



COUNTY ADVISORY BULLETIN

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BULLETIN 2019-04

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STATE TRANSPORTATION OPERATING BUDGET

APPLICABLE LEGISLATION: Am. Sub. HB 62 (133rd General Assembly)

Creates the FY 2020-2021 transportation budget. Increases the rate of and modifies the distribution of revenue from motor fuel excise taxes, makes appropriations for programs related to transportation and public safety, provides funding for the biennium beginning July 1, 2019, and ending June 30, 2021, and provides authorization and conditions for the operation of transportation-related state and local programs. Individual Revised Code sections changed by the bill will be noted under the explanation of each provision. Certain provisions were enacted through uncodified sections of the bill which will be in force until June 30, 2021.

LEAD SPONSOR: Representative Scott Oelslager

HOUSE COSPONSORS: Representatives Blessing, Carruthers, Cera, DeVitis, Hambley, Howse, D. Manning, O'Brien, Patterson, Perales, Seitz, K. Smith, Sobecki.

SENATE COSPONSORS: Senators Uecker, Antonio.

EFFECTIVE DATE: Appropriations for current expenses effective 04/03/19, but first apply 07/01/19; appropriations not for current expenses effective 07/03/19; motor fuel tax changes effective 07/01/2019; other provisions effective later as specified in the bill. There are no line item vetoes.

BULLETIN SUMMARY

This bulletin summarizes provisions related to counties and other local governments that were enacted as part of the state transportation operating budget for FY 2020-2021, Amended Substitute House Bill 62. The bill authorizes the first increase in the state's motor fuel excise tax since 2005, enacts new fees for electric and hybrid vehicles, and modifies the distribution formula for new revenue enacted by the bill. The increased amount is expected to result in \$1.5 million additional annual revenue per county. Counties and other local governments that receive more than \$500,000 per year of motor fuel tax revenue must provide annual updates of projects

that use this revenue on their websites.

Other policy changes discussed in this bulletin include:

- Funding for public transportation;
- Membership, funding, and registration processes for transportation improvement districts;
- Competitive bidding exemption for used supplies purchased at auction;
- Special purpose authority for a Hamilton County public transit sales tax levy;
- Procedures for a transit authority to claim local social service funding as match for federal or state programs;
- Butler County Emergency Management Program;
- Removal of the front license plate requirement;
- Offset of Local Government Funds for local governments that use a traffic law photo-monitoring device;
- Township and municipal license registration fees;
- Road to Ohio's Future Joint Legislative Study Committee;
- ODOT Catastrophic Snowfall Program;
- ODOT report on the Greater Cincinnati Eastern Bypass;
- ODOT study of fees for overweight vehicle permits;
- Appointment procedures for a newly merged board of alcohol, drug addiction, and mental health.

MOTOR FUEL EXCISE TAX

Revised Code Sections: 5735.01, 5735.011, 5735.05, 5735.051, 5735.053, 5735.142, 5735.27

The state levies an excise tax on both gasoline and diesel motor fuel. The tax is assessed on the number of units (gallons) sold. Since 2005, the rate for both gasoline and diesel fuel has been 28 cents per gallon. The bill increases the excise tax rate for gasoline by 10.5 cents per gallon and increases the diesel tax rate by 19 cents per gallon. Both increases will be effective July 1, 2019. The bill also adds compressed natural gas (CNG) to the list of taxable fuels, using a CNG gallon-equivalent standard of 139.30 cubic feet or 6.36 pounds. The tax on CNG is phased-in over four years with the final rate of 47 cents per gallon effective July 1, 2023. The phase-in schedule for CNG proceeds as follows: 10 cents per gallon starting July 1, 2020; 20 cents per gallon starting July 1, 2020; 30 cents per gallon starting July 1, 2021; 40 cents per

gallon starting July 1, 2022; 47 cents starting July 1, 2023.

New Motor Fuel Excise Tax Rates

Fuel Type	Rate per Gallon	Effective Date
Gasoline	38.5 cents	July 1, 2019
Diesel	47 cents	July 1, 2019
CNG	47 cents	Phase-in starts July 1, 2019; completed by July 1, 2023

The Ohio Legislative Service Commission (LSC) estimates that the changes will result in approximately \$865 million in new revenue annually during the biennium. The bill creates a new funding distribution formula that applies only to the revenue that results from the increased motor fuel tax rate. The current distribution formula allocates approximately 60 percent of revenue to the state and 40 percent to local governments. The new formula allocates 55 percent to the state and 45 percent to local governments. However, before the distribution takes place, two percent of total revenue is transferred to the Highway Operating Fund for use by ODOT.

After the overall local share has been determined, funds for local governments are allocated using the current distribution formula of 42.86 percent for municipalities, 37.14 percent for counties, and 20 percent for townships. The equal share formula for distribution of funding to counties does not change. Counties will receive an increased distribution of \$1.53 million per year, bringing the total distribution to \$4.9 million per county.

The township share will be increased slightly through a special allocation formula that will shift about \$8.9 million to townships annually. (This special allocation also exists in current law, ORC 5735.27.) The costs of this special allocation formula will be drawn in equal shares from distributions for counties, municipalities, and ODOT.

REGISTRATION FEES FOR ELECTRIC AND HYBRID VEHICLES

Revised Code Sections: 4501.10, 4503.10, 4503.103

The legislation creates new annual motor vehicle license registration fees specifically for vehicles that do not use conventional engines. The fee for an electric vehicle will be \$200 per year. For hybrid vehicles, the fee will be \$100. The fees are in addition to the standard registration fees applicable to all vehicles and will be collected at the same time as the standard fee. This provision takes effect January 1, 2020.

MOTOR FUEL EXCISE TAX REPORTING REQUIREMENT

Uncodified Section: 755.50, recodified as ORC 5735.43

The bill creates a reporting requirement for any agency or entity, including a local government, that receives funding derived from the motor fuel tax. If the entity either expends the funds on a project that takes more than seven business days to complete or expends \$500,000 or more of the funds, the entity must post on its website annual updates on how the funds are being used. Such information may include how much money is spent, when the money is spent, on what

projects the money is spent, and similar information demonstrating to the public the use of funds received. It should be noted that County Engineers are already required to provide a detailed annual report under ORC 5543.02.

FUNDING FOR PUBLIC TRANSPORTATION / AUDIT REQUIREMENT

Revised Code Section: 5501.09

Uncodified Sections: 203.15, 755.90

The bill contains a \$70 million per year appropriation in the ODOT budget for public transit purposes. The majority of the funding, \$63.5 million per year, is earmarked for the same purposes as funding allocated under the Federal Highway Administration flexible funding program in the FY 2018-2019 budget. The FHWA "flex" funding has been used for capital expenditures. These funds will be made available through an ODOT application process starting early in FY 2020. The remaining \$6.5 million continues existing programs that formerly received a GRF appropriation in the operating budget but now will be funded through HB 62.

Previous law required the State Auditor to conduct a financial audit of a transit authority once every two years. The bill changes the requirement so that the Auditor must audit one large and two small regional transit authorities each year. The audit reports must be submitted to the governor, General Assembly, and Office of Management and Budget no later than 90 days after their completion.

TRANSPORTATION IMPROVEMENT DISTRICTS: MEMBERSHIP

Revised Code Section: 3.112

The bill specifies that an elected official or employee of a county, township, or municipal corporation may serve as a member or officer of the board of trustees of a transportation improvement district (TID) without constituting the holding of incompatible offices or having an unlawful interest in a public contract. This language negates Ohio Attorney General Opinion 2018-024, which found that a county commissioner serving on a TID would create conflict of interest because the county board of commissioners can appropriate funds to a TID. As of 2019, there were 40 counties with TIDs. For more information about the location of TIDs, see the ODOT website, <http://www.dot.state.oh.us/Divisions/JobsAndCommerce/Pages/TID.aspx>.

TRANSPORTATION IMPROVEMENT DISTRICTS: FUNDING AND PROCESS CHANGES

Uncodified Section: 203.40

The bill appropriates \$4.5 million per year from the Highway Construction Fund (line item 772421) for TIDs. Funding cannot be used for administrative cost but can be used for preliminary engineering, detailed design, right-of-way acquisition, and construction. ODOT funds cannot support more than 25 percent of total project costs, not to exceed \$250,000 for an individual TID. A TID must submit a funding request to ODOT no later than September 1 of each fiscal year and must be registered with ODOT before applying. ODOT must decide whether to fund the request within 90 days of the date on which the request was submitted.

A TID must have a specific eligible project to be registered. In addition, a TID must meet at least one of three criteria to stay registered with ODOT:

- The TID has designated by resolution a project or program of projects and facilitated, including in conjunction with and through other governmental agencies, funding for costs of a project or program of projects in an aggregate amount of not less than \$10,000,000 within the eight-year period commencing January 1, 2005.
- The TID has designated by resolution a project or program of projects and facilitated, including in conjunction with and through other governmental agencies, funding for costs of a project or program of projects in an aggregate amount of not less than \$15,000,000 from the commencement date of the project or program of projects.
- The TID has designated by resolution a project or program of projects that has estimated aggregate costs in excess of \$10,000,000, and the County Engineer of the county in which the TID is located has attested by a sworn affidavit that the costs of the project or program of projects exceeds \$10,000,000 and that the TID is facilitating a portion of the funding for that project or program of projects.

USED SUPPLIES PURCHASED AT AUCTION EXEMPT FROM COMPETITIVE BIDDING

Revised Code Section: 307.86

The bill exempts used supplies purchased at auction from county competitive bidding requirements. Supplies are defined as equipment, materials, and other tangible assets.

INFRASTRUCTURE INCLUDED IN HAMILTON COUNTY TRANSIT LEVY

Revised Code Sections: 306.353, 306.70, 5739.023

The bill modifies the levy authority of a regional transit authority serving a territory that includes a county with a population more than 750,000 but less than 900,000 as of the most recent decennial US Census (i.e., Hamilton County). Under this provision, the Southwest Ohio Regional Transit Authority (SORTA) may levy a sales tax in part for the specific purpose of funding the general construction or maintenance of roads or bridges related to the provision of service by the regional transit authority. If the transit authority levies such a tax, it must enter into agreements with local governments within its territory to fund infrastructure projects before the revenue can be spent. These agreements are subject to all of the following conditions:

- The regional transit authority must submit each such agreement for approval to the appropriate public works integrating committee designated by the Ohio Public Works Commission;
- The integrating committee must annually review, approve, or deny agreements submitted to it by the regional transit authority and must notify the authority of its decision;
- The public works integrating committee can make its decisions by an affirmative vote of six members (rather than the standard seven members used for OPWC requests);
- The regional transit authority can expend funds only as authorized in an approved agreement.

If the regional transit authority proposes to fund public infrastructure projects, this must be stated in the public hearing notice before adopting the levy resolution. This also must be stated in the ballot language. The notice and ballot also may state the percentage of the tax proceeds to be allocated among each of the purposes of the proposed tax and, if one of the purposes is to provide general revenue for the transit authority, the percentage of the proceeds to be allocated among the specific projects, functions, or other uses to be funded by that general revenue. The language is not required to state a percentage allocation, however.

COUNTY TRANSIT SYSTEM – SOCIAL SERVICE MATCH

Revised Code Section: 306.051

The bill establishes the conditions under which a county transit authority may claim social service funds spent in the county as match for state or federal programs. For purposes of this law, social service funds that are appropriated by a board of county commissioners for the following purposes may be considered for use as local match:

- Services for senior citizens;
- Services for persons with developmental disabilities;
- Services funded in whole or in part with federal funds provided for social services programs, including the Community Development Block Grant program;
- Other services that have the purpose of assisting the overall social well-being of individuals, families, and communities.

The new law establishes certain conditions that must be met in order to claim funds as local match. County tax levy revenue may be used as local matching funds only if two conditions are met:

- the use of funds is consistent with the purpose for which the tax was levied;
- the use of the funds does not jeopardize the state's or county's eligibility to receive federal funds for one or more purposes.

Prior to claiming any county tax levy funds as match, the county transit system must enter into an agreement with the local government department, agency, board, or commission responsible for administering those funds. The agreement must establish the terms and conditions of the use of the funds by the county transit system as local matching funds.

BUTLER COUNTY EMERGENCY MANAGEMENT PROGRAM

Uncodified Section: 755.15

The bill authorizes a board of county commissioners in a county with a population between 350,000 and 375,000 as measured by the 2010 US Census (i.e., Butler County) to enter into a contract with the county sheriff or a chief of a fire department with countywide authority to implement a Countywide Emergency Management Program as an alternative to the current statutory process for a Countywide Emergency Management Agency. The county may

appropriate general funds to support the new program including expenses for a countywide public safety communication system and other assets needed by the personnel of the sheriff or the fire chief. If the Emergency Management Program is established, the sheriff or chief must appoint a director or coordinator of the program and requires that the director or coordinate complete a professional development program in accordance with Department of Public Safety rules. All agencies with emergency management functions in the county are required to cooperate in the development of an all-hazards emergency operations plan and participate in the annual exercise.

REMOVAL OF FRONT LICENSE PLATE REQUIREMENT

Revised Code Sections: 4503.19, 4503.193, 4503.21, 4503.23, 4549.10

The bill provides that the display of a single current license plate and validation sticker on the rear of the vehicle is sufficient to indicate current registration in Ohio. This provision takes effect July 1, 2020. Vehicle owners can continue to purchase two plates if that is their preference. A single plate will cost \$6.50 and a set of two plates will cost \$7.50.

TRAFFIC CONTROL CAMERAS -- LOCAL GOVERNMENT FUND OFFSET

Revised Code Sections: 5747.502, 5747.51, 5747.53

The bill directs the Tax Commissioner to withhold local government funds from any local government that uses a traffic law photo-monitoring device (i.e., red light camera) to assess traffic fines. A local government that uses red light cameras must file a report with the tax commissioner each year by July 31 detailing the amount of civil fines the local government collected in the previous fiscal year based on evidence collected from red light cameras. Based on the report, the tax commissioner must notify the county auditor and treasurer and reduce payments from the local government fund in each month in an amount equal to one-twelfth of the fines collected. (For municipal corporations, amounts are withheld first from the direct municipal LGF share and then from the municipality's share from the undivided county LGF). The tax commissioner also must reduce LGF payments if a local government fails to file the required report.

The law creates an exception for fines assessed because of traffic violations in a school zone. In this case, LGF payments are not reduced, but the local government must use an amount equal to the fines for school safety purposes.

LGF payments that are withheld because of this law will be deposited in a special fund (Ohio Highway and Transportation Safety Fund) for use by the ODOT transportation district in which the local government is located. If the local government is located within more than one transportation district, the amount credited to the account of each transportation district is prorated based on the number of centerline miles of public roads and highways in both the local authority and the respective districts. The ODOT district deputy director must use the funds to enhance public safety on public roads and highways within that transportation district.

TOWNSHIP AND MUNICIPAL LICENSE REGISTRATION FEE

Revised Code Sections: 4504.173 (municipal), 4504.181 (township)

The bill permits townships and municipalities to implement an additional \$5 license registration

fee. The funds can be used for the same types of capital expenditures permitted under existing law. The ordinance or resolution cannot be adopted as an emergency measure and is subject to a referendum. The fee remains in effect until it is repealed.

Counties received parallel authority in Substitute House Bill 26 of the 132nd General Assembly, the previous transportation budget. The adoption of a municipal or township license fee does not preempt the adoption of this latest additional \$5 fee by a county under ORC section 4504.24. Counties can enact four separate license taxes for a total of \$20. The authority for these taxes is found in ORC sections 4504.02, 4504.15, 4504.16, and 4504.24. However, counties that wish to enact the license tax under ORC section 4504.16 must first enact the tax under ORC section 4504.15. For more information, please consult County Advisory Bulletin 2018-1, *Additional County Motor Vehicle License Tax*.

ROAD TO OHIO'S FUTURE JOINT LEGISLATIVE STUDY COMMITTEE

Uncodified Section: 755.20

The legislation creates the "Road to Ohio's Future" Joint Legislative Study Committee. The purpose of the study committee is to review all of the following issues relating to ODOT and report back to the House and Senate by December 1, 2020:

- Alternative sources of revenue;
- Expense mitigation;
- Evolving technology;
- Exploration of innovative finance techniques;
- Asset leverage and conditions;
- The demographics of employees within the Department.

The membership of the committee includes five legislators from each chamber. Two of the five members from each chamber must be from the minority party. ODOT will provide staff for administrative purposes.

The law further directs the committee to conduct the following analyses:

- An analysis of the future needs of the department and the state's infrastructure, including local infrastructure;
- An analysis of all department personnel, with an emphasis on future retirements and possible attrition. The analysis must include a list of technology that will provide greater efficiency for the department;
- A cost-benefit analysis of leasing vehicles versus purchasing vehicles weighing more than 12,000 pounds gross vehicle weight;
- A cost-benefit analysis of leasing versus purchasing construction equipment that has a lifespan of five years or more;

- A review of evolving technology and its incorporation into traditional engineering and infrastructure solutions, as applied to planning, capacity enhancement, risk management, system operations, safety, and system reliability;
- An analysis of the department's debt policies, structures, and practices;
- An analysis of methods for leveraging state assets, including cell towers, light poles, rights-of-way, rest areas, buildings, and garages. The analysis must include the methods the department is currently using to leverage its assets and whether there are any impediments to leveraging assets, such as restrictions in advertising, constraints in renting spaces, or other impediments;
- An analysis of all department-maintained transportation systems, including an inventory of the structure ratings versus the department's target ratings; the urban, rural, general, and priority pavement condition ratings versus the department's target ratings; and a cost analysis of the funds that are necessary to maintain, improve, and expand the current transportation system under the department's jurisdiction;
- An analysis of using a vehicle-miles-traveled approach to transportation funding in Ohio and the feasibility of either starting a pilot program or fully using the vehicle-miles-traveled approach in this state;
- An analysis of technological advancements related to the display of front license plates, vehicle identification, and public safety generally;
- A review of all department functions and whether such functions accomplish and further the department's mission.

The study committee will cease to exist after delivering its report.

ODOT CATASTROPHIC SNOWFALL PROGRAM

Uncodified Section: 755.40

The bill directs ODOT to establish the Catastrophic Snowfall Program during fiscal years 2020 and 2021. The purpose of the program is to provide supplemental snow removal aid to counties, municipalities, or townships that receive 18 or more inches of snow in a 24-hour period and request aid under the program. ODOT is required to establish procedures to administer and implement the aid program, including procedures governing the following:

- An application process;
- A system for verifying the amount of snow the applicant received;
- A process for administering snow removal aid to a qualified applicant.

REPORT ON THE EASTERN BYPASS

Uncodified Section: 755.60

The legislation requires ODOT to submit a report to the General Assembly by December 31, 2019, pertaining to the Eastern Bypass of southwest Ohio and Greater Cincinnati. Specifically, the report is required to contain the following elements:

- A commentary on the study done by the Kentucky Transportation Cabinet (KTC) concerning the Eastern Bypass;
- Details on the information ODOT provided and the extent ODOT coordinated with KTC on KTC's study;
- Details on the next steps ODOT is taking or needs to take to coordinate with KTC to plan and construct the Eastern Bypass.

STUDY OF FEES FOR OVERWEIGHT VEHICLE PERMITS

Uncodified Section: 755.80

ODOT is required to conduct a study of the fees associated with overweight vehicle permits and the general impact of overweight vehicles on Ohio's infrastructure, and to submit a report of the study's findings and recommendations for changes to the existing permit fee structure to the Governor and General Assembly by October 1, 2019.

APPOINTMENTS TO A NEW BOARD OF ALCOHOL, DRUG ADDICTION, AND MENTAL HEALTH SERVICES

Revised Code Section: 340.021

Current law allows a board of county commissioners to adopt a resolution to merge a community mental health board with an alcohol and drug addiction services board. As of 2019, all counties had implemented this option except for Lorain. Previous law specified that initial appointments to the merged board had to come "to the greatest extent possible" from the members jointly recommended by the two independent boards. House Bill 62 modifies the appointment procedure so that commissioners must appoint individuals from among the current members jointly recommended by the two previous boards "unless the appointment is otherwise prohibited by law." This change effectively removes any discretion to appoint individuals who were not members of the two previous boards. Existing law prohibits board members from having certain family or business relationships with individuals providing services funded by the board (ORC 340.02).

Questions about this bulletin should be directed to Senior Policy Analyst [Jon Honeck](#), who is primarily responsible for its contents.