

# HOUSE BILL REPORT

## HB 2090

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### As Passed Legislature

**Title:** An act relating to taxation of gasohol.

**Brief Description:** Revising provisions relating to taxation of gasohol.

**Sponsors:** Representatives K. Schmidt, R. Fisher, Mitchell, Scott, Robertson, Hatfield, Skinner, Tokuda, Buck, Elliot, Ogden, Cairnes, Romero, Brown, Quall, Chopp, Patterson, Hankins and Blanton.

**Brief History:**

**Committee Activity:**

Transportation: 4/10/95 [DPS].

**Floor Activity:**

Passed House: 4/13/95, 94-1.

Passed Legislature.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives K. Schmidt, Chairman; Mitchell, Vice Chairman; R. Fisher, Ranking Minority Member; Hatfield, Assistant Ranking Minority Member; Blanton; Buck; Cairnes; Chopp; Elliot; Hankins; Horn; Johnson; Koster; McMahan; Ogden; Quall; Robertson; Romero; Scott and Tokuda.

**Staff:** Jeff Doyle (786-7322).

**Background:** ESHB 2326, enacted during the 1994 session, repealed a tax exemption and credit given to distributors that sold gasohol made with alcohol produced by small manufacturers. The exemption and credit were intended to benefit in-state alcohol producers, including a new plant in Eastern Washington, having an estimated fiscal impact of approximately \$5 million for the 1993-95 biennium. However, of the 17 producers taking advantage of the tax break, only three are located in Washington, while producers from El Salvador, Costa Rica and Jamaica have been the primary beneficiaries. In fiscal year 1994 alone, the loss to the state was over \$21 million.

In October of 1994, Western Petroleum Importers filed a lawsuit against the state seeking an injunction to restore the gasohol tax exemption and credit.

On March 28, 1995, a trial court judge in King County ruled in favor of Western Petroleum Importers in their challenge to ESHB 2326. The trial court decision came as a surprise to both the Legislature and the state attorneys general. The state is requesting expedited review by the state Supreme Court.

The judge also issued an injunction preventing the Department of Licensing from collecting the motor fuel tax until ESHB 2326 is approved by the voters in November. This injunction creates an enormous problem for the state because there is no mechanism in place that would allow the state to continue collecting the tax and hold the funds in abeyance until the matter is resolved by the Supreme Court or the voters.

Beginning, March 28, 1995, when the injunction was issued until this matter is resolved, the producers can sell as much gasohol as possible and avoid paying the motor vehicle fuel tax. In the normal course of business, this would cost the state about \$30 million per year in lost revenue, with over 90 percent of the tax break benefiting producers in El Salvador, Costa Rica, Jamaica and other out-of-state companies. However, because this may be a limited duration opportunity for these producers, the potential for even greater losses exists.

**Summary of Bill:** A refund system is established that would allow the state to continue to collect the motor fuel taxes on gasohol, holding the money in the gasohol exemption holding account for possible refund to gasohol distributors.

For motor fuel taxes paid by distributors under this refund system, refunds may not be issued unless an appellate court upholds the invalidation of ESHB 2326, and the voters reject that measure at the November general election.

Gasohol distributors will have no right to a refund of taxes collected under this system unless they actually comply with the law and remit the taxes.

If the voters ratify ESHB 2326, no refunds will be provided for taxes collected by the state as a result of ESHB 2326, which took effect May 1, 1994..

If the court of appeals or the Supreme Court upholds the original tax exemption repeal in ESHB 2326, the refund system shall be null and void, as it would not be necessary to refund taxes that were properly imposed under a proper application of law.

A severability clause allows a court to invalidate a particular section of the bill without affecting the remaining provisions establishing a refund system.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** This legislation closes a loophole in current law. The voters probably never intended to provide \$61 million in tax breaks to foreign gasohol producers at the expense of public roads. The cost to county roads alone is about \$15 million. The refund mechanism is needed and allows the Department of Transportation to track the amount of gasohol actually sold in state.

**Testimony Against:** None.

**Testified:** Sid Morrison, Department of Transportation; Eric Berger, County Road Administration Board; Curt Eschels, Washington State Association of Counties; and Helga Morgenstern, Department of Transportation.