

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1001 be amended to read as follows:

- 1 Page 159, between lines 24 and 25, begin a new paragraph and
- 2 insert:
- 3 "SECTION 177. IC 6-2.5-4-1 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person is
- 5 a retail merchant making a retail transaction when he engages in selling
- 6 at retail.
- 7 (b) A person is engaged in selling at retail when, in the ordinary
- 8 course of his regularly conducted trade or business, he:
- 9 (1) acquires tangible personal property for the purpose of resale;
- 10 and
- 11 (2) transfers that property to another person for consideration.
- 12 (c) For purposes of determining what constitutes selling at retail, it
- 13 does not matter whether:
- 14 (1) the property is transferred in the same form as when it was
- 15 acquired;
- 16 (2) the property is transferred alone or in conjunction with other
- 17 property or services; or
- 18 (3) the property is transferred conditionally or otherwise.
- 19 (d) Notwithstanding subsection (b), a person is not selling at retail
- 20 if he is making a wholesale sale as described in section 2 of this
- 21 chapter.
- 22 (e) The gross retail income received from selling at retail is only
- 23 taxable under this article to the extent that the income represents:
- 24 (1) the price of the property transferred, without the rendition of

1 any service; and
 2 (2) except as provided in subsection (g), any bona fide charges
 3 which are made for preparation, fabrication, alteration,
 4 modification, finishing, completion, delivery, or other service
 5 performed in respect to the property transferred before its transfer
 6 and which are separately stated on the transferor's records.

7 For purposes of this subsection, a transfer is considered to have
 8 occurred after delivery of the property to the purchaser.

9 (f) Notwithstanding subsection (e):

10 (1) in the case of retail sales of gasoline (as defined in
 11 IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the
 12 gross retail income received from selling at retail is the total sales
 13 price of the gasoline or special fuel minus the part of that price
 14 attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5,
 15 **IC 6-6-12**, or Section 4041(a) or Section 4081 of the Internal
 16 Revenue Code; and

17 (2) in the case of retail sales of cigarettes (as defined in
 18 IC 6-7-1-2), the gross retail income received from selling at retail
 19 is the total sales price of the cigarettes including the tax imposed
 20 under IC 6-7-1.

21 (g) Gross retail income does not include income that represents
 22 charges for serving or delivering food and food ingredients furnished,
 23 prepared, or served for consumption at a location, or on equipment,
 24 provided by the retail merchant. However, the exclusion under this
 25 subsection only applies if the charges for the serving or delivery are
 26 stated separately from the price of the food and food ingredients when
 27 the purchaser pays the charges."

28 Page 161, between lines 8 and 9, begin a new paragraph and insert:

29 "SECTION 3. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007,
 30 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 UPON PASSAGE]: Sec. 1. (a) The definitions in this section apply
 32 throughout this chapter.

33 (b) "Kerosene" has the same meaning as the definition contained in
 34 IC 16-44-2-2.

35 (c) "Gasoline" has the same meaning as the definition contained in
 36 IC 6-6-1.1-103.

37 (d) "Special fuel" has the same meaning as the definition contained
 38 in IC 6-6-2.5-22.

39 (e) "E85" has the meaning set forth in IC 6-6-1.1-103.

40 (f) "Unit" means the unit of measure, such as a gallon or a liter, by
 41 which gasoline or special fuel is sold.

42 (g) "Metered pump" means a stationary pump which is capable of
 43 metering the amount of gasoline or special fuel dispensed from it and
 44 which is capable of simultaneously calculating and displaying the price
 45 of the gasoline or special fuel dispensed.

46 (h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

- 1 (i) "Indiana special fuel tax" means the tax imposed under
2 IC 6-6-2.5.
- 3 (j) "Federal gasoline tax" means the excise tax imposed under
4 Section 4081 of the Internal Revenue Code.
- 5 (k) "Federal special fuel tax" means the excise tax imposed under
6 Section 4041 of the Internal Revenue Code.
- 7 (l) "Price per unit before the addition of state and federal taxes"
8 means an amount which equals the remainder of:
9 (1) the total price per unit; minus
10 (2) the state gross retail, Indiana gasoline or special fuel, **a county**
11 **supplemental motor fuel tax**, and federal gasoline or special fuel
12 taxes which are part of the total price per unit.
- 13 (m) "Total price per unit" means the price per unit at which gasoline
14 or special fuel is actually sold, including the state gross retail, Indiana
15 gasoline or special fuel, **a county supplemental motor fuel tax**, and
16 federal gasoline or special fuel taxes which are part of the sales price.
- 17 (n) "Distributor" means a person who is the first purchaser of
18 gasoline from a refiner, a terminal operator, or supplier, regardless of
19 the location of the purchase.
- 20 (o) "Prepayment rate" means a rate per gallon of gasoline
21 determined by the department under section 14 of this chapter for use
22 in calculating prepayment amounts of gross retail tax under section 9
23 of this chapter.
- 24 (p) "Purchase or shipment" means a sale or delivery of gasoline, but
25 does not include:
26 (1) an exchange transaction between refiners, terminal operators,
27 or a refiner and terminal operator; or
28 (2) a delivery by pipeline, ship, or barge to a refiner or terminal
29 operator.
- 30 (q) "Qualified distributor" means a distributor who:
31 (1) is a licensed distributor under IC 6-6-1.1; and
32 (2) holds an unrevoked permit issued under section 7 of this
33 chapter.
- 34 (r) "Refiner" means a person who manufactures or produces
35 gasoline by any process involving substantially more than the blending
36 of gasoline.
- 37 (s) "Terminal operator" means a person that:
38 (1) stores gasoline in tanks and equipment used in receiving and
39 storing gasoline from interstate or intrastate pipelines pending
40 wholesale bulk reshipment; or
41 (2) stores gasoline at a boat terminal transfer that is a dock or
42 tank, or equipment contiguous to a dock or tank, including
43 equipment used in the unloading of gasoline from a ship or barge
44 and used in transferring the gasoline to a tank pending wholesale
45 bulk reshipment."
46 Page 162, line 4, after "IC 6-6-1.1," insert "**IC 6-6-12**,"

- 1 Page 162, line 11, after "IC 6-6-2.5," insert "**IC 6-6-12**,"
- 2 Page 162, line 17, after "excluding" insert "**a county supplemental**
- 3 **motor fuel tax (IC 6-6-12) and**".
- 4 Page 212, between lines 11 and 12, begin a new paragraph and
- 5 insert:
- 6 "SECTION 202. IC 6-6-1.1-1204 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1204. (a) **Except**
- 8 **as provided in IC 6-6-12**, no city, town, county, township, or other
- 9 subdivision or municipal corporation of the state may levy or collect:
- 10 (1) an excise tax on or measured by the sale, receipt, distribution,
- 11 or use of gasoline; or
- 12 (2) an excise, privilege, or occupational tax on the business of
- 13 manufacturing, selling, or distributing gasoline.
- 14 (b) The provisions of subsection (a) may not be construed as to
- 15 relieve a distributor or dealer from payment of a state tax or state store
- 16 license."
- 17 Page 213, between lines 25 and 26, begin a new paragraph and
- 18 insert:
- 19 "SECTION 203. IC 6-6-12 IS ADDED TO THE INDIANA CODE
- 20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 21 UPON PASSAGE]:
- 22 **Chapter 12. County Supplemental Motor Fuel Tax**
- 23 **Sec. 1. The definitions in IC 36-1-2 apply throughout this article.**
- 24 **Sec. 2. As used in this chapter, "carrier" has the meaning set**
- 25 **forth in IC 6-6-4.1-1(a).**
- 26 **Sec. 3. As used in this chapter, "department" refers to the**
- 27 **department of state revenue.**
- 28 **Sec. 4. As used in this chapter, "motor fuel" means either of the**
- 29 **following:**
- 30 (1) Gasoline (as defined in IC 6-6-1.1-103).
- 31 (2) Special fuel (as defined in IC 6-6-2.5-22).
- 32 **Sec. 5. (a) After January 1 but before August 1 of a year, a**
- 33 **county may impose a county supplemental motor fuel tax on motor**
- 34 **fuel sold in the county by adopting the ordinances required by this**
- 35 **section.**
- 36 (b) The executive of the county shall initiate the process as
- 37 follows:
- 38 (1) In a county containing a consolidated city, the executive
- 39 shall submit to the legislative body a proposed ordinance
- 40 imposing a county supplemental motor fuel tax after a public
- 41 hearing meeting the requirements of subsection (c).
- 42 (2) In a county that does not contain a consolidated city, the
- 43 executive shall adopt an ordinance imposing a county
- 44 supplemental motor fuel tax after a public hearing meeting
- 45 the requirements of subsection (c).
- 46 (c) Notice of the time, date, and place of the public hearing held
- 47 by the county executive under subsection (b) or the county fiscal

1 body under subsection (d) must be given in accordance with
2 IC 5-3-1.

3 (d) A county supplemental motor fuel tax may not be imposed
4 in a county unless the county fiscal body adopts an ordinance after
5 a public hearing that is identical to:

6 (1) the proposed ordinance submitted by the executive in the
7 case of a county containing a consolidated city; or

8 (2) the ordinance adopted by the executive in the case of a
9 county that does not contain a consolidated city.

10 (e) An ordinance adopted under this section must specify the
11 rate of the county supplemental motor fuel tax in the county and
12 the effective date of the ordinance to provide that the ordinance
13 takes effect:

14 (1) at least sixty (60) days after the adoption of the ordinance;
15 and

16 (2) on the first day of a month.

17 (f) The rate of a county supplemental motor fuel tax imposed
18 under this chapter may not exceed five-tenths of one cent (\$0.005)
19 per gallon of motor fuel sold in the county.

20 (g) If a fiscal body adopts an ordinance imposing a county
21 supplemental motor fuel tax under this section, the fiscal body shall
22 immediately send a certified copy of the ordinance to the
23 department.

24 Sec. 6. (a) If no bonds, leases, obligations, or other evidences of
25 indebtedness that are payable from the county supplemental motor
26 fuel tax are outstanding, the county supplemental motor fuel tax
27 may be repealed as follows:

28 (1) An ordinance to repeal the tax is adopted by the fiscal
29 body and approved by the executive in the case of a county
30 that contains a consolidated city or is subject to IC 36-2-3.5.

31 (2) Identical ordinances to repeal the tax are adopted by the
32 fiscal body and the executive in the case of a county that does
33 not contain a consolidated city and is not subject to
34 IC 36-2-3.5.

35 (b) An ordinance to repeal a county supplemental motor fuel tax
36 takes effect January 1 immediately following the date the repeal
37 was adopted. If a county repeals the ordinance imposing a county
38 supplemental motor fuel tax, the county auditor shall immediately
39 send to the commissioner of the department of state revenue a
40 certified copy of the ordinance repealing the ordinance imposing
41 the tax.

42 Sec. 7. Except as provided in section 8 of this chapter, a county
43 supplemental motor fuel tax imposed under this chapter shall be
44 imposed, paid, and collected in the same manner that the state
45 gasoline and special fuel taxes are imposed, paid, and collected
46 under this article. However, the return that is filed for the payment
47 of the tax may be a separate return or may be combined with the

1 return filed for the payment of the state gasoline tax or state
2 special fuel tax as prescribed by the department.

3 **Sec. 8. (a) This section applies only to a carrier.**

4 **(b) A county supplemental motor fuel tax imposed under this**
5 **chapter upon a carrier shall be imposed, paid, and collected in the**
6 **same manner as the state motor carrier fuel tax is imposed, paid,**
7 **and collected under IC 6-6-4.1. However, the return that is filed for**
8 **the payment of the tax may be a separate return or may be**
9 **combined with the return filed for the payment of the state motor**
10 **fuel tax as prescribed by the department.**

11 **Sec. 9. (a) This section applies only to a carrier.**

12 **(b) For each quarterly reporting period a carrier is entitled to**
13 **a credit against the carrier's county supplemental motor fuel tax**
14 **liability equal to the amount determined in STEP THREE of the**
15 **following formula.**

16 **STEP ONE: Determine the total amount of the carrier's**
17 **county supplemental motor fuel tax liability incurred during**
18 **the quarterly reporting period by purchasing motor fuel in a**
19 **county imposing a county supplemental motor fuel tax.**

20 **STEP TWO: Multiply the STEP ONE amount by a fraction.**
21 **The numerator of the fraction is the total number of miles**
22 **traveled on highways in Indiana by the carrier during the**
23 **quarterly reporting period, and the denominator of the**
24 **fraction is the total number of miles traveled within and**
25 **without Indiana by the carrier during the quarterly reporting**
26 **period.**

27 **STEP THREE: Determine the difference of:**

28 **(1) the amount determined in STEP ONE; minus**

29 **(2) the amount determined in STEP TWO.**

30 **(c) A carrier may claim the credit allowed by this section on a**
31 **form prescribed by the department that must be filed with the**
32 **quarterly report filed by the carrier under IC 6-6-4.1-10.**

33 **Sec. 10. (a) The department shall notify the county auditor of a**
34 **county that imposes a county supplemental motor fuel tax under**
35 **this chapter of the amount of the tax paid in the county.**

36 **(b) The amounts received from taxes imposed under this**
37 **chapter shall be paid monthly by the treasurer of state on warrants**
38 **issued by the auditor of state to the county treasurer.**

39 **Sec. 11. If a county imposes a county supplemental motor fuel**
40 **tax under this chapter, the county treasurer shall establish a**
41 **county supplemental motor fuel tax fund into which all amounts**
42 **received monthly from the treasurer of state shall be deposited.**

43 **Sec. 12. Before the twentieth day of each month, the county**
44 **auditor shall allocate the money deposited in the county**
45 **supplemental motor fuel tax fund during the previous month**
46 **among the taxing units in the county in the same manner that**
47 **county adjusted gross income taxes or county option income taxes**

(whichever is appropriate) are allocated among the taxing units in the county. If neither the county adjusted gross income tax (IC 6-3.5-1.1) nor the county option income tax (IC 6-3.5-6) are imposed in the county, the money deposited in the county supplemental motor fuel tax fund during the previous month must be allocated among the taxing units in the same manner that county option income taxes would be allocated in the county if the county option income tax were imposed in the county. Money allocated under this section must be distributed to the taxing units before the twenty-fifth day of each month.

Sec. 13. Revenue derived from the imposition of a county supplemental motor fuel tax under this chapter is outside the tax limits imposed by IC 6-1.1-18.5.

Sec. 14. A unit may use revenues from the imposition of a county supplemental motor fuel tax for any of the following purposes:

(1) Paying debt service or lease rentals on:

(A) bonds;

(B) leases;

(C) obligations; or

(D) any other evidence of indebtedness of the unit;

incurred to finance a road construction project.

(2) Paying the costs of any road construction project.

(3) As operating revenue for the maintenance of the unit's roads.

(4) Any other legal or corporate purpose of the unit.

Sec. 15. A county supplemental motor fuel tax imposed under this chapter is a listed tax for purposes of IC 6-8.1-1.

Sec. 16. The department shall annually estimate the amount of revenue that each county would collect under this chapter if the county adopted a county supplemental motor fuel tax. The department shall annually provide a copy of the estimate to the appropriate county auditor before July 1.

Sec. 17. A person who knowingly makes a false statement or knowingly presents a fraudulent receipt for the sale of motor fuel for the purpose of:

(1) obtaining;

(2) attempting to obtain; or

(3) assisting any other person to obtain or attempt to obtain; a credit, refund, or reduction of liability for a county supplemental motor fuel tax imposed under this chapter commits a Class C infraction.

Sec. 18. A carrier who knowingly violates this chapter, except for a violation covered by section 19 of this chapter, commits a Class C infraction.

Sec. 19. If a carrier:

(1) fails to pay a county supplemental motor fuel tax imposed

- 1 under this chapter; or
 2 (2) files a report concerning a county supplemental motor fuel
 3 tax after the date established under IC 6-6-4.1 for motor
 4 carrier fuel tax reports;
 5 the commissioner may suspend or revoke any annual permit, trip
 6 permit, temporary authorization, or repair and maintenance
 7 permit issued to the carrier. The commissioner may reinstate a
 8 permit or temporary authorization if a carrier files all required
 9 returns and reports and pays all outstanding liabilities.
- 10 Sec. 20. A person who receives or collects money as a county
 11 supplemental motor fuel tax imposed under this chapter on
 12 gasoline on which the person has not paid the tax, and knowingly
 13 fails to pay the money to the administrator as required under this
 14 chapter, commits a Class D felony.
- 15 Sec. 21. Except as otherwise provided by this chapter, a
 16 distributor (as defined in IC 6-6-1.1-103(d)) who:
 17 (1) recklessly fails to:
 18 (A) file the returns or statements required under this
 19 chapter; and
 20 (B) pay the taxes as required by this chapter; or
 21 (2) knowingly fails to keep correct records, books, and
 22 accounts required by this chapter with respect to a county
 23 supplemental motor fuel tax;
 24 commits a Class B misdemeanor.
- 25 Sec. 22. (a) This section does not apply to a carrier.
 26 (b) A person who knowingly uses motor fuel on which a county
 27 supplemental motor fuel tax:
 28 (1) has been imposed under this chapter; but
 29 (2) has not been paid;
 30 commits a Class B misdemeanor.
- 31 Sec. 23. If a person:
 32 (1) is subject to the taxes imposed under IC 6-6-1.1-201 and
 33 this chapter; and
 34 (2) fails to keep books and records as required by IC 6-8.1-5;
 35 the person is subject to the penalty under IC 6-8.1-10-4(b).
- 36 Sec. 24. (a) The definitions set forth in IC 6-6-2.5 apply to this
 37 section.
 38 (b) A supplier, permissive supplier, importer, or blender who
 39 knowingly fails to collect or timely remit a county supplemental
 40 motor fuel tax otherwise required to be paid to the department at
 41 the time that the state special fuel tax must be paid under
 42 IC 6-6-2.5-35 or pursuant to a tax precollection agreement under
 43 IC 6-6-2.5-35 is liable for the uncollected tax plus a penalty equal
 44 to one hundred percent (100%) of the uncollected tax.
 45 (c) Collection of a county supplemental motor fuel tax on special
 46 fuel arising from an out-of-state transaction does not in itself
 47 subject a supplier or permissive supplier to the jurisdiction of

1 **Indiana for any tax liability arising outside of this chapter.**

2 **(d) A person who fails or refuses to pay over to the state a**
 3 **county supplemental motor fuel tax on special fuel at the time**
 4 **required in this chapter or who fraudulently withholds or**
 5 **appropriates or otherwise uses the money or any portion thereof**
 6 **belonging to the state commits a Class D felony.**

7 **Sec. 25. The general assembly covenants with the respective**
 8 **units and the purchasers and owners of bonds, leases, obligations,**
 9 **or any other evidences of indebtedness of a unit payable from a**
 10 **county supplemental motor fuel tax imposed under this chapter**
 11 **that this chapter will not be repealed or amended in any manner**
 12 **that will adversely affect the imposition or collection of a tax**
 13 **imposed under this chapter so long as the principal, interest, or**
 14 **lease rentals due under those bonds, leases, obligations, or other**
 15 **evidences of indebtedness of a unit that are payable from a tax**
 16 **imposed under this chapter remain unpaid.**

17 SECTION 204. IC 6-8.1-1-1, AS AMENDED BY P.L.233-2007,
 18 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 UPON PASSAGE]: Sec. 1. "Listed taxes" or "taxes" includes only the
 20 pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat
 21 admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13);
 22 the slot machine wagering tax (IC 4-35-8); the gross income tax
 23 (IC 6-2.1) (repealed); the utility receipts and utility services use taxes
 24 (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted
 25 gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8)
 26 (repealed); the county adjusted gross income tax (IC 6-3.5-1.1); the
 27 county option income tax (IC 6-3.5-6); the county economic
 28 development income tax (IC 6-3.5-7); the municipal option income tax
 29 (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the financial
 30 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative
 31 fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor
 32 carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a
 33 reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax
 34 (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the
 35 hazardous waste disposal tax (IC 6-6-6.6); **a county supplemental**
 36 **motor fuel tax (IC 6-6-12)**; the cigarette tax (IC 6-7-1); the beer
 37 excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine
 38 excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the
 39 malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1);
 40 the various innkeeper's taxes (IC 6-9); the various food and beverage
 41 taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28);
 42 the oil inspection fee (IC 16-44-2); the emergency and hazardous
 43 chemical inventory form fee (IC 6-6-10); the penalties assessed for
 44 oversize vehicles (IC 9-20-3 and IC 9-30); the fees and penalties
 45 assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the
 46 underground storage tank fee (IC 13-23); the solid waste management

- 1 fee (IC 13-20-22); and any other tax or fee that the department is
- 2 required to collect or administer."
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1001 as printed January 17, 2008.)

Representative Dodge