Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: S2/21/19 H2/27/19*
92nd General Assembly A Bill
Regular Session, 2019 SENATE BILL 336

By: Senators Rice, Bledsoe, Bond, E. Cheatham, L. Chesterfield, J. Cooper, L. Eads, Elliott, J. English, Flippo, S. Flowers, J. Hendren, K. Ingram, Irvin, B. Johnson, M. Johnson, G. Leding, M. Pitsch, Rapert, G. Stubblefield, J. Sturch, D. Wallace
By: Representatives Holcomb, Shepherd, Berry, Breaux, Brown, Christiansen, Coleman, Crawford, M. Davis, Hollowell, Kelly, Lowery, Lynch, McNair, Richmond, Rye, Slape, Wardlaw, Wooten

For An Act To Be Entitled

AN ACT TO PROVIDE ADDITIONAL REVENUE TO MAINTAIN AND REPAIR HIGHWAYS, STREETS, AND BRIDGES IN THE STATE; TO LEVY A WHOLESALE SALES TAX ON MOTOR FUEL AND DISTILLATE SPECIAL FUEL; TO IMPOSE ADDITIONAL VEHICLE REGISTRATION FEES ON HYBRID AND ELECTRIC MOTOR VEHICLES; TO DESIGNATE SPECIAL REVENUES TO BE USED TO MAINTAIN AND REPAIR HIGHWAYS, STREETS, AND BRIDGES IN THE STATE; TO TRANSFER FUNDS NEEDED TO PAY FOR THE REPAIR AND MAINTENANCE OF HIGHWAYS, STREETS, AND BRIDGES IN THE STATE; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE ADDITIONAL REVENUE FOR THE MAINTENANCE AND REPAIR OF HIGHWAYS, STREETS, AND BRIDGES IN THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that additional revenue will be available to the state resulting from anticipated savings generated by the transformation of state government, the creation of cabinet positions, and other reductions in state government, and from the growth of casino gambling

resulting from the adoption of The Arkansas Casino Gaming Amendment of 2018, Arkansas Constitution, Amendment 100.

(b) The General Assembly intends to use a portion of the anticipated savings described in subsection (a) of this section to make additional revenues available for use in maintaining and repairing public highways, streets, and bridges in the state.

SECTION 2. Arkansas Code § 19-5-202(b)(2)(B), concerning the General Revenue Fund Account, is amended to read as follows:

(B) From the net general revenue, after adding the advance transfer, if any, the Treasurer of State shall make the following distributions and shall notify the Auditor of State and the Chief Fiscal Officer of the State:

(i) First, the Treasurer of State shall deduct one percent (1%), which shall be transferred to the Constitutional Officers Fund, as created in § 19-5-205(c). An appropriate percentage of not less than two percent (2%) and not to exceed three percent (3%), as determined from time to time by the Chief Fiscal Officer of the State as being the amount required to support the estimated commitments and expenditures of the State Central Services Fund for the current fiscal year, shall be transferred to the State Central Services Fund, as created in § 19-5-205(e);

(ii) Next, any revenue deposited into the General Revenue Fund Account of the State Apportionment Fund from the net casino gaming receipts tax under § 5(c) of Section 1 of The Arkansas Casino Gaming Amendment of 2018, *Arkansas Constitution*, Amendment 100, that exceeds thirty-one million two hundred thousand dollars ($31,200,000) in a fiscal year shall be held in a subaccount to be transferred on the last business day of the fiscal year from the General Revenue Fund Account of the State Apportionment Fund to the State Highway and Transportation Department Fund;

(iii)(a) On the last business day of the fiscal year ending June 30, 2020, and on the last business day of each following fiscal year, the Chief Fiscal Officer of the State shall transfer on his or her books and those of the Treasurer of State and the Auditor of State an amount not to exceed thirty-five million dollars ($35,000,000) from the funds available in the Restricted Reserve Fund and from any other funds designated by the Governor to the State Highway and Transportation Department Fund.

(b) The amount to be transferred under this subdivision (b)(2)(B)(iii) shall be calculated to provide the total sum of thirty-five million dollars ($35,000,000) to the State Highway and Transportation Department Fund when combined with the funds transferred in that fiscal year from the General Revenue Fund Account of the State Apportionment Fund under subdivision (b)(2)(B)(ii) of this section;

(iv) Next, the Treasurer of State shall deduct an amount sufficient to pay for cash rebates which have been paid or approved for payment during the current month upon applications filed therefor as authorized in §§ 26-51-601 — 26-51-608 [repealed] and deduct an amount sufficient to pay for refunds made during that month to taxpayers from overpayment of the income tax as certified by the Chief Fiscal Officer of the State and transfer that amount to the Individual Income Tax Withholding Fund, Corporate Income Tax Withholding Fund, and Home Owners Tax Relief Fund, as applicable; and

~~(iii)~~(v) The remaining revenue, known as general revenues available for distribution, in the General Revenue Fund Account of the State Apportionment Fund shall be distributed as provided by this chapter to the various funds and fund accounts as created and established in § 19-5-301 et seq. and to any other fund or fund account as may be authorized by law. The Treasurer of State, after distributing the general revenues available for distribution due each fund or fund account, shall deduct the amount of any advance transfers made during the month from the distribution to each applicable fund or fund account.

SECTION 3. Arkansas Code § 19-5-1263, concerning the Restricted Reserve Fund, is amended to add an additional subsection to read as follows:

(e) The funds available in the Restricted Reserve Fund may be transferred as provided in § 19-5-202(b)(2)(B)(iii).

SECTION 4. Arkansas Code § 19-6-301, concerning the enumeration of special revenues, is amended to add additional subdivisions to read as follows:

(263) The wholesale sales tax on motor fuel levied under § 26-64-101;

(264) The wholesale sales tax on distillate special fuel levied under § 26-64-102; and

(265) Additional registration fees for electric vehicles and hybrid vehicles under § 27-14-614.

SECTION 5. Arkansas Code § 19-6-405 is amended to read as follows:

19-6-405. State Highway and Transportation Department Fund.

The State Highway and Transportation Department Fund shall consist of:

(1) That part of the special revenues as specified in § 19-6-301(2)-(4), (22), (81), (105)-(107), (182), and (256), known as "highway revenue", as distributed under the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., and § 27-70-103 and § 27-72-301 et seq.;

(2) Those special revenues specified in § 19-6-301(10), (152), (187), (239), and (241);

(3) Fifty percent (50%) of § 19-6-301(26);

(4) That portion of § 19-6-301(2) as set out in § 27-14-601(a)(3)(H)(ii)(f) ;

(5) That portion of § 19-6-301(222);

(6) Those designated revenues as set out in § 26-56-201(e)(1), which consist of the additional total of four cents (4¢) distillate special fuel taxes to be distributed as provided in the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq.;

(7) Federal revenue sharing funds as set out in § 19-5-1005;

(8) The special revenues specified in § 26-64-103, which consist of the wholesale sales taxes on motor fuel and distillate special fuel;

(9) The special revenues specified in § 27-14-614, which consist of the additional registration fees on electric vehicles and hybrid vehicles; and

~~(8)~~(10) Any federal funds that may become available,

there to be used for the maintenance, operation, and improvement required by the Arkansas Department of Transportation in carrying out the functions, powers, and duties as set out in Arkansas Constitution, Amendment 42, and §§ 27-65-102 — 27-65-107, 27-65-110, 27-65-122, and 27-65-124, and the other laws of this state prescribing the powers and duties of the department and the State Highway Commission.

SECTION 6. Arkansas Code Title 26 is amended to add an additional chapter to read as follows:

CHAPTER 64

WHOLESALE SALES TAX ON FUEL

26-64-101. Wholesale sales tax on motor fuel.

(a) As used in this section:

(1) "Average wholesale selling price" 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; and

(2) "Motor fuel" means the same as defined in § 26-55-202.

(b) In addition to the taxes levied in §§ 26-55-205, 26-55-1002, 26-55-1006, 26-55-1201, and 26-56-601, there is levied a wholesale sales tax upon the average wholesale selling price of motor fuel at the rate determined under this section.

(c)(1) On or before October 1, 2019, the Director of the Department of Finance and Administration shall determine the rate of the wholesale sales tax levied under this section by multiplying the twelve-month average wholesale selling price of motor fuel for the period of January 1, 2018, through December 31, 2018, by one and six-tenths percent (1.6%).

(2) The wholesale sales tax rate determined under this subsection is effective for the period of October 1, 2019, through September 30, 2020.

(3) To make the collection of the wholesale sales tax levied under this subsection more efficient, the director shall convert the wholesale sales tax calculated under subdivision (c)(1) of this section to a cent-per-gallon amount rounded to the nearest one-tenth of one cent (0.1¢).

(d)(1) Beginning July 1, 2020, and each July 1 thereafter, the director shall calculate the wholesale sales tax levied under this section by multiplying the twelve-month average wholesale selling price of motor fuel for the period of January 1 through December 31 of the immediately preceding year by one and six-tenths percent (1.6%).

(2) The wholesale sales tax rate calculated under this subsection is effective for the twelve-month period beginning on October 1 of the year in which the calculation is made under this subsection.

(3) To make the collection of the wholesale sales tax levied under this subsection more efficient, the director shall convert the wholesale sales tax calculated under subdivision (d)(1) of this section to a cent-per-gallon amount rounded to the nearest one-tenth of one cent (0.1¢).

(4)(A) If the twelve-month average wholesale selling price calculated in subdivision (d)(1) of this section is more than the twelve-month average wholesale selling price of the year preceding that calculation, the director shall convert the resulting wholesale sales tax to a cent-per-gallon amount rounded to the nearest one-tenth of one cent (0.1¢).

(B) If the wholesale sales tax rate calculated in subdivision (d)(1) of this section would result in an increase in the wholesale sales tax of more than one-tenth of one cent (0.1¢) per gallon of motor fuel when converted to a cent-per-gallon amount and rounded to the nearest one-tenth of one cent (0.1¢), the percentage used in the calculation of the wholesale sales tax rate under subdivision (d)(1) of this section shall be limited to the highest percentage that results in a cents-per-gallon amount that does not exceed one-tenth of one cent (0.1¢) for that twelve-month period when rounded to the nearest one-tenth of one cent (0.1¢).

(5) If the twelve-month average wholesale selling price used for the calculation in subdivision (d)(1) of this section is less than the twelve-month average wholesale selling price of the preceding year, the calculation under subdivision (d)(1) of this section shall not be made, and the wholesale sales tax rate for the twelve-month period beginning October 1 shall be equal to the wholesale sales tax rate for the immediately preceding twelve-month period.

(e) The wholesale sales tax levied under this section shall be paid by motor fuel dealers to motor fuel distributors, who shall collect, report, and remit the tax in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of motor fuel taxes levied in Title 26, Chapter 55, of the Arkansas Code.

(f) By August 1 of each year, the Department of Finance and Administration shall publish the cent-per-gallon wholesale sales tax to be collected by motor fuel dealers and paid to motor fuel distributors beginning on October 1 of that year under this section and shall notify motor fuel dealers and motor fuel distributors of the published amount.

26-64-102. Wholesale sales tax on distillate special fuel.

(a) As used in this section:

(1) "Average wholesale selling price" means the United States Gulf Coast regular average wholesale selling price of distillate special fuel as published in an index by the Energy Information Administration within the United States Department of Energy or some other similar reliable index if the index published by the Energy Information Administration within the United States Department of Energy is no longer available; and

(2) "Distillate special fuel" means the same as defined in § 26-56-102, except that it does not include distillate special fuel used for off-road purposes as identified in § 26-56-224.

(b) In addition to the taxes levied in §§ 26-56-201, 26-56-502 and 26-56-601, there is levied a wholesale sales tax upon the average wholesale selling price of distillate special fuel at the rate determined under this section.

(c)(1) On or before October 1, 2019, the Director of the Department of Finance and Administration shall determine the rate of the wholesale sales tax levied under this section by multiplying the twelve-month average wholesale selling price of distillate special fuel for the period of January 1, 2018, through December 31, 2018, by two and nine-tenths percent (2.9%).

(2) The wholesale sales tax rate determined under this subsection is effective for the period of October 1, 2019, through September 30, 2020.

(3) To make the collection of the wholesale sales tax levied under this subsection more efficient, the director shall convert the wholesale sales tax calculated under subdivision (c)(1) of this section to a cent-per-gallon amount rounded to the nearest one-tenth of one cent (0.1¢).

(d)(1) Beginning July 1, 2020, and each July 1 thereafter, the director shall calculate the wholesale sales tax levied under this section by multiplying the twelve-month average wholesale selling price of distillate special fuel for the period of January 1 through December 31 of the immediately preceding year by two and nine-tenths percent (2.9%).

(2) The wholesale sales *tax rate* calculated under this subsection is effective for the twelve-month period beginning on October 1 of the year in which the calculation is made under this subsection.

(3) To make the collection of the wholesale sales tax levied

under this subsection more efficient, the director shall convert the wholesale sales tax calculated under subdivision (d)(1) of this section to a cent-per-gallon amount rounded to the nearest one-tenth of one cent (0.1¢).

(4)(A) If the twelve-month average wholesale selling price calculated in subdivision (d)(1) of this section is more than the twelve-month average wholesale selling price of the year preceding that calculation, the director shall convert the resulting wholesale sales tax to a cent-per-gallon amount rounded to the nearest one-tenth of one cent (0.1¢).

(B) If the wholesale sales tax rate calculated in subdivision (d)(1) of this section would result in an increase in the wholesale sales tax of more than one-tenth of one cent (0.1¢) per gallon of distillate special fuel when converted to a cent-per-gallon amount and rounded to the nearest one-tenth of one cent (0.1¢), the percentage used in the calculation of the wholesale sales tax rate under subdivision (d)(1) of this section shall be limited to the highest percentage that results in a cents-per-gallon amount that does not exceed one-tenth of one cent (0.1¢) for that twelve-month period when rounded to the nearest one-tenth of one cent (0.1¢).

(5) If the twelve-month average wholesale selling price used for the calculation in subdivision (d)(1) of this section is less than the twelve-month average wholesale selling price of the preceding year, the calculation under subdivision (d)(1) of this section shall not be made, and the wholesale sales tax rate for the twelve-month period beginning October 1 shall be equal to the wholesale sales tax rate for the immediately preceding twelve-month period.

(e) The wholesale sales tax levied under this section shall be paid by distillate special fuel dealers to distillate special fuel suppliers, who shall collect, report, and remit the tax in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of distillate special motor fuel taxes levied in Title 26, Chapter 56, of the Arkansas Code.

(f) By August 1 of each year, the Department of Finance and Administration shall publish the cent-per-gallon wholesale sales tax to be collected by distillate special fuel dealers and paid to distillate special fuel suppliers beginning on October 1 of each year under this section and shall notify distillate special fuel dealers and distillate special fuel

suppliers of the published amount.

26-64-103. Disposition of revenues.

The wholesale sales taxes collected under this chapter are special revenues and shall be distributed under § 27-70-206.

26-64-104. Reporting and disclosure requirements.

(a)(1) Each city and county that expends revenues distributed under this chapter shall submit a report to the Director of the Department of Finance and Administration no later than June 30 of each year detailing the:

(A) Amount of revenues received under this chapter;

(B) Expenditures made from the revenues received under this chapter; and

(C) Projects funded using revenues received under this chapter.

(2) The director may undertake an investigation of the expenditures reported by the cities and counties under subdivision (a)(1) of this section, including without limitation using the audit procedures under the Arkansas Tax Procedure Act, § 26-18-101 et seq., to verify compliance with this chapter.

(b) The Arkansas Department of Transportation shall make a report available to the Governor and the Legislative Council no later than November 1 of each year detailing the expenditures of the revenues distributed to the department under this chapter, including without limitation the expenditures made from the revenues received under this chapter and the projects funded using revenues received under this chapter.

SECTION 7. Arkansas Code Title 27, Chapter 14, Subchapter 6, is amended to add an additional section to read as follows:

27-14-614. Additional fee for electric vehicles and hybrid vehicles.

(a) As used in this section:

(1) "Electric vehicle" means a vehicle that:

(A) Is propelled by an electric motor powered by a battery or other electrical device incorporated into the vehicle; and

(B) Is not propelled by an internal combustion engine; and

(2) "Hybrid vehicle" means a vehicle that draws propulsion

energy from both an internal combustion engine and an energy storage device.

(b) In addition to the other fees required to be paid to register a vehicle under this subchapter, there is levied an annual fee of:

(1) Two hundred dollars ($200) for each electric vehicle registered; and

(2) One hundred dollars ($100) for each hybrid vehicle registered.

(c) The revenues collected under this section are special revenues and shall be distributed to the State Highway and Transportation Department Fund.

SECTION 8. EFFECTIVE DATE. Sections 4-7 of this act are effective on the first day of the calendar quarter following the effective date of this act.

/s/Rice