

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 209** DATE: **March 12, 2008**

STATUS: **As Enacted – Effective March 26, 2008** SPONSOR: **Sen. Carey**
(Certain provisions effective June 25, 2008)

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **OVI fines for indigent criminal defense**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
Indigent Defense Support Fund (Fund 5DY) – Public Defender Commission			
Revenues	Gain in the range of \$925,000 to \$1.4 million*	Gain in the range of \$3.7 million to \$5.5 million	Annual gain in the range of \$3.7 million to \$5.5 million
Expenditures	Increase, up to available revenue	Increase, up to available revenue	Increase, up to available revenue
Operating Expenses Fund (Fund 5M8) – Tobacco Use Prevention and Control Foundation			
Revenues	- 0 -	Cash transfers totaling up to \$1,990,790 from endowment fund	- 0 -
Expenditures	- 0 -	Potential increase of up to \$1,990,790	- 0 -
State Bureau of Motor Vehicles Fund (Fund 4W4) – Department of Public Safety**			
Revenues	- 0 -	Potential, at most minimal, loss in annual vehicle registration fees	Potential, at most minimal, loss in annual vehicle registration fees
Expenditures	- 0 -	- 0 -	- 0 -
Off-Road Vehicle Trails Fund (Fund 521) – Department of Natural Resources**			
Revenues	- 0 -	Potential, at most minimal, loss in annual vehicle registration fees	Potential, at most minimal, loss in annual vehicle registration fees
Expenditures	- 0 -	- 0 -	- 0 -
State Parks Operations Fund (Fund 512) – Department of Natural Resources**			
Revenues	- 0 -	Potential gain from increased use of off-road vehicle trails in state parks	Potential gain from increased use of off-road vehicle trails in state parks
Expenditures	- 0 -	- 0 -	- 0 -



STATE FUND	FY 2008	FY 2009	FUTURE YEARS
Wildlife Fund (Fund 015) – Department of Natural Resources**			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	(1) Increase of approximately \$10,000 in one-time start-up costs; (2) Increase of approximately \$1,100 in ongoing administrative expenses	Increase of approximately \$1,100 in ongoing administrative expenses

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

* Assumes revenue amounts will be at most 25% of estimated annual range, as at least three-quarters or more of fiscal year will be over before revenue starts being collected.

** As certain provisions are subject to the referendum, any related state fiscal effects may occur no sooner than the start of FY 2009.

- **Indigent Defense Support Fund (Fund 5DY).** Assuming the annual average number of violators for each category of OVI violation holds in the future, and all of those violators pay the mandatory fine amount, then the total amount of money that would potentially be generated per year for deposit in Fund 5DY will be around \$5.5 million. However, it seems very likely that some OVI violators will be either unwilling and/or financially unable to pay the specified fine amount. Staff at the Ohio Public Defender Commission have examined this "collectibility" issue and estimated that the amount of revenue that will be generated annually at around \$3.7 million. The bill appropriates that amount – \$3.7 million in each of FYs 2008 and 2009 – for the purpose of assisting counties in their costs related to maintaining indigent criminal defense systems.
- **Tobacco Use Prevention and Control Foundation.** The bill appropriates \$1,990,790 for Fund 5M8 in FY 2009, which will be backed by transfers from the Foundation's endowment fund to pay staff salaries and benefits.
- **Special vehicle registration reciprocity.** The bill eliminates the current requirement that all out-of-state residents wishing to use a snowmobile, off-highway motorcycle, or all-purpose vehicle (APV) in Ohio must register the vehicle with the Bureau of Motor Vehicles. This will likely result in a loss of revenues to the Department of Public Safety's State Bureau of Motor Vehicles Fund (Fund 4W4) and the Department of Natural Resources' Off-Road Vehicle Trails Fund (Fund 521), both of which receive a portion of the registration fees for snowmobiles, off-highway motorcycles, and APVs. The Department of Natural Resources' State Parks Operations Fund (Fund 512) could see a gain in revenues if the new reciprocity policy encourages more riders to cross state lines in order to use Ohio's off-road vehicle trails.
- **Vehicle hunting permits.** The bill requires the Department of Natural Resources' Division of Wildlife to establish a permit program allowing mobility-impaired individuals to use a vehicle to hunt in public wildlife areas. Because the bill prohibits the Division from charging a fee for permits, it will incur increased costs to establish and operate the program. These costs, of approximately \$11,100 in the first year and \$1,100 annually thereafter, would be borne by the Wildlife Fund (Fund 015).

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Clerks of Courts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal cost to properly receipt and disburse specified OVI fine amount	Potential minimal cost to properly receipt and disburse specified OVI fine amount	Potential minimal cost to properly receipt and disburse specified OVI fine amount
County Indigent Criminal Defense Systems			
Revenues	Gain in the range of \$2.8 million to \$4.1 million*	Gain in the range of \$3.7 million to \$5.5 million	Annual gain in the range of \$3.7 million to \$5.5 million
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

* Assumes revenue amounts will be at most 75% of estimated annual range, as at least one-quarter or more of county fiscal year will be over before revenue starts being disbursed by state.

- **Clerks of courts.** Clerks of municipal courts, county courts, mayor's courts, and courts of common pleas will be required to collect and then forward the specified OVI fine amount for deposit in the state treasury to the credit of the Indigent Defense Support Fund. Presumably, these clerks of courts will need to modify their accounting systems in order to properly receipt and disburse the specified OVI fine amount to the state treasury. It would not appear that the potential cost to establish and maintain the appropriate controls for any given clerk of court would exceed minimal.
- **County indigent criminal defense systems.** The bill will likely generate in the range of \$3.7 million to \$5.5 million annually for the purpose of providing additional state financial assistance to county indigent criminal defense systems.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Increases the range of the mandatory OVI fines paid pursuant to section 4511.19 of the Revised Code for a violation of the prohibition against operating a vehicle under the influence (hereinafter referred to as "OVI").
- Directs that a specified amount of the mandatory fine, which varies according to the category of the OVI violation, be added to the special crediting provisions that the court is required to follow in the case of imposing the mandatory fine.
- Requires the specified fine amount be directed for deposit in the state treasury to the credit of the Indigent Defense Support Fund, which the bill creates.
- Appropriates \$3,700,000 in each of FYs 2008 and 2009 from the newly created fund, to be used by the State Public Defender for indigent criminal defense.
- Appropriates \$1,990,790 in FY 2009 for the Tobacco Use Prevention and Control Foundation's operating expenses.
- Eliminates the current requirement that out-of-state residents wishing to use a snowmobile, off-highway motorcycle, or all-purpose vehicle (APV) in Ohio must register their vehicle with the Bureau of Motor Vehicles.
- Requires the Department of Natural Resources' Division of Wildlife to issue permits allowing hunting by vehicle for persons with mobility impairments.

OVI fines for indigent criminal defense

State revenues and expenditures

The statutorily specified fines imposed for OVI violations each have a particular range, which vary according to the level of the offense, and are generally a function of the offender's number of prior OVI violations and the timeframe in which those violations occurred (sometimes referred to as the "look back period").

The bill increases the mandatory fines for OVI violations at both the top and the bottom of their respective ranges and essentially directs that a specified amount of that increase be deposited in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY), which the bill creates. Table 1 immediately below displays the range of the mandatory OVI fines under current law and under the bill, as well as the specified amount for each category of violation that is to be collected and forwarded for deposit in Fund 5DY.

Table 1 Range of Mandatory OVI Fines			
Category of OVI Violation	Range of Fines (Current Law)	Range of Fines (The Bill)	Amount Deposited into Fund 5DY
1st offense in 6 years	\$250-\$1,000	\$325-\$1,075	\$75
2nd offense in 6 years	\$350-\$1,500	\$475-\$1,625	\$125
3rd offense in 6 years	\$550-\$2,500	\$800-\$2,750	\$250
4th or 5th offense in 6 years or 6th in 20 years	\$800-\$10,000	\$1,300-\$10,500	\$500
2nd or more OVI felonies in lifetime	\$800-\$10,000	\$1,300-\$10,500	\$500

The data in Table 2 immediately below, which was provided by the Department of Public Safety, displays the number of individuals who were convicted of, or pleaded guilty to, an OVI violation in each of calendar years (CY) 2000 through 2006, as well as the number of prior OVI violations that those individuals had been convicted of, or pleaded guilty to, if any.

Table 2 Number of OVI Offenders, Calendar Years 2000 – 2006							
Number of OVI Violations	2000	2001	2002	2003	2004	2005	2006
1st	41,791	40,467	42,148	41,570	42,615	43,400	45,074
2nd	12,311	11,399	11,599	11,247	10,832	10,629	10,726
3rd	3,270	2,971	2,870	2,753	2,508	2,294	2,200
4th or more	715	595	541	460	446	373	346
Total	58,087	55,432	57,158	56,030	56,401	56,696	58,346

Based on the data in Table 2 above, LSC fiscal staff calculated that, between CYs 2000 and 2006, the average number of OVI violators annually were as follows: 42,438 first-time offenders (those with no prior convictions), 11,249 second-time offenders (those with one prior conviction), 2,695 third-time offenders (those with two prior convictions), and 497 offenders with three or more prior convictions.

Using the above-noted averages and the amount of the specified fee for each category of OVI violation, LSC fiscal staff assembled Table 3, immediately below, which displays the amount of revenue that could potentially be generated each year for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY).

Table 3			
Potential Annual Revenue Generation for Indigent Defense Support Fund			
Category of OVI Violation	Annual Average Number of Violators	Indigent Defense Support Fund Fee Amount	Amount of Revenue Generated
1st offense in 6 years	42,438	\$75	\$3,182,850
2nd offense in 6 years	11,249	\$125	\$1,406,125
3rd offense in 6 years	2,695	\$250	\$673,750
4th or more	497	\$500	\$248,500
Potential Total Amount Generated Annually			\$5,511,225

Assuming the annual average number of violators for each category of OVI violation holds in the future, and all of those violators pay the mandatory fine amount, then the total amount of money that would potentially be generated per year for deposit in Fund 5DY will be around \$5.5 million. However, it seems very likely that some OVI violators will be either unwilling and/or financially unable to pay the specified fine amount. Staff at the Ohio Public Defender Commission have examined this "collectibility" issue and estimated that the amount of revenue that will be generated annually at around \$3.7 million. The bill appropriates that amount – \$3.7 million in each of FYs 2008 and 2009 – for the purpose of assisting counties in their costs related to maintaining indigent criminal defense systems.

Local revenues and expenditures

The bill, as discussed below, will have direct fiscal effects on at least two local government components: (1) clerks of courts, and (2) county indigent criminal defense systems.

Clerks of courts. Clerks of municipal courts, county courts, mayor's courts, and courts of common pleas will be required to collect and then forward the specified OVI fine amount for deposit in the state treasury to the credit of the Indigent Defense Support Fund. Presumably, these clerks of courts will need to modify their accounting systems in order to properly receipt and disburse the specified OVI fine amount to the state treasury. It would not appear that the potential cost to establish and maintain the appropriate controls for any given clerk of court would exceed minimal.

County indigent criminal defense systems. The bill will likely generate in the range of \$3.7 million to \$5.5 million annually for the purpose of providing additional state financial assistance to county indigent criminal defense systems.

Tobacco Use Prevention and Control Foundation

Employees of the Tobacco Use Prevention and Control Foundation are classified as state employees and as such their salaries must be paid from the state treasury. The Foundation makes transfers from its endowment fund for deposit in the state treasury to the credit of the Foundation's Operating Expenses Fund (Fund 5M8) for the purpose of paying the personnel expenses of Foundation employees. While the Foundation no longer receives Tobacco Master Settlement Agreement dollars, the Foundation continues to exist to manage the dollars that

remain in the endowment fund. The bill appropriates \$1,990,790 for Fund 5M8 in FY 2009, which will be backed by transfers from the endowment fund to pay staff salaries and benefits.

All-purpose and other special vehicle registration reciprocity

The bill eliminates the current requirement that all out-of-state residents wishing to use a snowmobile, off-highway motorcycle, or all-purpose vehicle (APV) in Ohio must register the vehicle with the Bureau of Motor Vehicles. Instead, the bill limits that requirement to residents of states that do not have a registration law similar to Ohio, effectively putting in place a policy of reciprocity for snowmobile, off-road motorcycle, and APV use between Ohio and other states. Eliminating the registration requirement for out-of-state owners of these types of vehicles will likely result in a slight decrease in revenue from the respective portions of registration fees that are paid into the State Bureau of Motor Vehicles Fund (Fund 4W4) and the Department of Natural Resources' Off-Road Vehicle Trails Fund (Fund 521). To the extent that the current law may discourage out-of-state vehicle owners from using trails in Ohio's state parks, the bill's reciprocity policy may allow for increased revenue to the State Parks Operations Fund (Fund 512) from fees and other park income as more riders may cross state lines in order to use Ohio's off-road vehicle trails.

Hunting by vehicle for persons with mobility impairments

The bill requires the Department of Natural Resources' Division of Wildlife to establish a program to issue permits to mobility-impaired individuals who wish to use a vehicle to hunt on public wildlife lands. In accordance with the federal Americans with Disabilities Act, the bill expressly prohibits the Division from charging a fee for permits. As a result, the Division would have to administer the program using its existing resources, including revenues being deposited in the state treasury to the credit of the Wildlife Fund (Fund 015). These revenues would be used to cover the costs of implementing and operating the program, for example, developing eligibility criteria and application procedures, and designating public wildlife areas in which permit holders may use a vehicle to hunt.

Because there are likely to be few such permit applications, the Department estimates that the annual cost of printing and mailing permits would be approximately \$300. The additional payroll cost of annual permit application review would be approximately \$800 (40 hours x \$20/hour). The Department also estimates a one-time cost of approximately \$10,000 (\$2,000 each for five districts) to post signs and make minor road and access improvements in public wildlife areas where permit holders would be permitted to hunt. Taking into account these one-time start-up costs, this would result in a cost of approximately \$11,100 to the Wildlife Fund for the first year of the program, and ongoing annual costs of approximately \$1,100.

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