



January 27, 2012

SENATE BILL No. 353

DIGEST OF SB 353 (Updated January 25, 2012 9:39 am - DI 58)

Citations Affected: IC 6-2.5; noncode.

Synopsis: Sales tax on gasoline. Provides that gross retail taxes imposed on gasoline shall be imposed on a per gallon basis. Requires the department of state revenue to determine a prepayment tax rate per gallon using a quarterly statewide average price and the 7% gross retail tax rate. Requires all reports of sales and use tax on gasoline to be filed electronically and the taxes remitted using the department's online tax system. Changes from 25% to 15% the amount the price of gasoline must change before a new prepayment rate may be set. Requires a new prepayment rate to take effect on the first or fifteenth of the month. Requires the department to publish notices on its Internet web site and provide notices to registered distributors, refiners, and terminal operators using electronic mail with a direct link.

Effective: Upon passage; January 1, 2013.

Walker, Lanane, Boots

January 9, 2012, read first time and referred to Committee on Tax and Fiscal Policy.
January 26, 2012, amended, reported favorably — Do Pass.

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SB 353—LS 6808/DI 58+



January 27, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 353

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 1. (a) A person is
3 a retail merchant making a retail transaction when ~~he~~ **the person**
4 engages in selling at retail.
5 (b) A person is engaged in selling at retail when, in the ordinary
6 course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~
7 **the person:**
8 (1) acquires tangible personal property for the purpose of resale;
9 and
10 (2) transfers that property to another person for consideration.
11 (c) For purposes of determining what constitutes selling at retail, it
12 does not matter whether:
13 (1) the property is transferred in the same form as when it was
14 acquired;
15 (2) the property is transferred alone or in conjunction with other
16 property or services; or
17 (3) the property is transferred conditionally or otherwise.

SB 353—LS 6808/DI 58+



1 (d) Notwithstanding subsection (b), a person is not selling at retail
 2 if ~~he~~ **the person** is making a wholesale sale as described in section 2
 3 of this chapter.

4 (e) The gross retail income received from selling at retail is only
 5 taxable under this article to the extent that the income represents:

6 (1) the price of the property transferred, without the rendition of
 7 any service; and

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

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

15 (f) Notwithstanding subsection (e):

16 (1) in the case of retail sales of ~~gasoline (as defined in~~
 17 ~~IC 6-6-1.1-103)~~ and special fuel (as defined in IC 6-6-2.5-22), the
 18 gross retail income received from selling at retail is the total sales
 19 price of the ~~gasoline or~~ special fuel minus the part of that price
 20 attributable to tax imposed under ~~IC 6-6-1.1; IC 6-6-2.5 or Section~~
 21 ~~4041(a) or~~ Section 4081 of the Internal Revenue Code; and

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

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

33 SECTION 2. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008,
 34 SECTION 314, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JANUARY 1, 2013]: Sec. 3. (a) With respect to the sale
 36 of gasoline which is dispensed from a metered pump, a retail merchant
 37 shall collect, for each unit of gasoline sold, state gross retail tax in an
 38 amount equal to the product, rounded to the nearest one-tenth of one
 39 cent (\$0.001), of:

40 (1) the ~~price per unit before the addition of state and federal taxes;~~
 41 **number of gallons of gasoline sold;** multiplied by

42 (2) seven percent (~~7%~~).

SB 353—LS 6808/DI 58+



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(2) the prepayment rate per gallon that is in effect at the time of the sale.

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

SECTION 3. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department **electronically** the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- ~~(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.~~
- ~~(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.~~
- ~~(4) (2) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.~~
- ~~(5) (3) The total amount of money received from the sale of special fuel during the period covered by the report.~~
- ~~(6) (4) That portion of the amount described in subdivision (5) (3) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.~~
- ~~(7) (5) The total number of gallons of E85 sold from a metered pump during the period covered by the report.~~

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals:

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1 **(1) the state gross retail taxes imposed on the sale of the**
 2 **gasoline for the number of gallons of gasoline sold during the**
 3 **period through the department's online tax filing program;**
 4 **plus**

5 **(2) six and fifty-four hundredths percent (6.54%) of the gross**
 6 **receipts, including state gross retail taxes, but excluding Indiana**
 7 **and federal ~~gasoline and~~ special fuel taxes, received by the retail**
 8 **merchant from the sale of the ~~gasoline and~~ special fuel;**

9 that is covered by the report and on which the retail merchant was
 10 required to collect state gross retail tax. The retail merchant shall remit
 11 that amount regardless of the amount of state gross retail tax which the
 12 merchant has actually collected under this chapter. However, the retail
 13 merchant is entitled to deduct and retain the amounts prescribed in
 14 subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

15 (c) A retail merchant is entitled to deduct from the amount of state
 16 gross retail tax required to be remitted under subsection (b) the amount
 17 determined under STEP THREE of the following formula:

18 STEP ONE: Determine:

19 (A) the sum of the prepayment amounts made during the
 20 period covered by the retail merchant's report; minus

21 (B) the sum of prepayment amounts collected by the retail
 22 merchant, in the merchant's capacity as a qualified distributor,
 23 during the period covered by the retail merchant's report.

24 STEP TWO: Subject to subsections (d) and (f), for qualified
 25 reporting periods beginning after June 30, 2009, and ending
 26 before July 1, 2020, determine the product of:

27 (A) eighteen cents (\$0.18); multiplied by

28 (B) the number of gallons of E85 sold at retail by the retail
 29 merchant during the period covered by the retail merchant's
 30 report.

31 STEP THREE: Add the amounts determined under STEPS ONE
 32 and TWO.

33 For purposes of this section, a prepayment of the gross retail tax is
 34 presumed to occur on the date on which it is invoiced.

35 (d) The total amount of deductions allowed under subsection (c)
 36 STEP TWO may not exceed the amount of money that the budget
 37 agency determines is available in the retail merchant E85 deduction
 38 reimbursement fund established under IC 15-15-12-30.5 for the
 39 deductions for all retail merchants in a particular qualified reporting
 40 period. A retail merchant is not required to apply for an allocation of
 41 deductions under subsection (c) STEP TWO. Before August 1 of each
 42 year, the budget agency shall estimate whether the amount of

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1 deductions from the immediately preceding qualified reporting period
 2 that are subject to reimbursement under IC 15-15-12-30.5(f) and the
 3 deductions expected to be reported under subsection (c) STEP TWO
 4 for the qualified reporting periods beginning after December 31 and
 5 ending before April 1 of the following year will exceed the amount of
 6 money available in the retail merchant E85 deduction reimbursement
 7 fund for the deductions. If the budget agency determines that the
 8 amount of money in the retail merchant E85 deduction reimbursement
 9 fund is insufficient to cover the amount of the deductions expected to
 10 be reported, the budget agency shall publish in the Indiana Register a
 11 notice that the deduction program under subsection (c) STEP TWO is
 12 suspended with respect to the qualified reporting periods occurring in
 13 the following calendar year and that no deductions will be granted for
 14 retail transactions occurring in the qualified reporting periods occurring
 15 in the following calendar year.

16 (e) As used in this section, "qualified reporting period" refers to a
 17 reporting period beginning after December 31 and ending before April
 18 1 of each year.

19 (f) The budget agency may suspend the deduction program under
 20 subsection (c) STEP TWO for a particular year at any time during a
 21 qualified reporting period if the budget agency determines that the
 22 amount of money in the retail merchant E85 deduction reimbursement
 23 fund and the amount of money that will be transferred to the fund on
 24 July 1 will not be sufficient to reimburse the deductions expected to
 25 occur before the deduction program for the year ends on March 31. The
 26 budget agency shall immediately provide notice to the participating
 27 retail merchants of the decision to suspend the deduction program for
 28 that year.

29 SECTION 4. IC 6-2.5-7-10, AS AMENDED BY P.L.182-2009(ss),
 30 SECTION 181, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JANUARY 1, 2013]: Sec. 10. (a) Each refiner or
 32 terminal operator and each qualified distributor that has received a
 33 prepayment of the state gross retail tax under this chapter shall remit
 34 the tax received to the department semimonthly, through the
 35 department's online tax filing system, according to the following
 36 schedule:

37 (1) On or before the tenth day of each month for prepayments
 38 received after the fifteenth day and before the end of the
 39 preceding month.

40 (2) On or before the twenty-fifth day of each month for
 41 prepayments received after the end of the preceding month and
 42 before the sixteenth day of the month in which the prepayments

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- 1 are made.
- 2 (b) Before the end of each month, each refiner or terminal operator
- 3 and each qualified distributor shall file a report **electronically** covering
- 4 the prepaid taxes received and the gallons of gasoline sold or shipped
- 5 during the preceding month. The report must include the following:
- 6 (1) The number of gallons of gasoline sold or shipped during the
- 7 preceding month, identifying each purchaser or receiver as
- 8 required by the department.
- 9 (2) The amount of tax prepaid by each purchaser or receiver.
- 10 (3) Any other information reasonably required by the department.

11 SECTION 5. IC 6-2.5-7-11 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 11. Each
 13 distributor that prepays the state gross retail tax under this chapter shall
 14 file a monthly report with the department. The report shall be filed
 15 **electronically and** no later than the last day of the month following the
 16 month that the report covers. The report must include the following:

- 17 (1) The number of gallons of gasoline purchased or received by
- 18 the distributor from each refiner, terminal operator, or another
- 19 distributor.
- 20 (2) The amount of state gross retail tax prepaid to each refiner,
- 21 terminal operator, or distributor.
- 22 (3) The number of gallons of gasoline sold to each distributor,
- 23 retail merchant, exempt purchaser, or other person and the
- 24 amount of state gross retail tax collected from each distributor,
- 25 retail merchant, or other person identifying the location of each
- 26 distributor, retail merchant, exempt purchaser, or other person, as
- 27 required by the department.
- 28 (4) Any other information reasonably required by the department.

29 SECTION 6. IC 6-2.5-7-14, AS AMENDED BY P.L.182-2009(ss),
 30 SECTION 182, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JANUARY 1, 2013]: Sec. 14. (a) Before **March 10**,
 32 June 10, **September 10**, and December 10 of each year, the department
 33 shall determine and provide to:

- 34 (1) each refiner and terminal operator and each qualified
- 35 distributor known to the department to be required to collect
- 36 prepayments of the state gross retail tax under this chapter; and
- 37 (2) any other person that makes a request;
- 38 a notice of the prepayment rate to be used during the following ~~six (6)~~
- 39 **three (3)** month period. **The notice shall be published on the**
- 40 **department's Internet web site, published in the Indiana Register,**
- 41 **and provided to registered distributors, refiners, and terminal**
- 42 **operators by an electronic mail message that includes a direct link**

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1 **to the notice on the department's Internet web site.** The department,
 2 after approval by the office of management and budget, may determine
 3 a new prepayment rate if the department finds that the statewide
 4 average retail price per gallon of gasoline, excluding the Indiana and
 5 federal gasoline taxes and the Indiana gross retail tax, has changed by
 6 at least ~~twenty-five percent (25%)~~ **fifteen percent (15%)** since the
 7 most recent determination. **A new prepayment rate may not take**
 8 **effect until the immediately following first or fifteenth day of the**
 9 **month, whichever is earlier.**

10 (b) **Before the end of the month immediately following each**
 11 **calendar quarter, the department shall determine the statewide**
 12 **average retail price of gasoline for the most recently completed**
 13 **calendar quarter.** In determining the ~~prepayment rate retail price per~~
 14 ~~gallon of gasoline~~ under this section, the department shall use the ~~most~~
 15 ~~recent statewide average~~ retail price of gasoline ~~available to~~
 16 **determined by** the department.

17 (c) The prepayment rate per gallon of gasoline determined by the
 18 department under this section is the amount per gallon of gasoline
 19 determined under ~~STEP FOUR~~ **THREE** of the following formula:

20 STEP ONE: Determine the ~~statewide average~~ retail price per
 21 gallon of gasoline, excluding the Indiana and federal gasoline
 22 taxes and the Indiana gross retail tax.

23 STEP TWO: Determine the product of the following:

- 24 (A) The STEP ONE amount.
- 25 (B) The Indiana gross retail tax rate.
- 26 ~~(C) Eighty percent (80%):~~

27 ~~STEP THREE: Determine the lesser of:~~

- 28 ~~(A) the STEP TWO result; or~~
- 29 ~~(B) the product of:~~

30 ~~(i) the prepayment rate in effect on the day immediately~~
 31 ~~preceding the day on which the prepayment rate is~~
 32 ~~redetermined under this section; multiplied by~~

33 ~~(ii) one hundred twenty-five percent (125%):~~

34 ~~STEP FOUR: THREE:~~ Round the ~~STEP THREE TWO~~ result to
 35 the nearest one-tenth of one cent (\$0.001).

36 SECTION 7. [EFFECTIVE UPON PASSAGE] (a) **Before June 10,**
 37 **2012, and for purposes of IC 6-2.5-7, the department of state**
 38 **revenue shall publish the gross retail tax prepayment rate**
 39 **prescribed by IC 6-2.5-7-14, as amended by this act, that will apply**
 40 **to sales of gasoline for the period beginning July 1, 2012, through**
 41 **September 30, 2012.**

42 (b) Each retail merchant covered by IC 6-2.5-7 shall, for sales

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1 made before July 1, 2012, take an inventory of the gasoline in
2 storage on the commencement of business on July 1, 2012, and
3 reconcile the amount of gross retail taxes owed on sales of gasoline
4 through June 30, 2012, in the manner and on the forms prescribed
5 by the department of state revenue. The reconciliation shall be filed
6 with the department of state revenue before September 1, 2012,
7 and shall be accompanied by a payment for any gross retail taxes
8 owed on gasoline sold through June 30, 2012, or by a claim for a
9 credit, if the retail merchant's reconciliation indicates the retail
10 merchant has overpaid gross retail taxes on gasoline sold through
11 June 30, 2012.

12 (c) This SECTION expires January 1, 2013.
13 SECTION 8. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 3 with "[EFFECTIVE JANUARY 1, 2013]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 1. (a) A person is a retail merchant making a retail transaction when ~~he~~ **the person** engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~ **the person:**

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if ~~he~~ **the person** is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

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

(f) Notwithstanding subsection (e):

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- (1) in the case of retail sales of ~~gasoline (as defined in IC 6-6-1.1-103)~~ and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the ~~gasoline or~~ special fuel minus the part of that price attributable to tax imposed under ~~IC 6-6-1.1; IC 6-6-2.5 or Section 4041(a) or~~ Section 4081 of the Internal Revenue Code; and
- (2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

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

Page 2, line 15, after "department" insert "**electronically**".

Page 2, line 38, after "period" insert "**through the department's online tax filing program**".

Page 4, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-7-10, AS AMENDED BY P.L. 182-2009(ss), SECTION 181, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 10. (a) Each refiner or terminal operator and each qualified distributor that has received a prepayment of the state gross retail tax under this chapter shall remit the tax received to the department semimonthly, through the department's online tax filing system, according to the following schedule:

- (1) On or before the tenth day of each month for prepayments received after the fifteenth day and before the end of the preceding month.
- (2) On or before the twenty-fifth day of each month for prepayments received after the end of the preceding month and before the sixteenth day of the month in which the prepayments are made.

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file a report **electronically** covering the prepaid taxes received and the gallons of gasoline sold or shipped during the preceding month. The report must include the following:

- (1) The number of gallons of gasoline sold or shipped during the preceding month, identifying each purchaser or receiver as

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required by the department.

(2) The amount of tax prepaid by each purchaser or receiver.

(3) Any other information reasonably required by the department.

SECTION 5. IC 6-2.5-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 11. Each distributor that prepays the state gross retail tax under this chapter shall file a monthly report with the department. The report shall be filed **electronically and** no later than the last day of the month following the month that the report covers. The report must include the following:

(1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor.

(2) The amount of state gross retail tax prepaid to each refiner, terminal operator, or distributor.

(3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of state gross retail tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person, as required by the department.

(4) Any other information reasonably required by the department."

Page 4, line 31, after "period." insert "**The notice shall be published on the department's Internet web site, published in the Indiana Register, and provided to registered distributors, refiners, and terminal operators by an electronic mail message that includes a direct link to the notice on the department's Internet web site.**".

Page 4, line 35, strike "twenty-five percent".

Page 4, line 36, strike "(25%)" and insert "**fifteen percent (15%)**".

Page 4, line 36, after "determination." insert "**A new prepayment rate may not take effect until the immediately following first or fifteenth day of the month, whichever is earlier.**".

Page 4, line 38, delete "attorney general" and insert "**department**".

Page 4, line 38, delete "provide to the" and insert "**determine**".

Page 4, line 39, delete "department".

Page 5, line 1, delete "provided".

Page 5, line 1, strike "to" and insert "**determined by**".

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Page 5, line 1, delete "by the attorney" and insert ".".

Page 5, delete line 2.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 353 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 0.

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