

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1260

Bill Subtitle: TO DEDICATE REVENUES TO BE USED BY THE STATE AND LOCAL GOVERNMENTS TO IMPROVE, CONSTRUCT, AND MAINTAIN THE HIGHWAYS, ROADS, STREETS, AND BRIDGES IN THE STATE; AND TO DECLARE AN EMERGENCY.

Basic Change :

Sponsor: Representative D. Douglas

HB1260 would provide funding to be used to improve, construct and maintain highways, roads, streets and bridges in the state. The proposal would dedicate a portion of the existing state sales and use tax collected on the sale of motor vehicles and levy a new wholesale sales tax on gasoline and diesel fuels as the funding sources.

The proposal provides for transfers from general revenue to highways to begin when the annual gross collection of general revenue from sales and use tax exceeds two billion five hundred million dollars (\$2,500,000,000). After meeting the threshold amount, the Chief Fiscal Officer of the State (CFO) would determine the monthly total net general revenues that were collected as sales and use tax upon the sale of new or used motor vehicles, trailers, or semitrailers. On the last day of each month, the certified amount would be provided to the State Treasurer who would transfer the certified amount from general revenues to the State Highway and Transportation Department Fund.

For the first year after the general revenues of sales and use tax exceeded the two billion five hundred million dollars (\$2,500,000,000), a total of thirty million dollars (\$30,000,000) would be transferred for highways. During the second year, sixty million dollars (\$60,000,000) would be transferred; For the third year, a ninety million dollars (\$90,000,000) would be transferred; and for each year thereafter, a total of one hundred twenty million dollars (\$120,000,000) would be transferred.

HB1260 also adds an additional chapter to the Arkansas Code, Title 26, Chapter 64, to levy a new wholesale sales tax on sales of motor fuel (gasoline) and special motor fuel (diesel) in Arkansas. The wholesale sales taxes on gasoline and diesel fuel would be calculated on an annual basis using the average wholesale prices of the fuels. For purposes of the calculation, the "average wholesale selling price" would be the 12-month average per gallon United States Gulf Coast regular average wholesale selling price of gasoline and diesel fuels as published by the Energy Information Administration within the United States Department of Energy or other similar reliable index if the index published by the Energy Information Administration is no longer available. The 12-month average wholesale price for the calendar year would be multiplied by a sales tax rate of 3.5% with the result converted to a cents-per-gallon tax rate rounded to the nearest one-tenth of one cent. The per gallon wholesale sales tax would then be added to the existing Arkansas per gallon excise taxes on gasoline (\$.215 per gallon) and diesel fuel (\$.225 per gallon) by the wholesale distributor or supplier when selling the fuel to the retailer. The Department of Finance and Administration (DFA) would make the annual calculation of the total tax rate per gallon and supply the tax rates to the distributors and suppliers for subsequent tax collection when selling the fuel to retailers. The fuel prices as stated at the pump would include all Arkansas taxes levied on the fuels.

The new wholesale sales tax on fuels would become effective and DFA would make the calculation of the wholesale sales tax rate for gasoline and diesel fuels to be effective on April 1, 2020. Beginning on April 1, 2021 and each April 1 thereafter, DFA would determine the new wholesale sales tax rate per gallon using the most recent calendar year average wholesale selling prices. The bill provides that declining fuel prices would not result in the wholesale average selling price used in the calculation to

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determine tax rates to be less than the prices used for the initial year of the wholesale sales tax. The wholesale sales taxes on gasoline and diesel fuels would be deposited with: seventy percent (70%) to the State Highway and Transportation Department Fund; fifteen percent (15%) to the County Aid Fund; and fifteen percent (15%) to the Municipal Aid Fund.

The proposal complies with the provisions of the International Fuel Tax Agreement by establishing the required cents-per-gallon tax rate that is used by interstate carriers when reporting taxes to Arkansas. The new wholesale sales tax on diesel fuel would not apply to dyed diesel fuel used in off-road machinery and equipment.

Revenue Impact :

Transfers to the State Highway and Transportation Department Fund from State General Revenues

FY2021 - \$ 30 Million
FY2022 - \$ 60 Million
FY2023 - \$ 90 Million
FY2024 - \$120 Million

[State General Revenues from state sales and use taxes should exceed two billion five hundred million dollars (\$2,500,000,000) in FY2020. Transfers to the State Highway and Transportation Department Fund would begin in FY2021. Deposits into the State Highway and Transportation Department Fund are for use of the State Highway and Transportation Department only.]

Additional Gasoline and Diesel Taxes

FY2020 - \$ 21.4 Million in Additional Revenues for State, City and County Highways, Streets, and Roads. [Two Months of Tax Deposits only during FY2020. **Annual Amount = \$128.4 Million**]

FY2021 - \$130.5 Million in Additional Revenues for State, City and County Highways, Streets, and Roads.

[Estimate uses FY2018 gasoline and diesel consumption levels. Gasoline = 1,515,422,797 gallons, Diesel = 689,649,744 gallons.]

[FY2020 calculation based on estimated average wholesale prices for 2019 of gasoline to be \$1.650 per gallon and \$1.862 per gallon for diesel fuel. Two months of tax deposits would occur during FY2020 if tax is effective on April 1, 2020. If full 12 months, revenue impact would be \$128.4 million. Additional tax per gallon effective April 1, 2020: Gasoline - \$.058; Diesel - \$.065. Total Tax I Rate per Gallon effective April 1, 2020 -- Gasoline \$.27.3; Diesel - \$.290.]

[FY2021 calculation based on estimated average wholesale prices for 2020 of gasoline to be \$1.784 per gallon and \$2.124 per gallon for diesel fuel. Additional tax per gallon effective April 1, 2021: Gasoline - \$.062; Diesel - \$.074. Total Tax Rate per Gallon effective April 1, 2021 -- Gasoline \$.277; Diesel - \$.299.]

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[All subsequent years of tax collections would be dependent of total fuel consumption levels in Arkansas and annual average wholesale prices.]

Taxpayer Impact :

Licensed wholesaler distributors and suppliers will collect the wholesale sales tax on motor fuel and distillate special fuel along with the existing excise taxes on fuels. The distributors and suppliers will also change the tax rate per gallon to be collected on an annual basis.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation

Procedural Changes :

On an annual basis, DFA would determine the 12-month average wholesale selling price for gasoline and diesel fuels and calculate the tax rates to be collected by wholesale distributors and suppliers beginning on April 1 of each year. DFA will provide notification to the licensed wholesalers of the new tax rates and update the Arkansas tax rate information to IFTA for use by interstate carriers.

Other Comments :

None.

Legal Analysis :

HB1260 would establish two new sources of revenue for the State Highway and Transportation Department Fund ("Highway Fund") and one new source of revenue for the County Aid Fund and the Municipal Aid Fund.

The first source of funding for the Highway Fund would come into effect only when the annual gross collection of general revenue of sales and use tax exceeds \$2,500,000,000. HB1260 would then require the Chief Fiscal Officer of the State ("CFO") to determine the monthly total net general revenues that were collected as sales or use taxes on the sale of new and used motor vehicles, trailers, or semitrailers.

Once the CFO certifies that the amount of gross collection of sales and use taxes (the "certified gross collections") exceeds \$2,500,000,000, HB1260 would require the Treasurer of State to transfer to the Highway Fund an escalating portion of the certified gross collections that were collected as sales or use taxes on the sale of new and used motor vehicles, trailers, or semitrailers (the "motor vehicle certified gross collections"). Specifically, after the first year that the certified amount exceeds

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\$2,500,000,000, HB1260 would require the Treasurer to transfer \$30,000,000 of the motor vehicle gross collections to the Highway Fund. After the second year that the certified amount exceeds \$2,500,000,000, HB1260 would require the Treasurer to transfer \$60,000,000 of the motor vehicle gross collections to the Highway Fund. After the third year that the certified amount exceeds \$2,500,000,000, HB1260 would require the Treasurer to transfer \$90,000,000 of the motor vehicle gross collections to the Highway Fund. For each year after the third year after the certified amount exceeds \$2,500,000,000, HB1260 would require the Treasurer to transfer \$120,000,000 of the motor vehicle gross collections to the Highway Fund.

However, HB1260 as drafted is not clear on several points as it relates to these transfers of money to the Highway Fund. First, if in one year the certified gross collections exceed \$2,500,000,000 but in a subsequent year the certified gross collections do not exceed \$2,500,000,000, HB1260 is not clear whether the Treasurer would be required to make the transfer of money to the Highway Fund in the second year. Further, if the certified gross collections exceed \$2,500,000,000 in one year, fail to exceed \$2,500,000,000 the second year, but exceed \$2,500,000,000 in the third year, HB1260 as drafted is unclear how much money the Treasurer would be required to transfer to the Highway Fund for the third year or whether this would start the transfer cycle over again.

HB1260, in addition to directing the above-described transfers, would levy a new tax as another source of funding for the Highway Fund and a source of funding for the County Aid Fund and the Municipal Aid Fund. 70% of the new tax would be distributed to the Highway Fund, 15% to the County Aid Fund, and 15% to the Municipal Aid Fund.

Specifically, the tax would be levied at a rate of 3.5% upon the average wholesale selling price per gallon on motor fuel and distillate special fuel. Beginning April 1, 2020, HB1260 would require wholesalers of either motor fuel or distillate special fuel to collect the tax from retailers of either motor fuel or distillate special fuel, and the wholesaler would be responsible for reporting and remitting the tax. HB1260 would require wholesalers of motor fuel or distillate special fuel to report and remit the tax on or before the twenty-fifth day of each month following the month during which the tax was collected. This is the same date on which suppliers of motor fuel or distillate special fuels are required to report and remit the taxes levied under §§ 26-55-205 and 26-56-201, respectively.

The phrase "average wholesale selling price," as used in the bill, means the United States Gulf Coast regular average wholesale selling price of motor fuel as published in an index by the Energy Information Administration within the United States Department of Energy or other similar reliable index if the index published by the Energy Information Administration within the United States Department of Energy is no longer available. The tax rate for 2020 would be calculated using the average wholesale selling price for the period of January 1, 2019 to December 31, 2019. The periods of January 1 to December 31 would be used for each subsequent year.

HB1260 contains an emergency clause and would become effective on July 1, 2019. HB1260 does not increase the rates for the property, excise, privilege or personal taxes that were levied at the time of Amendment 19 to the Constitution of the State of Arkansas and thus does not require a three-fourths vote of the Arkansas General Assembly.

HB1260 as drafted fails to specifically state two key implementation deadlines for the Department of

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Finance and Administration ("DFA"). First, while HB1260 would require the DFA to determine by March 1, 2020 the cent-per-gallon rate for the first year of the tax, HB1260 does not specifically state when the DFA would be required to determine the rate as applied to subsequent years. Second, while HB1260 would require the DFA to publish the calculated cent-per-gallon rate, HB1260 does not specifically state when the DFA would be required to publish the rate.