

ASSEMBLY BILL NO. 366—ASSEMBLYMEN
SILBERKRAUS, GARDNER AND DOOLING

MARCH 17, 2015

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to the use of certain motor vehicle fuel taxes. (BDR 32-927)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing a county, city or town to use that portion of money received by the county, city or town from the imposition of certain motor vehicle fuel taxes for the construction, maintenance and repair of certain rights-of-way within the jurisdiction of the county, city or town; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the distribution to and use by a county, city or town of the proceeds of certain motor vehicle fuel taxes. (NRS 365.535-365.565) Existing law authorizes counties, cities and towns to use such proceeds for various purposes relating to the construction, maintenance or repair of public roads and highways within the jurisdiction of the county, city or town. **Sections 5-8** of this bill generally provide for the uniform use of such proceeds by a county, city or town for the construction, maintenance and repair of a right-of-way within the jurisdiction of the respective county, city or town. **Section 3** of this bill defines "construction, maintenance and repair" for the purposes of **sections 5-8** to include: (1) any costs, other than administrative costs, that are directly connected with and necessarily incidental to the construction, maintenance and repair of a right-of-way, including, without limitation, the costs of labor, designing any improvement within a right-of-way and inspecting any improvement within a right-of-way; and (2) administrative costs only if those costs are directly incurred by a local government in connection with the construction, maintenance and repair of a right-of-way and are necessary for, and directly incidental to, the completion of the project for the administrative costs are incurred. **Section 4** defines "right-of-way" for certain purposes to mean any existing public road, highway, street or alley, and any real property or any interest therein that is acquired, dedicated or reserved for the construction, operation and maintenance of a public road, highway, street or alley.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 365 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *As used in NRS 365.535 to 365.565, inclusive, and*
4 *sections 2, 3 and 4 of this act, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 and 4 of this*
6 *act have the meanings ascribed to them in those sections.*

7 **Sec. 3.** *“Construction, maintenance and repair” includes,*
8 *without limitation:*

9 1. *The acquisition, operation or use of any material,*
10 *equipment or facility that is used for the construction,*
11 *maintenance or repair of a right-of-way and is necessary for the*
12 *safe and efficient use of the right-of-way;*

13 2. *Grades and regrades;*

14 3. *Graveling, oiling, surfacing, macadamizing and paving;*

15 4. *Sweeping, cleaning and sanding roads and removing snow*
16 *from roads;*

17 5. *Installing, maintaining and repairing:*

18 (a) *Crosswalks, sidewalks and pathways that are within the*
19 *right-of-way;*

20 (b) *Culverts, catch basins, drains, sewers and manholes;*

21 (c) *Inlets and outlets;*

22 (d) *Retaining walls, bridges, overpasses, underpasses, tunnels*
23 *and approaches;*

24 (e) *Artificial lights and lighting equipment, parkways and*
25 *sprinkling facilities and the control of vegetation;*

26 (f) *Grade and traffic separators;*

27 (g) *Fences, cattle guards and other devices to control access to*
28 *a county or city road;*

29 (h) *Signs, markings and devices for the control of traffic; and*

30 (i) *Facilities for personnel and the storage of equipment used*
31 *to construct, maintain or repair a right-of-way; and*

32 6. *The payment of any costs, other than administrative costs,*
33 *that are directly connected with and necessarily incidental to the*
34 *construction, maintenance and repair of a right-of-way, including,*
35 *without limitation, the costs of labor, designing any improvement*
36 *within a right-of-way and inspecting any improvement within a*
37 *right-of-way.*

38 7. *The payment of administrative costs that are:*

39 (a) *Directly incurred by a local government in connection with*
40 *the construction, maintenance and repair of a right-of-way; and*

41 (b) *Necessary for, and directly incidental to, the completion of*
42 *the project for which the administrative costs are incurred.*



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Sec. 4. "Right-of-way" means:

1. Any public road, highway, street or alley.

2. Any real property or any interest therein that is acquired, dedicated or reserved for the construction, operation and maintenance of a public road, highway, street or alley.

Sec. 5. NRS 365.540 is hereby amended to read as follows:

365.540 1. The money collected, as prescribed by NRS 365.175 and 365.185, from the tax on motor vehicle fuels, other than aviation fuel, after the remittances and deposits have first been made pursuant to the provisions of NRS 365.535, must be placed to the credit of the State Highway Fund by the State Treasurer. An amount equal to that part of the tax collected pursuant to NRS 365.175, which represents 5 cents of the tax per gallon must be used exclusively for the construction, ~~and~~ maintenance *and repair* of ~~[public highways, and may not be used to purchase equipment related thereto.]~~ *a right-of-way.*

2. The money collected, as prescribed by NRS 365.180 and 365.190, after the remittances and deposits have first been made pursuant to the provisions of NRS 365.535, must be allocated by the Department as prescribed in NRS 365.550 and 365.560.

3. The money collected as prescribed by NRS 365.200 must be allocated by the Department as prescribed by NRS 365.550 and 365.560.

4. The money collected from the tax on aviation fuel must be deposited by the Department with the State Treasurer for credit to the Account for Taxes on Aviation Fuel, which is hereby created as a revolving account.

Sec. 6. NRS 365.550 is hereby amended to read as follows:

365.550 1. Except as otherwise provided in subsection 2, the receipts of the tax levied pursuant to NRS 365.180 must be allocated monthly by the Department to the counties using the following formula:

(a) Determine the average monthly amount each county received in the Fiscal Year ending on June 30, 2003, and allocate to each county that amount, or if the total amount to be allocated is less than that amount, allocate to each county a percentage of the total amount to be allocated that is equal to the percentage of the total amount allocated to that county in the Fiscal Year ending on June 30, 2003;

(b) If the total amount to be allocated is greater than the average monthly amount all counties received in the Fiscal Year ending on June 30, 2003, determine for each county an amount from the total amount to be allocated using the following formula:

(1) Multiply the county's percentage share of the total state population by 2;



(2) Add the percentage determined pursuant to subparagraph (1) to the county's percentage share of total mileage of improved roads or streets maintained by the county or an incorporated city located within the county;

(3) Divide the sum of the percentages determined pursuant to subparagraph (2) by 3; and

(4) Multiply the total amount to be allocated by the percentage determined pursuant to subparagraph (3);

(c) Identify each county for which the amount determined pursuant to paragraph (b) is greater than the amount allocated to the county pursuant to paragraph (a) and:

(1) Subtract the amount determined pursuant to paragraph (a) from the amount determined pursuant to paragraph (b); and

(2) Add the amounts determined pursuant to subparagraph (1) for all counties;

(d) Identify each county for which the amount determined pursuant to paragraph (b) is less than or equal to the amount allocated to the county pursuant to paragraph (a) and:

(1) Subtract the amount determined pursuant to paragraph (b) from the amount determined pursuant to paragraph (a); and

(2) Add the amounts determined pursuant to subparagraph (1) for all counties;

(e) Subtract the amount determined pursuant to subparagraph (2) of paragraph (d) from the amount determined pursuant to subparagraph (2) of paragraph (c);

(f) Divide the amount determined pursuant to subparagraph (1) of paragraph (c) for each county by the sum determined pursuant to subparagraph (2) of paragraph (c) for all counties to determine each county's percentage share of the sum determined pursuant to subparagraph (2) of paragraph (c); and

(g) In addition to the allocation made pursuant to paragraph (a), allocate to each county that is identified pursuant to paragraph (c) a percentage of the total amount determined pursuant to paragraph (e) that is equal to the percentage determined pursuant to paragraph (f).

2. At the end of each fiscal year, the Department shall:

(a) Determine the total amount to be allocated to all counties pursuant to subsection 1 for the current fiscal year; and

(b) Use the proceeds of the tax paid by a dealer, supplier or user for June of the current fiscal year to allocate to each county an amount determined pursuant to subsection 3.

3. If the total amount to be allocated to all the counties determined pursuant to paragraph (a) of subsection 2:

(a) Does not exceed the total amount that was received by all the counties for the Fiscal Year ending on June 30, 2003, the Department shall adjust the final monthly allocation to be made to



each county so that each county is allocated a percentage of the total amount to be allocated that is equal to the percentage of the total amount allocated to that county in the Fiscal Year ending on June 30, 2003.

(b) Exceeds the total amount that was received by all counties for the Fiscal Year ending on June 30, 2003, the Department shall:

(1) Identify the total amount allocated to each county for the Fiscal Year ending on June 30, 2003, and the total amount for the current fiscal year determined pursuant to paragraph (a) of subsection 2;

(2) Apply the formula set forth in paragraph (b) of subsection 1 using the amounts in subparagraph (1), instead of the monthly amounts, to determine the total allocations to be made to the counties for the current fiscal year; and

(3) Adjust the final monthly allocation to be made to each county to ensure that the total allocations for the current fiscal year equal the amounts determined pursuant to subparagraph (2).

4. Of the money allocated to each county pursuant to the provisions of subsections 1, 2 and 3:

(a) An amount equal to that part of the allocation which represents 1.25 cents of the tax per gallon must be used exclusively for the service and redemption of revenue bonds issued pursuant to NRS 373.131, for the construction, maintenance and repair of county ~~roads, and for the purchase of equipment for that construction, maintenance and repair,~~ *rights-of-way* under the direction of the boards of county commissioners of the several counties . ~~[, and must not be used to defray expenses of administration.]~~

(b) An amount equal to that part of the allocation which represents 2.35 cents of the tax per gallon must be allocated to the county, if there are no incorporated cities in the county, or, if there is at least one incorporated city in the county, allocated monthly by the Department to the county and each incorporated city in the county using, except as otherwise provided in paragraph (c), the following formula:

(1) Determine the average monthly amount the county and each incorporated city in the county received in the fiscal year ending on June 30, 2005, and allocate to the county and each incorporated city in the county that amount, or if the total amount to be allocated is less than that amount, allocate to the county and each incorporated city in the county a percentage of the total amount to be allocated that is equal to the percentage of the total amount allocated to that county or incorporated city, as applicable, in the fiscal year ending on June 30, 2005.



(2) If the total amount to be allocated is greater than the average monthly amount the county and all incorporated cities within the county received in the fiscal year ending on June 30, 2005, determine for the county and each incorporated city in the county an amount from the total amount to be allocated using the following formula:

(I) One-fourth in proportion to total area.

(II) One-fourth in proportion to population.

(III) One-fourth in proportion to the total mileage of improved roads and streets maintained by the county or incorporated city in the county, as applicable.

(IV) One-fourth in proportion to vehicle miles of travel on improved roads and streets maintained by the county or incorporated city in the county, as applicable.

➤ For the purpose of applying the formula, the area of the county excludes the area included in any incorporated city.

(3) Identify whether the county or any incorporated city in the county had an amount determined pursuant to subparagraph (2) that was greater than the amount allocated to the county or incorporated city, as applicable, pursuant to subparagraph (1) and, if so:

(I) Subtract the amount determined pursuant to subparagraph (1) from the amount determined pursuant to subparagraph (2); and

(II) Add the amounts determined pursuant to subparagraph (I) for the county and all incorporated cities in the county.

(4) Identify whether the county or any incorporated city in the county had an amount determined pursuant to subparagraph (2) that was less than or equal to the amount determined for the county or incorporated city, as applicable, pursuant to subparagraph (1) and, if so:

(I) Subtract the amount determined pursuant to subparagraph (2) from the amount determined pursuant to subparagraph (1); and

(II) Add the amounts determined pursuant to subparagraph (I) for the county and all incorporated cities in the county.

(5) Subtract the amount determined pursuant to subparagraph (II) of subparagraph (4) from the amount determined pursuant to sub-subparagraph (II) of subparagraph (3).

(6) Divide the amount determined pursuant to subparagraph (I) of subparagraph (3) for the county and each incorporated city in the county by the sum determined pursuant to sub-subparagraph (II) of subparagraph (3) for the county and all



1 incorporated cities in the county to determine the county's and each
2 incorporated city's percentage share of the sum determined pursuant
3 to sub-subparagraph (II) of subparagraph (3).

4 (7) In addition to the allocation made pursuant to
5 subparagraph (1), allocate to the county and each incorporated city
6 in the county that is identified pursuant to subparagraph (3) a
7 percentage of the total amount determined pursuant to subparagraph
8 (5) that is equal to the percentage determined pursuant to
9 subparagraph (6).

10 (c) At the end of each fiscal year, the Department shall:

11 (1) Determine the total amount to be allocated to a county
12 and each incorporated city within the county pursuant to paragraph
13 (b) for the current fiscal year; and

14 (2) Use the amount equal to that part of the allocation which
15 represents 2.35 cents per gallon of the proceeds of the tax paid by a
16 dealer, supplier or user for June of the current fiscal year to allocate
17 to a county and each incorporated city in the county an amount
18 determined pursuant to paragraph (d).

19 (d) If the total amount to be allocated to a county and all
20 incorporated cities in the county determined pursuant to
21 subparagraph (1) of paragraph (c):

22 (1) Does not exceed the total amount that was received by
23 the county and all the incorporated cities in the county for the fiscal
24 year ending on June 30, 2005, the Department shall adjust the final
25 monthly amount allocated to the county and each incorporated city
26 in the county so that the county and each incorporated city is
27 allocated a percentage of the total amount to be allocated that is
28 equal to the percentage of the total amount allocated to that county
29 or incorporated city, as applicable, in the fiscal year ending on
30 June 30, 2005.

31 (2) Exceeds the total amount that was received by the county
32 and all incorporated cities in the county for the fiscal year ending on
33 June 30, 2005, the Department shall:

34 (I) Identify the total amount allocated to the county and
35 each incorporated city in the county for the fiscal year ending on
36 June 30, 2005, and the total amount for the current fiscal year
37 determined pursuant to subparagraph (1) of paragraph (c);

38 (II) Apply the formula set forth in subparagraph (2) of
39 paragraph (b) using the amounts in sub-subparagraph (I), instead of
40 the monthly amounts, to determine the total allocations to be made
41 to the county and the incorporated cities in the county for the current
42 fiscal year; and

43 (III) Adjust the final monthly allocation to be made to the
44 county and each incorporated city in the county to ensure that the



total allocations for the current fiscal year equal the amounts determined pursuant to sub-subparagraph (II).

5. The amount allocated to the counties and incorporated cities pursuant to subsections 1 to 4, inclusive, must be remitted monthly. The State Controller shall draw his or her warrants payable to the county treasurer of each of the several counties and the city treasurer of each of the several incorporated cities, as applicable, and the State Treasurer shall pay the warrants out of the proceeds of the tax levied pursuant to NRS 365.180.

6. The formula computations must be made as of July 1 of each year by the Department of Motor Vehicles, based on estimates which must be furnished by the Department of Transportation and, if applicable, any adjustments to the estimates determined to be appropriate by the Committee pursuant to subsection 10. Except as otherwise provided in subsection 10, the determination made by the Department of Motor Vehicles is conclusive.

7. The Department of Transportation shall complete:

(a) The estimates of the total mileage of improved roads or streets maintained by each county and incorporated city on or before August 31 of each year.

(b) A physical audit of the information submitted by each county and incorporated city pursuant to subsection 8 at least once every 10 years.

8. Each county and incorporated city shall, not later than March 1 of each year, submit a list to the Department of Transportation setting forth:

(a) Each improved road or street that is maintained by the county or city; and

(b) The beginning and ending points and the total mileage of each of those improved roads or streets.

↪ Each county and incorporated city shall, at least 10 days before the list is submitted to the Department of Transportation, hold a public hearing to identify and determine the improved roads and streets maintained by the county or city.

9. If a county or incorporated city does not agree with the estimates prepared by the Department of Transportation pursuant to subsection 7, the county or incorporated city may request that the Committee examine the estimates and recommend an adjustment to the estimates. Such a request must be submitted to the Committee not later than October 15.

10. The Committee shall hold a public hearing and review any request it receives pursuant to subsection 9 and determine whether an adjustment to the estimates is appropriate on or before December 31 of the year it receives a request pursuant to



subsection 9. Any determination made by the Committee pursuant to this subsection is conclusive.

11. The Committee shall monitor the fiscal impact of the formula set forth in this section on counties and incorporated cities. Biennially, the Committee shall prepare a report concerning its findings and recommendations regarding that fiscal impact and submit the report on or before February 15 of each odd-numbered year to the Director of the Legislative Counsel Bureau for transmittal to the Senate and Assembly Committees on Taxation of the Nevada Legislature for their review.

12. As used in this section:

(a) "Committee" means the Committee on Local Government Finance created pursuant to NRS 354.105.

~~(b) "Construction, maintenance and repair" includes the acquisition, operation or use of any material, equipment or facility that is used exclusively for the construction, maintenance or repair of a county or city road and is necessary for the safe and efficient use of that road, including, without limitation:~~

~~— (1) Grades and regrades;~~

~~— (2) Graveling, oiling, surfacing, macadamizing and paving;~~

~~— (3) Sweeping, cleaning and sanding roads and removing snow from a road;~~

~~— (4) Crosswalks and sidewalks;~~

~~— (5) Culverts, catch basins, drains, sewers and manholes;~~

~~— (6) Inlets and outlets;~~

~~— (7) Retaining walls, bridges, overpasses, underpasses, tunnels and approaches;~~

~~— (8) Artificial lights and lighting equipment, parkways, control of vegetation and sprinkling facilities;~~

~~— (9) Rights of way;~~

~~— (10) Grade and traffic separators;~~

~~— (11) Fences, cattle guards and other devices to control access to a county or city road;~~

~~— (12) Signs and devices for the control of traffic; and~~

~~— (13) Facilities for personnel and the storage of equipment used to construct, maintain or repair a county or city road.~~

~~(c)~~ "Improved road or street" means a road or street that is, at least:

(1) Aligned and graded to allow reasonably convenient use by a motor vehicle; and

(2) Drained sufficiently by a longitudinal and transverse drainage system to prevent serious impairment of the road or street by surface water.

~~(d)~~ (c) "Total mileage of an improved road or street" means the total mileage of the length of an improved road or street, without



1 regard to the width of that road or street or the number of lanes ~~for~~
2 *the road or street* has for vehicular traffic.

3 **Sec. 7.** NRS 365.560 is hereby amended to read as follows:

4 365.560 1. The receipts of the tax levied pursuant to NRS
5 365.190 must be allocated monthly by the Department to the
6 counties in which the payment of the tax originates pursuant to the
7 formula set forth in subsection 2.

8 2. The receipts must be apportioned by the Department
9 between the county, towns with town boards as organized under
10 NRS 269.016 to 269.019, inclusive, and incorporated cities within
11 the county in the same ratio as the assessed valuation of property
12 within the boundaries of the towns or incorporated cities within the
13 county bears to the total assessed valuation of property within the
14 county, including property within the towns or incorporated cities.

15 3. Any money apportioned to a county pursuant to subsection 2
16 must be expended by the county solely for:

17 (a) The service and redemption of revenue bonds issued
18 pursuant to chapter 373 of NRS; *and*

19 (b) The construction, maintenance and repair of ~~the public~~
20 ~~highways of the~~ county ~~;~~ *and*

21 ~~—(c) The purchase of equipment for that construction,~~
22 ~~maintenance and repair.~~

23 ~~→ The money must not be used to defray the expenses of~~
24 ~~administration.]~~ *rights-of-way.*

25 4. Any money apportioned to towns or incorporated cities
26 pursuant to subsection 2 must be expended only ~~upon the streets,~~
27 ~~alleys and public highways of the town or city.]~~ *for the*
28 *construction, maintenance and repair of rights-of-way,* other than
29 state highways, under the direction and control of the governing
30 body of the town or city.

31 ~~[5. As used in this section, “construction, maintenance and~~
32 ~~repair” has the meaning ascribed to it in NRS 365.550.]~~

33 **Sec. 8.** NRS 365.562 is hereby amended to read as follows:

34 365.562 1. The receipts of the tax as levied in NRS 365.192
35 must be allocated monthly by the Department to the counties in
36 proportion to the number of gallons of fuel that are sold to the
37 retailers in each county pursuant to the information contained in the
38 statements provided to the Department pursuant to NRS 365.192.

39 2. The Department must apportion the receipts of that tax
40 among the county, for unincorporated areas of the county, and each
41 incorporated city in the county. The county and each city are
42 respectively entitled to receive each month that proportion of those
43 receipts which its total population bears to the total population of the
44 county.



1 3. The money apportioned to the county or a city must be used
2 by ~~[it solely to]~~ *the county or city for the construction,*
3 *maintenance and* repair ~~[or restore existing paved roads, streets and~~
4 ~~alleys,]~~ *of the rights-of-way in the county or city,* other than those
5 maintained by the Federal Government and this State . ~~[, by~~
6 ~~resurfacing, overlaying, resealing or other such customary methods.]~~
7 **Sec. 9.** This act becomes effective on July 1, 2015.

