



# Ohio Legislative Service Commission

Matthew L. Stiffler

## Fiscal Note & Local Impact Statement

**Bill:** H.B. 272 of the 129th G.A.

**Date:** November 27, 2012

**Status:** As Introduced

**Sponsor:** Reps. Celeste and Ruhl

**Local Impact Statement Procedure Required:** Yes

**Contents:** Street racing

### State Fiscal Highlights

#### STATE FUND

#### FY 2013 – FUTURE YEARS

##### General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Potential, likely no more than minimal, annual incarceration cost increase

##### Certain Department of Public Safety Funds\*

Revenues (1) Potential gain of up to a few thousand dollars per year in license reinstatement and immobilization fees; (2) Potential, highly variable, annual gain in proceeds from sale of forfeited vehicles

Expenditures Potential, at most minimal, annual increase

##### Indigent Defense Support Fund (Fund 5DY0)

Revenues Potential gain of up to a few thousand dollars per year in locally collected state court costs

Expenditures - 0 -

##### Victims of Crime/Reparations Fund (Fund 4020)

Revenues (1) Potential gain of up to a few thousand dollars per year in locally collected state court costs; (2) Potential, highly variable, annual gain in proceeds from sale of forfeited vehicles

Expenditures - 0 -

##### Drug Abuse Resistance Education Fund (Fund 4L60)

Revenues Potential, highly variable, annual gain in proceeds from sale of forfeited vehicles

Expenditures - 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

\* Funds include, but may not be limited to, State Bureau of Motor Vehicles Fund (Fund 4W40), Law Enforcement Reimbursement Fund (Fund 83R0), State Highway Safety Fund (Fund 7036), and State Highway Patrol Contraband, Forfeiture, and Other Fund (Fund 83C0).

- **Incarceration expenditures.** As a result of the bill, additional offenders/juveniles could be sentenced to a state prison/juvenile correctional facility for a felony street racing offense. The resulting potential increase in state incarceration costs could range up to, but not exceed, \$100,000 per year.

- **Department of Public Safety.** Annually, the Department: (1) may collect up to \$1,000 or more in additional annual license reinstatement and immobilization fees, (2) is likely to incur negligible ongoing costs to distribute required nitrous oxide purchase statements, and (3) receive occasional proceeds from the sale of criminally forfeited vehicles.
- **Court cost revenues.** There may be a total increase of up to a few thousand dollars per year in locally collected state court costs distributed between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020), as additional offenders/juveniles may be found to have committed a felony, rather than a misdemeanor, street racing offense.
- **Vehicle forfeitures.** As a result of the bill's criminal forfeiture provisions, additional vehicles may be subject to a court-ordered criminal forfeiture and subsequently sold, with some portion of the proceeds being paid into certain state law enforcement and forfeiture funds, including, but not limited to, the Victims of Crime/Reparations Fund (Fund 4020) and the Drug Abuse Resistance Education Fund (Fund 4L60). The magnitude of the proceeds that could be paid into any given state fund annually is likely to vary significantly from year-to-year.

# Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2013 – FUTURE YEARS

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**Counties (criminal and juvenile justice systems)**

Revenues	Potential gain of, at most, a few thousand dollars per year in court costs and fines
Expenditures	Potential increase to prosecute and sanction additional felony violators

**Municipalities**

Revenues	Potential loss of, at most, a few thousand dollars per year in court costs and fines
Expenditures	Potential, at most minimal, annual savings as certain cases elevate to felony status

**Law Enforcement Agencies (counties, municipalities, and townships)**

Revenues	Potential, highly variable, gain in proceeds from sale of forfeited vehicles
Expenditures	- 0 -

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

- **County criminal and juvenile justice systems.** The bill's penalty enhancements may increase a county's cost to investigate, prosecute, adjudicate, defend (if the person is indigent), and sanction certain individuals whose conduct would be elevated from a misdemeanor to a felony. Whether these increased costs will or could be offset by additional revenues in the form of court costs, fines, fees, and forfeited vehicles is unclear. Therefore, whether the net effect on any given county will be a cost increase exceeding a minimum of \$5,000 per year is uncertain.
- **Municipal criminal justice systems.** As a result of the bill's felony penalty enhancements, certain cases that might otherwise have been processed as a misdemeanor may be elevated to the felony jurisdiction of the court of common pleas. In theory, this creates a potential savings for the municipality that would have processed the case and presumably a loss in court costs and fines that might otherwise have been collected from violators. The potential savings effect and related revenue loss are likely to be no more than a few thousand dollars per year.
- **Law enforcement agencies.** As a result of the bill's immobilization, impoundment and criminal forfeiture provisions, additional vehicles may be subject to a court-ordered criminal forfeiture and subsequently sold, with some portion of the proceeds being deposited in local law enforcement and forfeiture funds. The amounts that could be generated for any given local fund are likely to be highly variable from year-to-year.

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## Detailed Fiscal Analysis

### Street racing convictions

According to reports by the Department of Public Safety in calendar year 2011, a total of 99 drivers statewide were convicted of street racing. Most of those convictions occurred in three distinct geographical areas of the state as follows:

- Jurisdictions within the counties of Cuyahoga, Lorain, Stark, and Summit;
- Jurisdictions within the counties of Hamilton, Warren, Clermont, Butler, and Montgomery; and
- Jurisdictions within Franklin County.

In the remainder of the state's counties during that same period, there were either no or few convictions for street racing reported.

### Prohibited conduct and penalties

#### Counties and municipalities

**Expenditures.** The bill's street racing prohibitions and related penalty enhancements will in all likelihood create additional work for county criminal and juvenile justice systems, as it enhances the penalty under certain circumstances from a misdemeanor to a felony and allows for the criminal forfeiture of a vehicle. The practical effect is that certain cases and costs will be shifted from the jurisdiction of a municipal or county court system to the jurisdiction of the court of common pleas. The magnitude of the potential additional cost for counties to prosecute and sanction street racing violators is uncertain.

**Revenues.** As a result of the bill, court costs and fines in certain cases that might otherwise have been collected and retained by a municipality will be collected and retained by a county. The potential revenue loss to a municipality and related revenue gain to a county is likely to be no more than a few thousand dollars per year. Local jurisdictions may also gain revenue from the criminal forfeiture and subsequent sale of a vehicle involved in street racing.

**Net effect.** Whether the potential cost increase to any particular county will be offset by any revenue gained from court costs, fines, fees, and forfeited vehicles is unclear. Therefore, whether the net effect on any given county could be a cost increase exceeding a minimum of \$5,000 per year is uncertain.

### State incarceration expenditures

As a result of the bill's penalty enhancements: (1) additional adults may be sentenced to a prison term and (2) additional juveniles may be sentenced to a period of confinement in a state juvenile correctional facility. In theory, the costs for the state's departments of Rehabilitation and Correction and Youth Services increase to secure and provide services to those adults and juveniles, respectively. The number of additional

individuals sentenced to the state in any given year is expected to be relatively small, which means the additional incarceration or confinement costs that the state might incur annually, and cover with money appropriated from the General Revenue Fund (GRF), may be up to, but not in excess of, \$100,000.

### **State Indigent Defense Support Fund (Fund 5DY0)**

As a result of the bill's prohibitions and related penalty enhancements, additional persons may be charged, arrested, and convicted of a felony offense as opposed to a misdemeanor offense. In such a case, the court is generally required to impose state court costs to be deposited in the Indigent Defense Support Fund (Fund 5DY0). The state court cost credited to Fund 5DY0 is \$20 for a misdemeanor offense and \$30 for a felony offense. The number of enhanced convictions is expected to be relatively small statewide, which means that the amount of additional court cost revenue generated for deposit in Fund 5DY0 annually may be, at most, a few thousand dollars.

### **State Victims of Crime/Reparations Fund (Fund 4020)**

The bill may generate additional revenues for deposit in the state's Victims of Crime/Reparations Fund (Fund 4020) from two sources: (1) locally collected state court costs and (2) proceeds from the sale of criminally forfeited vehicles.

#### **Court costs**

As a result of the bill, additional persons who might have been convicted of committing a misdemeanor street racing offense under current law will, subsequent to enactment, be convicted of committing a felony offense. In the matter of a person convicted of a misdemeanor or felony offense, the court is generally required to impose state court costs of \$9 and \$30, respectively, to be deposited in Fund 4020. The number of enhanced convictions is expected to be relatively small statewide, which means that the amount of additional court cost revenue generated for deposit in Fund 4020 annually may be, at most, a few thousand dollars.

#### **Criminal forfeiture**

As a result of the bill's penalty enhancements, vehicles used in street racing may be ordered forfeited and subsequently sold. Under certain circumstances, a portion of the proceeds may be deposited in Fund 4020, however, the amount that might be so deposited annually is likely to be highly variable.

### **Impoundment and immobilization**

The bill requires the impoundment and immobilization of all vehicles involved in street racing offenses. Under current law, when a vehicle is immobilized the owner is charged a \$100 fee collected by the state and credited to the Law Enforcement Reimbursement Fund (Fund 83R0). These funds are used to reimburse law enforcement for costs associated with the immobilization of a vehicle. In addition to this fee, local law enforcement may assess a fee for the towing and storage of the vehicle. These fees are assessed and collected locally. The annual increase in the collection of revenue for

the immobilization, towing, and storage of vehicles in any local jurisdiction will vary widely, but for some jurisdictions it could exceed a minimum of \$5,000 annually.

The impoundment of license plates will require the owner of the vehicle to apply for reinstatement at the end of the impoundment period. The fees associated with reinstating the license plates are split between the State Highway Safety Fund (Fund 7036) and the State Bureau of Motor Vehicles Fund (Fund 4W40). The number of additional persons that might have their vehicle immobilized and impounded is likely to be relatively small; suggesting that the reinstatement revenues credited to either Fund 7036 or Fund 4W40 will be, at most, a few thousand dollars per year.

### **Criminal forfeiture of a vehicle**

The bill specifies when the court orders the criminal forfeiture of a vehicle involved in street racing. According to current criminal forfeiture law, after establishing whether or not a lien holder exists, and/or has any right to the vehicle, the law enforcement agency that employs the law enforcement officer who seized the vehicle is offered the vehicle. If that agency does not desire the vehicle, it must be sold. The proceeds from the sale must be distributed as follows:

- Payment of the costs incurred in connection with the seizure, storage, and maintenance of, and provision of security for, the vehicle, any proceeding arising out of the forfeiture, and if any, the sale.
- Payment of the value of any lien or ownership interest.
- Remaining proceeds not to exceed a total amount of \$1,000 is paid into the appropriate local law enforcement trust funds and/or state forfeiture funds.
- Remaining proceeds shall be applied so that 50% is paid into the Victims of Crime/Reparations Fund (Fund 4020), 25% is paid into the Drug Abuse Resistance Education Fund (Fund 4L60), and 25% is paid into the appropriate local law enforcement trust funds and/or state forfeiture funds.

Thus, as a result of the bill's criminal forfeiture provisions, additional vehicles may be subject to a court-ordered criminal forfeiture and subsequently sold, with some portion of the proceeds being paid into certain state and local law enforcement and forfeiture funds. The amounts likely to be credited to any such state or local fund annually are likely to be highly variable.

### **Nitrous oxide purchase statement**

The bill requires a retailer who sells at retail nitrous oxide to require every person who purchases nitrous oxide in this state from the retailer to complete and sign a nitrous oxide purchase statement to be developed and made available to retail sellers at no charge by the Department of Public Safety. The statement is required to include language to the effect that the purchaser agrees to not use the nitrous oxide in a motor vehicle that the person operates on a public road, street, or highway in this state. There is likely to be little, if any, discernible ongoing cost for the Department to perform this duty.