel tax is between 35 cents and 37.5 cents, the importing state's credit is the amount of their tax rate up to 37.5 cents.
- Establishes a credit against the export fuel tax for states that import crude into Washington.
- Provides funding to the Puget Sound Ferry Capital Construction Account.
- Provides funding to the newly created Significant Regional Transportation Projects Account. Funding to be used for the Columbia River Crossing, North Spokane Corridor, and the State Route 520 Bridge.
- Establishes the refinery and crude import licenses for reporting purposes for the export tax and the crude import credit.
- Establishes penalties for licensees or persons acting as such that fails, neglects, or refuses to file a required fuel tax return.
- Provides technical reference corrections in the fuel tax statutes.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 15 members: Representatives Clibborn, Chair; Liias, Vice Chair; Dickerson,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Eddy, Finn, Flannigan, Moeller, Morris, Rolfes, Sells, Simpson, Springer, Takko, Williams and Wood.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Driscoll, Ericksen, Johnson, Klippert, Kristiansen, Nealey, Shea and Upthegrove.

**Staff:** Jerry Long (786-7306).

**Background:**

Washington has five major refineries and exports approximately 3.2 billion gallons of fuel annually. Current statutes direct that fuel taxes be collected at the time the fuel is removed from the terminal rack. Exported fuel to destinations outside the state is exempt from the state's current fuel tax of 37.5 cents per gallon fuel tax. To receive an exemption, one must be a licensed motor vehicle fuel supplier, special fuel supplier, motor vehicle fuel exporter, special fuel exporter, or a licensed blender. In the case where fuel has been exported outside the state on which the fuel tax has been paid, the payer is entitled to a refund of the fuel taxes. In 1944 the voters passed the 18th Amendment to the Constitution which stated that excise taxes collected on the sale, distribution, or use of motor vehicle fuel shall be used exclusively for highway purposes, but fuel that was used for non-highway use was not taxed.

During 2008 the Joint Legislative Audit and Review Committee (JLARC) reviewed this tax exemption for exported fuel as one of their Tax Preference Reviews. According to the report, the U.S. Supreme Court has ruled that taxes imposed by one state that affect goods that will be purchased in another state are not strictly prohibited by the federal Constitution. Taxes between states must be analyzed under a four-prong approach test that looks at whether: the tax applied to an activity with nexus with the taxing state; the tax is fairly apportioned; the tax does not discriminate against interstate commerce; and the tax is related to the service provided by the state. Presently there are three states (Tennessee, Texas, and Florida) that have some form of taxation of fuel being exported to other states. The JLARC recommendation was to retain the motor vehicle fuel tax and special fuel tax exemption for exported fuel, even though it may be possible, depending on the structure of the tax, to provide less than a full exemption on exported fuel and still comply with interstate commerce.

Refineries in the state pay a business and occupation tax at .00484 percent based on the value of the product being sold. Crude oil prices fluctuate with world demand as the price is highly volatile and normally represents approximately 65 percent of the cost per gallon of fuel.

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**Summary of Substitute Bill:**

The substitute bill establishes a fuel tax credit of 35 cents per gallon against Washington's 37.5 cent fuel tax rate, resulting in a 2.5 cent fuel tax for fuel exported to other states. If the importing state's fuel tax is between 35 cents and 37.5 cents, the importing state's credit is the amount of their tax rate up to 37.5 cents.

A motor vehicle fuel exporter that also imports crude for use in Washington will receive an amount of credit up to 2.5 cents per gallon against the export fuel tax owed. A credit earned in one calendar year may be credited against taxes incurred in the subsequent calendar year.

Fifty-five percent of the export fuel tax must be distributed to the Puget Sound Ferry Capital Construction Account to be used for the construction and preservation of the Washington ferry system. Forty-five percent must be distributed to the newly created Significant Regional Transportation Projects Account. Thirty-five percent of the revenue from the export fuel tax must be used for the Columbia River Crossing, 5 percent for the State Route (SR) 520 Bridge, and 5 percent for the Spokane North Corridor. After these projects are completed, any excess funds in the Significant Regional Transportation Projects Account may be used for other significant regional transportation projects.

The substitute bill establishes the refinery and crude import license for reporting purposes for the export tax and the crude import credit. It provides technical reference corrections to the fuel tax statutes.

The substitute bill includes a severability clause.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill provides technical reference corrections for fuel tax distributions, refineries, refiners, and oil importers. It clarifies that the credit for crude oil can be used against the export fuel tax for the same state where the crude oil was imported from and the export fuel was exported to. It adds definitions for "refinery," "international fuel tax agreement licensee," "crude oil," and "crude oil importer" along with establishing crude oil importer and refinery licenses.

The substitute bill establishes penalties for when a licensee, or a person acting as such, fails, neglects, or refuses to file a return or files an incomplete or incorrectly formatted tax report:

- for the first occurrence, the licensee, or person acting as such, must receive a warning letter from the Department of Licensing (department). The warning letter must provide instructions for accurate reporting or notify the licensee or person how to obtain technical assistance from the department;
- for the second occurrence, a penalty of \$250 is imposed by the department;
- for the third occurrence, a penalty of \$500 is imposed by the department; and
- for the fourth occurrence and for each occurrence thereafter, a penalty of \$1,000 is imposed by the department.

Fifty-five percent of the export fuel tax must be deposited into the Puget Sound Ferry Capital Construction Account with 45 percent being deposited into the Significant Regional Transportation Projects Account. The Columbia River Crossing Account has been changed to the Significant Regional Transportation Projects Account to be used for the Columbia River Crossing (35 percent), Spokane North Corridor (5 percent), and the SR 520 Bridge (5 percent). After the three projects are completed, any excess funds in the Significant Regional Transportation Projects Account may be used for other significant regional transportation projects.

No averaging for refineries to report and pay business and occupation taxes.

The import crude credit is based on a state instead of by a company.

Existing refunds, exemptions, and credits are applicable to fuel exports.

The substitute bill provides technical reference corrections in the fuel tax statutes.

The substitute bill changes the effective date from August 1, 2010, to January 1, 2011.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect January 1, 2011.

**Staff Summary of Public Testimony:**

(In support) The bill provides support for the Washington ferry system which lost a large portion of funding when the Motor Vehicle Excise Tax was discontinued. The ferries need to have funding to replace boats and maintain the ferry system, which is part of the state's highway system and encourages tourism. The bill provides funding for needed vessels and jobs. The Columbia River Bridge is important to interstate commerce between Oregon and Washington. The bill will provide funding needed for the new Columbia River Bridge, which is important to the state's economy along with moving people and goods between the two states. The bill helps in providing tax equality between the states and provides funding for greatly needed projects. The bill provides a import credit to offset the export tax for states that import crude into Washington.

(Opposed) Should a funding bill like this one be looked at now, or be part of a larger transportation funding package in the future? What other future options are there, and what comprehensive package is needed to providing transportation needs in the future? In reviewing the proposed substitute bill, there are some technical issues that need to be corrected before the bill is voted out of committee. The stakeholders would like to work with committee and department staff to correct the technical issues and concerns that they have with the bill prior to the bill being voted out. The state presently does not have an export tax on any other products.

**Persons Testifying:** (In support) Representative Morris, prime sponsor; Representative Moeller; Alan Mendel, Ferry Advisory Executive Council and Vashon Ferry Advisory Committee; Walt Elliott, Kingston Ferry Advisory Committee; Ann Erickson, Bremerton Ferry Committee and the Ferry Community Partnership and the Washington Association of Realtors; Rick Wickman, Identity Clark County; Bill Fromhold, Columbia River Crossing Coalition; Frank Nelson, Ferry Community Partnership; and Gordon Baxter, Puget Sound Metal Trades Council.

(Opposed) Greg Hanan, Western States Petroleum Association.

**Persons Signed In To Testify But Not Testifying:** None.