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Joint Fiscal Office

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Fiscal Note

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H.736 – An act relating to the Transportation Program and miscellaneous changes to laws related to transportation

As introduced by the House Committee on Transportation

<https://legislature.vermont.gov/bill/status/2022/H.736>

Bill Summary

The FY 2023 Transportation Bill (H.736) adopts and amends the State of Vermont’s annual [Transportation Program](#) and contains numerous statutory amendments and funding authorizations related to transportation. The bill also includes six provisions related to revenue-related statutory provisions, **none of which are expected to have a material fiscal impact to State government.**

Section 35 proposes to repeal obsolete administrative language pertaining to the State’s former gross receipts assessment on common carriers. Although this tax was formally repealed in 1988, accompanying language remains in statute. Repealing this language will not have a fiscal impact.

Section 37 proposes a technical amendment about right-of-way access permit application fees for certain utility installations to conform the statute with existing practices—with no expected fiscal impact.

Section 39 proposes to increase the traffic violation penalties for driving a prohibited vehicle through Smugglers’ Notch, where Vermont Route 108 passes through a steep, narrow mountain pass with tight turns and rock obstructions adjacent to the roadway. Assuming similar levels of violation issuance in future years, the proposed changes would have an approximately \$3,500 positive impact to the Transportation Fund and approximately \$525 positive impact to the Crime Victims’ Restitution Special Fund, beginning in FY 2023.

Section 48 proposes to enact a new, more stringent traffic violation for operating a vehicle in excess of the legal weight limits designated for a covered bridge. The fiscal impact of this provision is not currently known but is likely to be de minimis.

Section 51 proposes a three-year extension of the sunset provision on a State agency or department’s authority to set fees for the public use of electric vehicle supply equipment (EVSE) owned or controlled by the State agency or department. State agencies or departments are not currently levying such a fee, but this provision would extend their authority to do so beyond the current sunset of July 1, 2022, until July 1, 2025.

Section 54 proposes to repeal obsolete statutory language pertaining to penalties for violating a specific statute that formerly authorized the Agency of Transportation to issue rules for the use of parking places and picnic grounds within the limits of State highways. The specific statutory language enabling the Agency to enact these rules was repealed in 2007, rendering the language setting the violation amount unnecessary. This provision will not have a fiscal impact.

Sec. 35: Repeal of Obsolete 5 V.S.A. Chapter 5

Act 160 (1988) previously repealed the gross receipts assessment on common carriers that was formerly authorized in 5 V.S.A. § 63. Although Act 160 repealed this assessment more than three decades ago, the accompanying administrative language contained elsewhere in chapter 5 ([5 V.S.A. §§ 64 - 67](#)) remains in statute. This language, proposed by the Agency of Transportation, is intended to repeal obsolete statutory provisions and will not have a fiscal impact.

Sec. 37: Section 1111 Right-of-Way Access Permits

Section 37 proposes to amend [19 V.S.A. § 1112\(b\)\(2\)](#) to clarify that the \$100 application fee for right-of-way access permits (often known as “[Section 1111 permits](#)”) for utility installations that directly connect to the State highway subsurface stormwater system shall be assessed on a per-application, rather than per-connection, basis. This language is a technical amendment that conforms the statute to the existing practices of charging application fees on a per-application basis, regardless of how many connections are contained within the application, and clarifies that permits for stormwater connections are issued for connections to the subsurface stormwater system only (e.g., drains, pipes). A representative from the Agency of Transportation testified to the House Transportation Committee on February 16, 2022, that these applications are relatively infrequent (approximately 10 applications over the last six years) and seldom involve more than one connection to the stormwater system. As this amendment does not change current practices, it is not expected to have a fiscal impact.

Sec. 39: Smugglers’ Notch Prohibited Vehicle Violations

Section 39 proposes to amend [23 V.S.A. § 1006b](#) to:

- Change the definition of “prohibited vehicles” that are restricted from operating on the Smugglers’ Notch segment of Vermont Route 108 from “commercial vehicles” to “single-unit motor vehicles over 40 feet in length and combination vehicles over 45 feet in total length”;
- Increase the civil penalty for driving a prohibited vehicle on the Smugglers’ Notch segment of Vermont Route 108 from \$1,000 to \$1,500;
- Increase the civil penalty for violations that result in substantially impeding the flow of traffic on Vermont Route 108 from \$2,000 to \$3,000;
- Subject both the operator of the vehicle and the operator’s employer to the civil penalties for these violations (unless they are the same person); and,
- Exempt law enforcement, fire, emergency medical services, and search and rescue vehicles involved in training or response from the definition of prohibited vehicles.

The Agency of Transportation is proposing these changes to clarify the dimensions of prohibited vehicles that are likely to get stuck on this roadway and discourage future incidences of traffic obstructions.

Traffic Violation Revenue

Revenue from violating the vehicle restrictions through Smugglers’ Notch is allocated as follows:

- 1) The civil penalties generated from violations are deposited into the Transportation Fund per [19 V.S.A. § 11\(1\)](#).
- 2) The Judicial Bureau assesses a surcharge equal to 15% of the penalty imposed for the offense, rounded upward to the nearest whole dollar, which is deposited in the Crime Victims’ Restitution Special Fund (per [13 V.S.A. § 7282\(a\)\(9\)](#)).
- 3) In addition to those penalties and surcharges, the Judicial Bureau assesses a surcharge of \$47 for any offense or violation, of which \$29.75 is deposited in the Victims Compensation Special Fund, and of which \$10 is deposited in the Domestic Violence and Sexual Violence Special Fund (per [13 V.S.A. § 7282\(a\)\(8\)\(D\)](#)). The remaining \$7.25 is deposited in the General Fund.

Table 1 details the current and proposed penalties for violating 23 V.S.A. § 1006b(b)(2), by fund:

Table 1: Current and Proposed Penalty Revenue – Smugglers’ Notch Prohibited Vehicle Violations – 23 V.S.A. § 1006b(b)						
	Transportation Fund	Crime Victims’ Restitution Special Fund	Victims Compensation Special Fund	Domestic Viol./ Sexual Viol. Special Fund	General Fund	TOTAL
	Penalty	15% of Penalty	Flat \$47 per Violation			
Prohibited Vehicle						
Current	\$1,000.00	\$150.00	\$29.75	\$10.00	\$7.25	\$1,197.00
Proposed	\$1,500.00	\$225.00	\$29.75	\$10.00	\$7.25	\$1,772.00
Change	+\$500.00	+\$75.00	-	-	-	+\$575.00
Substantially Impeding Flow of Traffic						
Current	\$2,000.00	\$300.00	\$29.75	\$10.00	\$7.25	\$2,347.00
Proposed	\$3,000.00	\$450.00	\$29.75	\$10.00	\$7.25	\$3,497.00
Change	+\$1,000.00	+\$150.00	-	-	-	+\$1,150.00

Estimated Fiscal Impact

The Agency of Transportation reports that an average of 8.6 vehicles have become stuck on this section of roadway annually between 2017 and 2021, with an average of 5.6 violations of this specific statutory provision issued annually. The number of stuck vehicles and violations issued are not always equal, as some vehicles may get stuck without a specific citation issued or violations may be issued through proactive enforcement efforts prior to the vehicle advancing down the roadway and risking getting stuck. While the number of violations issued each year is relatively small, stuck vehicles often cause considerable disruption and long traffic detours through this area, and substantial time and effort is often required to extricate vehicles that cannot navigate the tight clearances and steep grades of the narrow roadway.

Table 2: Number of Smugglers’ Notch Traffic Violations Issued				
Violation	FY 2020	FY 2021	FY 2022 (YTD through 1/24/22)	Average
Prohibited Vehicle	2	5	2	3
Substantially Impeding Flow of Traffic	1	3	2	2
Total Number of Violations	3	8	4	5
<i>Source: Vermont Judicial Bureau</i>				

Assuming an average of three violations per year are issued for driving a prohibited vehicle through Smugglers’ Notch, the proposed higher penalties would result in a financial impact of approximately \$1,500 of additional revenue to the Transportation Fund and \$225 to the Crime Victims’ Restitution Special Fund annually, beginning in FY 2023.

Assuming an average of two violations per year are issued for driving a prohibited vehicle through Smugglers’ Notch that substantially impedes the flow of traffic, the proposed higher penalties would result in a financial impact of approximately \$2,000 of additional revenue to the Transportation Fund and \$300 to the Crime Victims’ Restitution Special Fund annually, beginning in FY 2023.

However, it is possible that educational and enforcement efforts may lead to greater awareness and compliance

of the vehicle restrictions in Smugglers' Notch and different levels of violation issuance in the future.

Sec. 48: New Traffic Violation for Excessive Weight on Covered Bridges

Section 48 proposes to create a new traffic violation with a heightened penalty for operating a vehicle in excess of the legal weight limits designated for a covered bridge. Currently, [19 V.S.A. § 315](#) authorizes a fine of not more than \$200 (\$300 for each subsequent offense) for operating a vehicle exceeding the weight limit prescribed on a restricted bridge. Section 41 of the bill proposes to repeal this provision in Title 19, and Section 48 replaces it with a new traffic violation in Title 23 specific to covered bridges punishable by a civil penalty of \$1,500, with a \$2,000 penalty if the violation substantially impedes the flow of traffic. The penalties shall be doubled for second or subsequent violations within a three-year period. Data was unavailable at the time of publication for how many violations have been issued under the Title 19 provision specific to covered bridges in recent years, therefore the fiscal impact of this provision is unknown but likely de minimis. Any funds received from violating this new Title 23 provision would be allocated to the funds of State government as outlined in *Table 1*.

Sec. 51: EVSE Fees Sunset Extension

Section 51 proposes to amend [Act 59 \(2019\)](#) to extend by three years the July 1, 2022 sunset contained in [32 V.S.A. § 604](#) on State agencies' and departments' authority to establish and collect fees from the public use of their electric vehicle supply equipment (EVSE).

32 V.S.A. § 604 permits any agency or department that owns or controls EVSE to establish, set, and adjust fees for the use of that EVSE. The fees may be established at less than costs, to cover costs, or equal to the retail rate charged for the use of EVSE available to the public. Fees collected shall be deposited in the same fund or account within a fund from which the electric operating expense for the EVSE originated. Note that this language does not apply to privately owned EVSE operating through public-private partnerships.

Up to this point, the installation of agency EVSE has been limited in scope and primarily paid for through fleet funds or targeted appropriations, and electricity and maintenance fees have been paid through internal service funds. As of January 2022, neither the Agency of Transportation nor the Department of Buildings and General Services has established or collected fees under the authority of 32 V.S.A. § 604, as there are currently few of these sites in operation, and there are significant administrative and technological issues with implementing a fee for their public use. This provision of the bill, therefore, would have no impact on current State revenues. This provision would, however, allow State agencies and departments to establish and collect fees for the public use of EVSE that they own or control for three years beyond July 1, 2022.

As State agencies and departments continue to plan for deploying EVSE statewide, and as additional privately operated EVSE sites come online, it is possible that agencies will seek to implement fees in the future to help with cost recovery from employees and/or members of the public. Section 52 requires an annual report to be filed by the Agency of Transportation, in consultation with the Department of Buildings and General Services, to provide updates on the State's efforts to collect fees for the use of EVSE under State ownership or control.

Sec. 54: 19 V.S.A. § 22 Technical Correction

Section 54 proposes to repeal [19 V.S.A. § 22](#), which establishes a fine of \$100 per day for violations of [19 V.S.A. § 21\(c\)](#). However, 19 V.S.A. § 21(c), which formerly authorized the Agency of Transportation to make rules for the use of parking places and picnic grounds within the limits of State highways, was previously repealed in Act 164 (2007). As the underlying statutory violation was previously repealed, the language contained in 19 V.S.A. § 22 that established the penalty for violating that provision is no longer necessary. This language is a technical correction proposed by the Agency of Transportation and is not expected to have any fiscal impact.

Additional Resources

State of Vermont Transportation Program (adopted in the Transportation Bill as amended by the Transportation Bill):

<https://vtrans.vermont.gov/about/capital-programs>

JFO Fiscal Summaries of H.736:

<https://ljfo.vermont.gov/subjects/transportation/transportation-budget>