

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB453**

**Bill Subtitle: TO PROVIDE FUNDING FOR THE ARKANSAS WATERWAYS COMMISSION AND FOR THE DEVELOPMENT, IMPROVEMENT, AND EXPANSION OF RIVER TRANSPORTATION RESOURCES WITHIN THE MCCLELLAN-KERR ARKANSAS RIVER NAVIGATION SYSTEM.**

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### Basic Change :

**Sponsor: Sen. L. Eads**

SB453 would amend § 26-26-1616 regarding the distribution of ad valorem taxes collected from water transportation companies.

Under current law, ad valorem taxes collected from water transportation companies are distributed with the first \$2.5 million collected annually being deposited to the Ad Valorem Tax Fund for distribution to Arkansas Counties. Any amount collected over \$2.5 million is deposited to the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund to provide financial assistance to port authorities and intermodal authorities for port development projects.

The bill would amend the current provisions and provide that ad valorem taxes collected that are apportionable to barges traversing the Arkansas River that are currently being deposited to the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund would be deposited with the first \$50,000.00 to the Miscellaneous Agencies Fund Account to be used exclusively by the Arkansas Waterways Commission with the remainder collected to the Arkansas River Navigation System Fund. The bill creates the Arkansas River Navigation System Fund and provides that the fund shall be used by the Arkansas Waterways Commission to develop, improve, and expand river transportation resources within the portion of the McClellan-Kerr Arkansas River Navigation System located in the State of Arkansas.

The act would be effective 90 days after adjournment of the 92<sup>nd</sup> General Assembly.

### Revenue Impact :

-Unknown Loss to Arkansas Port, Intermodal, and Waterway Development Grant Program Fund  
+\$50,000 Gain to the Arkansas Waterways Commission  
+Unknown Gain to the Arkansas River Navigation System Fund

[ During 2018, \$940,032 in ad valorem taxes were collected by DFA from water transportation companies in excess of the \$2.5 million threshold. Of the \$3,440,032 in total tax collections, DFA does not have information regarding the amount of taxes collected that were assessed by the Tax Division of the Public Service Commission on barges. Current Arkansas law does not require water transportation companies to report to the PSC barge properties separate from other transportation properties for purposes of assessment. ]

### Taxpayer Impact :

Ad valorem taxes paid by barge companies would be distributed to the Arkansas River Navigation System Fund instead of the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund.

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### **Resources Required :**

None.

### **Time Required :**

Adequate time is allowed for implementation.

### **Procedural Changes :**

This proposal will require modifications to the state's tax system to allow for the new distribution method of funds collected for this tax type.

### **Other Comments :**

The Department of Finance and Administration (DFA) could not deposit the ad valorem property tax collections on barges traversing the Arkansas River to the Arkansas Waterways Commission and the Arkansas River Navigation System Fund as the bill would require. After the Tax Division of the Public Service Commission (PSC) calculates and determines the amounts of taxes due by the water transportation companies, the amount of tax due for each company is provided to DFA and DFA issues a tax bill and receives the tax payments from the companies for subsequent deposit.

In order for the deposit of funds to the Arkansas Waterways Commission and the Arkansas River Navigation System Fund, the Tax Division of the PSC would have to assess the property tax on barges separate and apart from other water transportation company properties and provide that separate tax assessment amount to the DFA for tax collection.

The PSC reports that they do not make a distinction between boat miles and barge miles on the annual assessment reports submitted by water transportation companies. The PSC assesses on a unit basis so they consider total miles as opposed to the miles of the fractional parts. DFA does not have information as to the PSC's ability to provide the necessary information for future assessment years to DFA for the tax collection deposits as provided in the bill.

In order for the PSC to accumulate the proper identifying information as to the type of water transportation company property being assessed and if the company is assessing barges that traverse the Arkansas River, the bill should be amended and be effective for the next assessment year, that is, 2020 with the taxes being collected in calendar year 2021. Reports to the Tax Division of the PSC from water transportation companies were due on March 1, 2019 for properties owned on January 1, 2019. After undergoing the tax assessment process, these taxes will be collected in 2020. In order for the PSC to make a tax assessment on barges separate from other water transportation properties, the PSC would have to gather the required information on the annual reports submitted by the companies by March 1 of each year. The next opportunity to gather that information would be on the report submitted by the companies on March 1, 2020.

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The bill would be effective 90 days after final adjournment of the 92<sup>nd</sup> General Assembly. During 2019, DFA is collecting ad valorem taxes for assessment year 2018 with the final payments due by October 15, 2019. It is not clear if payments from barge companies received for assessment year 2018 and collected after the effective date of the Act are to be deposited to different funds than the payments received for assessment year 2018 prior to the effective date of the act. In addition, DFA would have no knowledge as to the type of properties assessed by water transportation companies remitting the tax for assessment year 2018 after the effective date of the act. DFA would not know if the company was paying taxes on barges and if the barges operated on the Arkansas River. An amendment to the bill to provide that the tax distributions are to be made based on assessment year tax collections would resolve the issue for future years.

The bill is not clear as to distribution of ad valorem tax collections from barge and other water transportation company properties when calculating the \$2.5 million threshold to be met before any subsequent collections are deposited into the designated funds. The bill is unclear whether the \$2.5 million threshold is to be met by collections on barge properties only, other water transportation properties only, or a combination of both. If the \$2.5 million threshold is to be met by water transportation company properties other than barge operating on the Arkansas river, the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund would receive limited or no funding. If the \$2.5 million threshold were to be met using tax collections on barges operating on the Arkansas River only, the Arkansas Waterways Commission and the Arkansas River Navigation System Fund would receive limited or no funding. It is recommended that the bill provide specific guidance as to how the \$2.5 million threshold is to be met and from which tax deposits.

The bill provides that the first \$50,000 of ad valorem taxes from barges operating on the Arkansas River are to be deposited to the Arkansas Waterways Commission after the threshold level of \$2.5 million is met. It is unclear whether the \$50,000 collection refers to state fiscal year collections, calendar year collections, or to assessment year collections. Assuming the \$50,000 deposit is to occur annually and not a one-time transfer, it is recommended that the bill be amended to provide clarifying language as to what annual period is to be used.

PSC reports that they do not make a distinction between boat miles and barge miles on the assessment report form for water transportation companies. The PSC assesses on a unit basis so they consider total miles as opposed to the miles of the fractional parts. DFA does not have information as to the PSC's ability to provide the necessary information for future assessment years to DFA for the tax collection deposits as provided in the bill.

§ 26-26-1601 et seq. contains the code provisions for the annual reporting of water transportation company properties for purposes of the ad valorem tax. The code provisions contain specific requirements for the information to be reported to the Tax Division of the PSC. To require the necessary information needed to make a tax assessment on barge property operating on the Arkansas River separate and apart from other properties of water transportation companies, amendments to provisions within this subchapter may be required.

The bill would require \$50,000 of the taxes remitted on barges operating on the Arkansas River to be deposited to the Arkansas Waterways Commission and additional deposits to the Arkansas River

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Navigation System Fund. Under current law, these monies would be deposited to the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund. With no information currently available to make deposits as contemplated by the bill and changes in the assessment process being required to acquire the necessary information to make such future deposits, an alternative approach could be to designate specific amounts of funding to be taken from the deposits that would go the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund and deposit those specified amounts to the new funds.

### Legal Analysis :

The bill redirects a portion of ad valorem property taxes collected on intercounty water transportation companies to a new purpose. Revenues from property tax on water transportation companies in excess of \$2.5 million are currently deposited to the Arkansas Port, Intermodal, and Waterway Development Grant Program Fund and used by the Arkansas Waterways Commission to provide financial assistance, through grants, to fund port development projects and related equipment purchases. The bill provides that taxes and penalties collected from water transportation companies that traverse the Arkansas River and that exceed \$2.5 million shall be redirected with the first \$50,000 going to the Arkansas Waterways Commission and the remainder to the Arkansas River Navigation System Fund. That fund is created in the bill and provides that money in the fund will be used by the Arkansas Waterways Commission to develop, improve, and expand water transportation resources on Arkansas' portion of the McClellan-Kerr Arkansas River Navigation System.

There is not a constitutional impediment to the levy and assessment of the taxes described in this bill. The taxes in issue are ad valorem property taxes. These taxes are assessed by PSC and collected by DFA. The taxes and penalties collected by DFA are paid to the State Treasurer for distribution to the counties as well as to certain state purposes that support county purposes. Amendment 47 to the Arkansas Constitution provides that the State of Arkansas shall not levy an ad valorem property tax. However, the Arkansas Supreme Court has held that the taxes at issue in this bill do not violate Amendment 47. Instead, the Court held that the tax is a county property tax and that administration of the tax by a state agency for purposes of efficiency does not violate Amendment 47. *See Arco Auto Carriers, Inc. v. State*, 232 Ark. 779, 341 S.W.2d 15 (1960). Additionally, the Arkansas Supreme Court determined that the use of a portion of these tax proceeds by the state does not violate Amendment 47 when the state expenditure serves a local purpose. *See Anderson Trucking Service, Inc. v. Tax Division, Arkansas Public Service Commission*, 26 Ark. 69, 546 S.W.2d 430 (1977).