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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Legislative Budget  
Office

**H.B. 62**  
**133rd General Assembly**

## Bill Analysis

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**Version:** As Introduced

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**CORRECTED VERSION\***

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\* Corrections are made to the description of motor fuel shrinkage allowances and refunds (p. 3), interstate maintenance (p. 9), and IDIQ contracts (p. 10).

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## **Department of Taxation**

- Increases the per gallon rates of the motor fuel tax and the motor fuel use tax from 28¢ to 46¢ beginning July 1, 2019.
- Indexes the per gallon rate of the taxes with the consumer price index (CPI) to account for inflation beginning July 1, 2020.
- Maintains current revenue distribution proportions and amounts.
- Continues the 1% fuel dealer and 1/2% retailer shrinkage allowances in effect biennially since 2008, superseding the 3% and 1% allowances in permanent codified law.
- Increases the refund for fuel used in school buses from 6¢ per gallon to 24¢ per gallon beginning July 1, 2019.
- Maintains existing cents-per-gallon refund levels for fuel used in transit and developmental disability system buses.
- Requires that the amount deposited to the Motor Fuel Tax Administration Fund be determined by appropriation rather than as a percentage of motor fuel tax receipts.

### **Motor fuel excise tax**

(R.C. 5735.05, 5735.053, and 5735.142; Sections 757.20, 757.30, 757.40, 757.50, and 812.30)

The motor fuel excise tax is levied at the rate of 28¢ per gallon and applies to gasoline, diesel, kerosene (other than K-1 grade), and all other liquid fuels, including liquid natural gas and liquid petroleum gas. Nearly all the revenue is devoted, by constitutional command, solely to road and highway purposes including construction, maintenance, signals and signs and other traffic control systems, various other highway related purposes, and to retiring debt issued for such purposes. A small percentage of the revenue is attributed to tax-paid fuel for boats or other water-going vessels, and that part of the revenue is used for various waterway-related purposes. The tax is payable primarily by wholesale distributors ("dealers").

#### **Rate**

The bill increases the per-gallon tax rate from 28¢ to 46¢ beginning July 1, 2019. Thereafter, the Tax Commissioner is required to annually increase the motor fuel excise tax rate at the same rate as the increase in the Consumer Price Index (CPI). The amount of the increase – referred to by the bill as the "tax adjustment factor" – is computed by multiplying 46¢ by the percentage increase in the CPI from January 1, 2019 to December 31 of the preceding year. This computation is to be completed in April of each year (beginning in 2020) and the rate increase takes effect on the ensuing July 1. No rate adjustment is to occur for years in which the CPI decreases – in that case the rate remains the same as the preceding year.

The CPI is a measure of inflation reported by the United States Bureau of Labor Statistics. The CPI used to index the fuel tax rate tracks the average change over time in the prices paid by urban consumers for a "market basket" of consumer goods and services.

### **Motor fuel use tax**

The state's motor fuel use tax rate will increase by the same amounts by operation of law. Under current law, the fuel use tax applies to fuel purchased outside Ohio but used within the state by commercial trucks.<sup>1</sup>

### **Revenue distribution**

Revenue generated from the rate increase will be distributed among state funds and among local governments in the same proportions as under current law. In fiscal year 2018, approximately 56% of the revenue was credited to the Highway Operating Fund, which is the primary state source of road and highway funding; about 6% was committed to highway debt service; and 2.75% was for transportation-related spending by various state agencies other than the Department of Transportation. About 31.5% of the revenue was distributed by statutory formula among counties, townships, and municipal corporations through the Gasoline Excise Tax Fund. An additional 3.4% of the revenue was devoted to local funding of roads and bridges through the state's local infrastructure program (LTIP) on a grant basis.

### **Allowances, discounts, and refunds**

Current law governing the motor fuel tax permits each motor fuel dealer that properly files and pays monthly taxes to deduct the tax due on 1% of the fuel the dealer received, minus 0.5% of the fuel sold to retail dealers.<sup>2</sup> This allowance is to cover the costs of filing the report and to compensate for evaporation, shrinkage, and other "unaccounted for" losses. Under permanent codified law, however, the percentages are 3% and 1%, respectively.<sup>3</sup> But each of the last six transportation appropriation acts reduced the 3% discount to 1% (minus 0.50% of fuel sold to retail dealers) for each year since FY 2008. The bill continues the allowance at the reduced 1% level throughout the FY 2020-2021 biennium.

Current law also grants a refund to retail fuel dealers who have purchased fuel on which the excise tax has been paid to account for evaporation and shrinkage.<sup>4</sup> In permanent codified law, the refund equals 1% of the taxes paid on the fuel each semiannual period. But, as with the dealer shrinkage allowance, the retailer refund has been reduced to 0.5% for each fiscal year from 2008 through 2019 by uncodified provisions in the last six transportation appropriation acts. The bill continues the reduced percentage at this level through the FY 2020-2021 biennium.

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<sup>1</sup> See, R.C. Chapter 5728, not in the bill.

<sup>2</sup> Section 757.20 of H.B. 26 of the 132<sup>nd</sup> G.A.

<sup>3</sup> R.C. 5735.06(B)(1)(c), not in the bill.

<sup>4</sup> R.C. 5735.141, not in the bill.

## Transit and school buses

Under current law, transit systems, school districts, and county developmental disability boards are entitled to refunds for at least some part of the fuel excise tax that was paid on the fuel used by those entities.<sup>5</sup> Transit systems are refunded 27¢ per gallon and developmental disability boards are refunded 6¢ per gallon (i.e., the amount by which the tax rate was last increased, from 2003 to 2005).

The bill increases the refund amount for school districts from 6¢ per gallon to 24¢ per gallon beginning July 1, 2019, but does not change the existing cents-per-gallon refund amounts for transit systems and developmental disability boards to account for the increased tax rate.

## Tax Administration Fund

Under current law, 0.275% of motor fuel tax receipts are credited to the Motor Fuel Tax Administration Fund and used to pay the expenses of the Department of Taxation in administering the tax. The bill instead requires that the amount deposited to the Fund be determined by appropriation.

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## Department of Public Safety (DPS)

- Clarifies that a commercial driver's license (CDL) holder, who (1) is operating **any** motor vehicle (commercial or not), (2) is arrested for a violation of the law governing operating a vehicle while impaired (OVI), and (3) refuses an officer's request to submit to a drug or alcohol test, will be disqualified from driving a commercial motor vehicle.
- Requires the State Board of Emergency Medical, Fire, and Transportation Services to participate in the Retained Applicant Fingerprint Database and Continuous Record Monitoring Service for any EMR, EMT, AEMT, or paramedic certified by the Board.
- Requires all individuals certified or applying for certification as an EMR, EMT, AEMT, or paramedic to submit one complete set of fingerprints to the Superintendent of the Bureau of Criminal Identification for a background check.
- Requires DPS to pay any associated fees for individuals submitting fingerprints for the database, except for applicants seeking certification by reciprocity.

## Implied consent for CDL holders

(R.C. 4506.17)

Currently, a person is disqualified from operating a commercial motor vehicle if all of the following apply:

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<sup>5</sup> R.C. 5735.142, not in the bill.

1. The person holds a commercial driver's license (CDL) or commercial temporary instruction permit (CDL permit) or the person operates a commercial motor vehicle that requires a CDL or CDL permit;
2. The person is arrested for violating the law governing operating a vehicle while impaired (OVI); and
3. The person refuses to submit to a blood, urine, or breath test despite being deemed to have consented under the implied consent statute.

Although R.C. Chapter 4506 requires the Registrar of Motor Vehicles to disqualify a CDL holder if the holder refuses to comply with a request for a blood, breath, or urine test under Ohio's implied consent statute, several lower courts have found that CDL holders may only be disqualified if the holder is operating a commercial motor vehicle at the time of arrest. *Lachowski v. Petit*, Portage C.P. No. 2018-CV-430; *Vaughn v. Petit*, Franklin C.P. No. 18CV007834. These decisions create uncertainty regarding the disqualification of a CDL holder who refuses to submit to a test while driving a **noncommercial** vehicle.

Consequently, the bill clarifies that refusal to submit to a test (when arrested for OVI) leads to disqualification when a CDL holder is driving **any** type of motor vehicle, not just a commercial motor vehicle.

Relatedly, the U.S. Supreme Court has found that the implementation of implied consent laws that impose a **civil** penalty, such as license disqualification, on motorists who refuse to comply with a request for a blood, breath, or urine test is constitutional. *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2165 (2016), citing *McNeely v. Missouri*, 133 S. Ct. 1552 (2013).

## **Emergency medical personnel background checks**

(R.C. 4765.302 and 109.5721, not in the bill)

The bill requires the State Board of Emergency Medical, Fire, and Transportation Services to participate in the Retained Applicant Fingerprint Database and Continuous Record Monitoring Service for any emergency medical responder (EMR), emergency medical technician (EMT), advanced emergency medical technician (AEMT), or paramedic certified by the Board. The Superintendent of the Bureau of Criminal Identification (BCI) collects and stores fingerprints in the database of employees or volunteers and then notifies participants when an individual has been arrested for, convicted of, or pleaded guilty to any offense. BCI conducts both initial and continuous background checks on employees and volunteers via the database and service.

Under the bill, each individual seeking initial certification or certification renewal as an EMR, EMT, AEMT, or paramedic must submit one complete set of fingerprints for background check purposes to the Superintendent, unless the individual is already enrolled in the Continuous Record Monitoring Service. The individual must be fingerprinted at a location approved by the Board. DPS will pay the initial or annual fee charged for background checks. However, an individual seeking certification by reciprocity must pay the initial background check fee and fee for enrollment in the database. Additionally, an individual seeking certification by reciprocity must ask that the Superintendent request the individual's records from the Federal Bureau of Investigation.

Under the bill, the Board is permitted to adopt rules establishing the standards and procedures for the provision of the background criminal records checks. The results from the background criminal records checks and the reports containing those results are not considered public records.

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## **Department of Transportation (ODOT)**

### **Speed limits**

- Expands the Director of Transportation's authority to establish variable speed limits to all highways, and removes prior restrictions that only specific interstate highways are eligible for variable speed limits.
- Requires changes to speed limits established in statute to be based on criteria established by an engineering study, as defined by the Director, rather than by specific types of studies as required under current law.
- Makes clarifying changes to the statutory speed limits, including consolidating a repetitive speed limit and creating consistency in the language and terminology.

### **Transportation facility access**

- Authorizes any agency (meaning any governmental or business entity that is authorized to appropriate property by eminent domain) to enter upon lands, waters, and premises as necessary to access and perform maintenance on transportation facilities.
- Requires the agency to give the owner or possessor of the property reasonable notice of the entry.
- Declares that the entry does not constitute a trespass.
- Applies existing law to an entry that does both of the following:
  - Requires the agency to make restitution or reimbursement for damages caused to the lands, waters, or premises as a result of the entry; and
  - Specifies that if the parties are unable to reach a settlement regarding restitution, damages may be recoverable by civil action.

### **Highway advertising devices**

- Clarifies that a nonconforming advertising device cannot be restored if it is destroyed by an "act of God."
- Authorizes the Director to designate any portion of the state highway system as a scenic byway, therefore requiring advertising devices to conform to special rules for advertising on such byways.

## Other changes

- Specifies that the Director need not produce, for evidence in a court, an original electronic record, plan, drawing, or other document (in addition to an exemption for nonelectronic original items, as in current law).
- Eliminates the presumed authorization to depose the Director in all pending lawsuits. (Currently, the Director may be deposed in all such suits as long as the deposition takes place at the Director's office.)
- Permits the Director to provide road salt (at the Director's purchase price) to a political subdivision under specified circumstances.
- Permits the Director to remove snow and ice from and to maintain, repair, improve, or provide lighting on interstate highways located within a municipal corporation or to reimburse a municipal corporation for such improvements.
- Extends, for two years, a current temporary exemption from statutory vehicle size and weight limits that applies to towing vehicles that are traveling to or returning from removing a motor vehicle from an emergency on a public highway.
- Authorizes the Director to enter in indefinite delivery indefinite quality (IDIQ) contracts for not more than two projects in fiscal years 2020 and 2021.
- For purposes of IDIQ contracts, requires the Director to prepare bidding documents, establish contract forms, determine contract terms and conditions, develop and implement a work order process, and take any other action necessary to fulfill the Director's duties and obligations related to IDIQ contracts.

## Speed limits

(R.C. 4511.21)

The bill makes several changes to the Ohio speeding law. First, the bill expands the Director's authority to establish variable speed limits to **all** highways. A variable speed limit is a highway speed limit that can vary from the normal speed limit depending on conditions such as time of day or weather. Under current law, the Director can only establish a variable speed limit on all or portions of Interstate 670, Interstate 275, and Interstate 90 (between Interstate 71 and the Pennsylvania border).

Second, the bill requires changes to speed limits established in statute to occur based on criteria established by an engineering study, as defined by the Director. Current law requires the changes to statutory speed limits to be based on either a "geometric and traffic characteristic study" or an "engineering and traffic investigation." Current law neither defines the study or the investigation nor specifies the differences, if any, between the two concepts. Thus, the bill standardizes the method of determining whether a change in the statutory speed limit is appropriate for a particular location. Under current law, unchanged by the bill, the Director or a local authority with the Director's approval may raise or lower a speed limit if local conditions make the current speed limit either greater or less than is reasonable or safe.

Finally, the bill makes clarifying changes to the statutory speed limits. The changes include consolidating a repetitive speed limit and creating consistency in the language and terminology.

## **Transportation facility access**

(R.C. 163.03)

The bill authorizes any agency (meaning any governmental entity, corporate entity, or private company that is authorized to appropriate property by eminent domain) to enter upon lands, waters, and premises as necessary to perform maintenance on transportation facilities. The bill does not specify what constitutes a "transportation facility."

An agency that seeks entry must give reasonable notice, to the owner or possessor of the property to be entered, between 48 hours and 30 days before the entry. The agency may provide the notice by any means reasonably available.

Under the bill, this type of entry does not constitute a trespass. Further, the bill applies existing law to an entry that does both of the following:

1. Requires the agency to make restitution or reimbursement for damages caused to the lands, waters, or premises as a result of the entry; and
2. Specifies that if the parties are unable to reach a settlement regarding restitution, damages may be recoverable by civil action.

## **Highway advertising devices**

### **Nonconforming advertising devices**

(R.C. 163.31 and 5516.08, not in the bill)

In the context of highway advertising devices on interstates, national highways, and other specified highways, a "nonconforming advertising device" is a device that does not meet current restrictions on location or design. However, because it existed prior to the adoption of those restrictions, the device is "grandfathered" and can remain on the property. Under federal law, a nonconforming device may not be restored if it is destroyed by an "act of God." The bill aligns Ohio law with this federal restriction.

### **Devices along scenic byways**

(R.C. 5516.05)

The bill authorizes the Director to designate any portion of the state highway system as a scenic byway. Under current law, the Director may designate any portion of the interstate highway, the national highway system, or the primary system as a scenic byway. Thus, the bill expands the number of highways that may be designated as scenic byways. As a result of this expansion, new advertising devices placed along the new scenic byways will need to conform to the restrictions that ODOT specifies for devices on scenic byways. Advertising devices already placed along newly designated scenic byways will be considered nonconforming advertising devices and can be maintained according to ODOT regulations pertaining to such devices.

## Court proceedings

(R.C. 5501.21)

Currently, the Department of Transportation may produce, in lieu of an original, a copy of a **paper** record, plan, drawing, or other document ("document") as evidence in a court, as long as the copy is stamped with the Department's seal. Under the bill, the Department may also produce, in lieu of an original, a copy of an **electronic** document that is stamped with the Department's seal.

Additionally, under current law, any party to any pending lawsuit may depose the Director as long as the deposition takes place in the Director's office. The bill eliminates the presumed authorization that the Director may be a deponent in **any** lawsuit, relevant to the Director or not. (The bill does not prohibit the Director from being deposed – it merely removes this broad grant of authority.)

## Excess road salt

(R.C. 5501.41)

The bill permits the Director to provide road salt to a political subdivision if all of the following apply:

1. The Director has excess road salt;
2. The political subdivision is unable to acquire road salt; and
3. The political subdivision is in an emergency situation.

The bill requires the Director to seek reimbursement for any road salt provided to a political subdivision for the same price at which the Director purchased the road salt. Current law permits the Director to remove snow and ice from state highways (including state highways within a municipal corporation, if the Director receives prior consent from the municipal corporation's legislative authority). Otherwise, each political subdivision is responsible for snow and ice removal in its respective jurisdiction (i.e., a board of county commissioners is responsible for county roads, a board of township trustees is responsible for township roads, etc.).

## Maintenance of interstate highways

(Section 203.70)

The bill permits the Director to remove snow and ice from and to maintain, repair, improve, or provide lighting on interstate highways located within the boundaries of a municipal corporation in order to meet federal highway requirements. Additionally, if there is a written agreement between the Director and the legislative authority of the municipal corporation, ODOT may reimburse that municipal corporation for all or part of the costs incurred by the municipal corporation in making the described improvements to the interstate highways in their boundaries. This permissive authority is an extension of the authority granted to the Director in 2017 in H.B. 26 (the prior transportation budget).

## Size and weight exemptions for towing vehicles

(Section 755.10; R.C. 5577.15, not in the bill)

The bill extends, for two years, a temporary exemption from statutory vehicle size and weight limits that applies to certain towing vehicles – ones that are traveling to and returning from removing a motor vehicle from an emergency on a public highway. Specifically, those size and weight limitations do not apply in any of the following circumstances:

1. When a person is engaged in the initial towing or removal of a wrecked or disabled motor vehicle from the site of an emergency on a public highway to the nearest qualified repair facility;
2. When the person is en route to the site of an emergency on a public highway to tow a wrecked or disabled motor vehicle; or
3. When the person is returning from delivering a wrecked or disabled motor vehicle to the nearest qualified repair facility after removing the motor vehicle from the site of an emergency on a public highway.

Prior to the temporary exemption (which, without the bill's extension, is scheduled to expire on June 30, 2019), the law only provided an exemption from the statutory vehicle size and weight limits for a towing vehicle while the vehicle was engaged in the scenario in (1), but not the scenarios in (2) or (3). Thus, a towing vehicle was exempt while towing the wrecked or disabled vehicle, but not while traveling to the emergency or returning back to its "home" location.

## Indefinite delivery indefinite quantity (IDIQ) contracts

(Section 203.100)

The bill requires the Director to advertise, seek bids for, and award indefinite delivery indefinite quantity (IDIQ) contracts for not more than two projects in fiscal years 2020 and 2021. An IDIQ contract is a contract for an indefinite quantity, within stated limits, of supplies or services that will be delivered by the awarded bidder over a defined contract period. For purposes of entering into IDIQ contracts, the Director is required to prepare bidding documents, establish contract forms, determine contract terms and conditions, develop and implement a work order process, and take any other action necessary to fulfill the Director's duties and obligations related to IDIQ contracts. The Director must ensure that an IDIQ contract includes the maximum overall value of the contract, which may include an allowable increase of \$100,000 or 5% of the advertised contract value, whichever is less, and the duration of the contract, including a time extension of up to one year if determined appropriate by the Director. The requirements pertaining to IDIQ contracts are an extension of the requirements from previous transportation budgets

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## Other Provisions

- Eliminates the exemption to the Opened Container Law that allows a person to possess an open container of alcohol in or on a stationary vehicle that is not being operated in a traffic lane and is in an outdoor refreshment area.

## Opened container of alcohol exemption

(R.C. 4301.62)

The bill eliminates the exemption to the Opened Container Law that allows a person to possess an opened container of beer or intoxicating liquor in or on a motor vehicle within an outdoor refreshment area (DORA) when the vehicle is stationary and is not being operated in a lane of vehicular traffic. A DORA is a designated area created by a municipal corporation or township in which a person may purchase beer or intoxicating liquor from a designated liquor permit holder and walk around outdoors.

The current exemption is not in compliance with the federal opened container law requirement. As a result, the state is subject to both limitations on the use of some federal transportation funds and to additional procedural requirements. The bill's elimination of this exemption makes Ohio's law compliant with the federal law.

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### Note on Effective Dates

(Sections 812.10 and 812.20)

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum under the Ohio Constitution and takes effect on the 91st day after the bill is filed with the Secretary of State (barring the filing of a referendum petition).

Article II, Section 1d of the Ohio Constitution states that "appropriations for the current expenses of state government and state institutions" and "[l]aws providing for tax levies" go into immediate effect and are not subject to the referendum. The bill includes a statement that an appropriation of money under the bill is not subject to the referendum if a contemplated expenditure is wholly to meet a current expense within the meaning of the Ohio Constitution and R.C. 1.471. However, the appropriation is subject to the referendum if a contemplated expenditure wholly or partly does not meet a current expense within the meaning of those provisions.

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### History

Action	Date
Introduced	02-12-19