



Bill Analysis

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Legislative Service Commission

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(As Introduced)

Rep. Patton

BILL SUMMARY

- Makes temporary changes to the motor fuel excise tax shrinkage and evaporation discount and refund amounts.
- Permits fuel tax revenues to be used to pay the interest, principal, and charges on Grant Anticipation Revenue Vehicles, which are bonds issued by the Treasurer of State on behalf of the Ohio Department of Transportation for highway construction projects approved by the United States Department of Transportation and currently are secured by federal transportation funds allocated to Ohio.
- Requires the Department of Transportation to revise its policy for classifying and prioritizing new construction planning and contracts to give priority to projects that promote economic development, encourage infrastructure and airport preservation and rehabilitation, expand public transportation capacity, reduce traffic congestion in urban areas, improve rail freight services, enhance safety, and reflect local community requests in land use decisions.
- Allows the Director of Transportation to enter into agreements and cooperate with the Secretary of Transportation to assume specified responsibilities of the Secretary, and allows the state to be sued in federal court in regard to ODOT actions arising from the assumption of such responsibilities.

* This analysis does not address appropriations, fund transfers, and similar provisions. That information will be found in the Redbook and Budget in Detail spreadsheet prepared by LSC for H.B. 67.

- Generally conforms Ohio law governing advertising devices along interstates and highways on the primary system with Federal Highway Administration provisions by updating definitions to reflect current procedures for determining highway status and by removing references to devices on the premises of a professional sports facility, which are not allowed under federal law.
- Upon approval of the Director of Transportation, allows a charitable organization operating a qualified attraction (natural wonders, and artistic, scenic, and historical attractions) to participate in the Department of Transportation's business logo program and place a logo on state directional signs within the rights-of-way of divided, multi-lane, limited access highways at no cost or for a nominal fee.
- Requires the Director of Public Safety to use money credited to the Family Violence Prevention Fund, which is currently required to be used to provide grants to family violence shelters in Ohio, to be used to operate the Division of Criminal Justice Services as well.
- Removes language, enacted when the Division of Homeland Security was created in 2003, declaring the intent of the General Assembly that the creation of the Division "not result in an increase of funding appropriated to the department."
- Creates the Federal Justice Grants Fund, to consist of money from federal grants that is received by the Division of Criminal Justice Services for criminal justice programs and that is not required to be credited into an interest-bearing fund or account.
- Creates the Justice Program Services Fund, to consist of money collected by the Division of Criminal Justice Services for nonfederal purposes that is not required to be credited to some other fund and to be used to pay costs of administering the operations of the Division.

CONTENT AND OPERATION

Motor fuel excise tax: evaporation and shrinkage discount and refund

(Section 557.10)

Under current law, a motor fuel excise tax of 28¢ per gallon is imposed on motor fuel dealers.¹ The law governing the motor fuel excise tax (R.C. 5735.06) also provides that a motor fuel dealer filing a complete and timely monthly tax report with payment is entitled to deduct a discount equal to 3% of the fuel gallonage the dealer received minus 1% of the fuel gallonage sold to retail dealers (to cover the costs of filing the report and to account for evaporation, shrinkage, and other losses).² Pursuant to the main operating budget for the current fiscal biennium enacted by Am. Sub. H.B. 66 of the 126th General Assembly, the discount was reduced to 2.5% (minus 0.83% of gallonage sold to retail dealers) during fiscal year 2006 and to 1.95% (minus 0.65% of gallonage sold to retail dealers) during fiscal year 2007. The bill proposes to reduce the discount for fiscal years 2008 and 2009 to 1.0% (minus 0.65% of gallonage sold to retail dealers).

Under the motor fuel excise tax law, retail dealers of motor fuel who have purchased fuel on which the motor fuel excise tax has been paid are granted a refund under that law for evaporation and shrinkage equal to 1.0% of the taxes paid on the fuel each semiannual period (R.C. 5735.141). Am. Sub. H.B. 66 reduced the refund to 0.83% for the semiannual periods ending in fiscal year 2006 and 0.65% for the semiannual periods ending in fiscal year 2007. The bill proposes to retain, for all four semiannual periods of fiscal years 2008 and 2009, the refund percentage established by Am. Sub. H.B. 66 for fiscal year 2007 (0.65% of the taxes paid per semiannual period).

¹ A "motor fuel dealer" is defined under the Revised Code to mean any person who (1) imports from another state or foreign country or acquires motor fuel by any means into a terminal in Ohio, (2) imports motor fuel from another state or foreign country in bulk lot vehicles for subsequent sale and distribution in Ohio from bulk lot vehicles, (3) refines motor fuel in Ohio, (4) acquires motor fuel from a motor fuel dealer for subsequent sale and distribution by that person in Ohio from bulk lot vehicles, or (5) possesses an unrevoked permissive motor fuel dealer's license. Any person who obtains dyed diesel fuel for use other than for the operation of motor vehicles on the public highways or on waters within Ohio, but later so uses it, will also be considered a motor fuel dealer regarding any unpaid taxes on the motor fuel so used (R.C. 5735.01).

² "Retail dealer" is defined under the Revised Code to mean any person that sells or distributes motor fuel at a retail service station located in Ohio (R.C. 5735.01).

Use of fuel tax proceeds to pay Grant Anticipation Revenue Vehicles (GARVEE bonds)

(R.C. 5735.05)

Federal law permits states to issue Grant Anticipation Revenue Vehicles, which are known as GARVEE bonds. This term refers to any financing instrument for which principal or interest is repaid with future federal-aid highway funds. The state debt instruments are issued in anticipation of the receipt of those funds in subsequent years. A state may use future obligations of its federal-aid funds not only for the retirement of principal but also for the payment of interest and of issuance, insurance, and other costs incidental to the sale of an eligible debt financing instrument.

The current Ohio motor fuel tax, which is levied on wholesalers and refiners that distribute fuel in Ohio, is composed of five components and totals 28¢ per gallon. The use of fuel tax revenue is limited by Section 5a of Article XII, Ohio Constitution, and permissible uses include payment of highway obligations, costs for the construction, reconstruction, maintenance, and repair of public highways and bridges and other statutory highway purposes, and the expense of state enforcement of traffic laws.

The bill permits one component of the fuel tax to be used to pay the interest, principal, and charges on GARVEE bonds.

Department of Transportation construction planning and contracting policy

(R.C. 5501.10)

Current law requires the Department of Transportation to establish a written policy for the classification and prioritization of all new construction plans and contracts. The policy must consider all aspects of new construction planning in a manner allowing the comparison of competing projects. The Director of Transportation is required to utilize the policy in regard to all new construction plans and contracts.

The bill requires the Department to revise its policy within three months after the requirement takes effect and continues to require the Director to utilize the policy in regard to all new construction plans and contracts. The revised policy must require the prioritization of projects using a method that includes criteria that promote economic development and encourage the preservation and rehabilitation of existing transportation infrastructure, the expansion of capacity for all modes of public transportation, the reduction of traffic congestion in urban areas, the preservation and rehabilitation of airports, the improvement of rail

freight services, the enhancement of safety, and land use decisions that reflect the requests of local communities.

Department of Transportation, environmental review process

(R.C. 5531.11)

Pursuant to federal authorization, the bill allows the Director of Transportation to enter into agreements and cooperate with the U.S. Secretary of Transportation to perform environmental reviews, consult, make decisions, assume specified federal environmental review responsibilities, and take other necessary actions required by the agreement and authorized under federal law. The Director may adopt rules for these purposes. The bill specifies that any expenditure of money by the Director in connection with authorized agreements must be payable from funds available to the Director.

The bill waives the state's immunity from civil liability and consents, only in regard to actions arising from the assumption of federal functions as described above, to be sued, and have its civil liability determined, in an appropriate federal court in accordance with the same rules of law applicable to suits against a federal agency.

Advertising on interstate highways

(R.C. 5516.01, 5516.02, and 5516.06)

Background

Under current law, the Department of Transportation regulates the placement of outdoor advertising devices along interstate and state primary system highways pursuant to the federal Highway Beautification Act of 1965. Whether a sign is prohibited, regulated by a permit system, or unregulated depends on a number of factors, including the type of highway near which the sign is located, the nature of the surrounding area (whether it is within an urban area, outside an urban area, or within a municipal corporation), whether the land is zoned commercial or industrial or is unzoned, and the distance from the sign to the highway. Under federal law, federal-aid highway funds may be reduced if the Secretary of Transportation determines that a state has not made provision for effective control of the erection and maintenance along the interstate system and the primary system of outdoor advertising signs, displays, and devices (23 U.S.C.A. § 131).

Highway status

The bill generally conforms Ohio law governing advertising devices along interstates, and highways on the primary system, with Federal Highway Administration provisions by (1) removing references to interstate highways, and highways on the national highway system, "as designated" by the Director of Transportation and "approved" by the Secretary of Transportation and (2) updating the definitions to reflect current federal procedures for determining highway status. Specifically, the bill defines "interstate system" as "that portion of the interstate system, or the national highway system, located within this state" and defines "primary system" as "the federal-aid primary system in existence on June 1, 1991, and any highway that is not on such system but that is on the national highway system." Under federal law, the federal-aid systems are the interstate system and the national highway system; the national highway system consists of the routes and connections depicted on the map submitted by the Secretary of Transportation to Congress (23 U.S.C.A. § 103).

Sports facility advertising devices

The bill removes references to advertising devices on the premises of a professional sports facility, which specifically are allowed under Ohio law but are not authorized under federal law. Current Ohio law allows advertising devices located on the premises of a "professional sports facility" to be erected within 660 feet of an interstate or primary highway right-of-way and defines a professional sports facility as all or part of a stadium, arena, motorsports complex, or other facility the primary purpose of which is to provide a site for (1) events of a major or minor league professional sports team associated with the state, a city, or a region of the state, or (2) motorsports events. By removing references to these devices, existing advertising devices on the premises of sports facilities presumably would become nonconforming devices. Nonconforming devices generally are ones that were lawful prior to a change in the law, but no longer are in compliance following the change; such devices may be maintained under an ODOT permit.

Business logo signs

(R.C. 4511.101)

Current law requires the Director of Transportation to establish a program for the placement of business logos on state directional signs within the rights-of-way of divided, multi-lane, limited access highways. The businesses participating in the program must pay all direct and indirect costs of the program, with the costs for a particular sign being divided equally among the businesses with logos on that sign.

The bill specifies that the Director must adopt rules to implement the entire business logo program and further authorizes the Director to approve the participation of a charitable organization operating a qualified attraction in the business logo sign program if the Director determines that promotion or protection of the qualified attraction serves a legitimate state interest. The Director may approve such participation at no cost or at a nominal fee.

The bill defines "charitable organization" by reference to existing charitable organization law, which generally includes any organization determined by the Internal Revenue Service to be a tax-exempt organization and also any organization established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose (R.C. 1716.01, not in the bill). The bill also defines "qualified attraction" as including natural wonders, and artistic, scenic, and historical attractions.

Uses of the Family Violence Prevention Fund

(R.C. 3705.242)

Under existing law, an additional fee of \$1.50 is charged for each certified copy of a birth record, certification of birth, and copy of a death record, and an additional fee of \$5.50 is charged for the filing of a divorce decree or decree of dissolution. Up to 3% of any such fee revenue may be retained by any local commissioner of health, local registrar of vital statistics, or court of common pleas that collects it to pay costs directly related to the collection of the fee and forward it to the Treasurer of State. The rest of the fee revenue must be forwarded to the Treasurer of State for deposit into the state treasury to the credit of the Family Violence Prevention Fund.

Existing law requires the Director of Public Safety to use money credited to the Family Violence Prevention Fund to provide grants to family violence shelters in Ohio. The bill requires that the Director also use the money to operate the Division of Criminal Justice Services in the Department of Public Safety.

Appropriations for the Division of Homeland Security

(R.C. 5502.03)

In 2003, Am. Sub. H.B. 95, the main operating appropriations act of the 125th General Assembly, created Division of Homeland Security within the Department of Public Safety. The creation of the Division was accompanied by a permanent law statement of intent of the General Assembly that the creation of the Division "does not result in an increase of funding appropriated to the

department." The bill removes this statement of intent. (The bill also contains a separate line-item appropriation for the Division of Homeland Security.)

Creation of the Federal Justice Grants Fund

(R.C. 5502.62; Section 550.10)

One of the duties of the Division of Criminal Justice Services is to apply for grants that are made available pursuant to federal criminal justice acts, or from other federal sources, to improve the criminal justice system in Ohio. If the terms of such a grant require that the money be credited to an interest-bearing fund or account, existing law requires it to be credited to a federal justice programs fund.

The bill creates in the state treasury the Federal Justice Grants Fund. It is to be used to receive federal money that is not required to be credited to an interest-bearing fund or account. The money must be used or distributed pursuant to the federal grant programs under which the money is received.

Creation of the Justice Program Services Fund

(R.C. 5502.67; Section 550.20)

The bill creates in codified law the Justice Program Services Fund, a fund from which appropriations were made in Am. Sub. H.B. 66 of the 126th General Assembly but which has never explicitly been created. Unless otherwise provided, money collected by the Division of Criminal Justice Services for "nonfederal purposes" is to be credited to the fund; such money includes, both at present and under the bill, subscription fees for participating in the Ohio Incident-Based Reporting System. The system is a voluntary crime reporting program in which Ohio law enforcement agencies can submit crime statistics directly to the state and federal governments in a automated format and can, in turn, query the database and obtain crime mapping and other reports from it. Money credited to the Justice Program Services Fund is to be used to pay costs of administering the operations of the Division of Criminal Justice Services.

HISTORY

ACTION	DATE
Introduced	02-22-07

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