

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

October 2, 2018

PROTECTIONS IN STATE LAW FOR TRANSPORTATION FUNDING

This memorandum summarizes provisions of the *Kansas Constitution* related to transportation and Kansas statutes directing moneys to the State Highway Fund (SHF) and protecting those moneys from other uses. It also provides an overview of recent constitutional amendments in other states to protect moneys for transportation from being used for other purposes.

Kansas Constitutional Provisions

Article 11 of the *Kansas Constitution*, on Finance and Taxation, includes two provisions related to transportation. Section 10, adopted in 1928 and renumbered but not amended, authorizes the State to direct certain levies to transportation purposes:

§ 10: Special taxes for highway purposes. The state shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels.

Section 9 limits state involvement in “internal improvements” and specifies “no general property tax shall ever be laid nor general obligation bonds issued by the state for” works of internal improvement. Section 9 was adopted in 1859, renumbered in 1931, and amended in 1957, 1980, and 1986.

Information on recent constitutional amendments in other states related to transportation is provided in the last section of this memorandum.

Kansas Statutory Provisions Directing Moneys to the State Highway Fund

Statutes also specifically direct certain taxes and fees to the SHF, in various categories. Information on those categories and brief descriptions of the statutory language are provided below.

The term “special taxes” in Article 11, § 10 is not defined in the statutes and such a definition has not been determined by the courts but, during the appropriations process, the Legislature and the Kansas Department of Transportation have treated all taxes and fees directed to the SHF except the sales tax as “special taxes.” Information is provided below on the main revenues directed to the SHF, by category.

It should be noted state courts and the U.S. Supreme Court have held, on constitutional grounds, that no legislative body may prevent or hinder a subsequent legislative body from taking a particular action; in other words, any statute may be amended.

Motor Vehicle Fuel Taxes

- KSA 2017 Supp. 79-3425 specifies amounts collected under the motor fuel tax law: “All of the amounts collected under the motor-fuel tax law and amendments thereto . . . shall be remitted . . . to the state treasurer. . . . [who] shall credit the remainder of such amounts as follows: To the [SHF] amounts specified in K.S.A. 79-34,142, and amendments thereto, to a special city and county highway fund” and to the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund. [Note: KSA 2017 Supp. 79-34,142 specifies 66.37 percent to the SHF and 33.63 percent to the Special City and County Highway Fund.]

Sales and Compensating Use Taxes

- KSA 2017 Supp. 79-3620(c)(6) contains language related to sales tax: “On July 1, 2016, and thereafter, the state treasurer shall credit 16.154% of the revenue collected and received from the tax imposed by K.S.A. 79-3603 [retail sales tax], and amendments thereto, at the rate of 6.5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d) [sales tax revenue {STAR} bond district taxes], in the [SHF].”
- KSA 2017 Supp. 79-3710(c)(6) contains language identical to that of KSA 2017 Supp. 79-3620(c)(6), but applicable to compensating use tax.
- KSA 2017 Supp. 82a-2101 establishes a clean drinking water fee of \$0.03 per 1,000 gallons of water sold at retail by a public water supply system (and delivered through mains, lines, or pipes) in lieu of sales tax and further states “on and after July 1, 2007, 5/106 of such amount shall be credited to the [SHF] and the remaining amount shall be credited to the state water plan fund.”

Vehicle Registration, Title, Permit, and Dealer Fees

- KSA 2017 Supp. 8-145(c) contains language related to registration and certificate of title fees. The statute notes all registration and certificate of title fees, minus a specified amount to be retained by a county treasurer or by the Division of Vehicles or a contractor (depending on which entity processes the transaction), are remitted to the State Treasurer, who “shall deposit the entire amount in the state treasury to the credit of the [SHF].” Exceptions under KSA 2017 Supp. 8-145(d) direct specific fees to other uses, e.g., \$3.50 of each title fee to be credited to the Kansas Highway Patrol Motor Vehicle Fund. This statute also directs the \$4.00 Division of Vehicles modernization surcharge to the SHF.
- KSA 2017 Supp. 8-1911(f) specifies fees for permits required for oversize and overweight vehicles. The statute states “all permit fees received under this section shall be remitted to the state treasurer . . . [who] shall deposit the entire

amount in the state treasury to the credit of the [SHF].” [Note: These fees range from \$20.00 to \$2,000.00.]

- KSA 2017 Supp. 8-2418 relates to fees, charges, or penalties under the Vehicle Dealers and Manufacturers Licensing Act: “The director [of Vehicles] shall remit all moneys received by or for the director from fees, charges or penalties under the provisions of this act to the state treasurer . . . [who] shall deposit the entire amount in the state treasury to the credit of the [SHF]...” except that \$10 of each vehicle salesperson license fee (currently \$25 under KSA 2017 Supp. 8-2404(e) (14)) is directed to the Vehicle Dealers and Manufacturers Fee Fund.

Driver’s License Fees

- KSA 2017 Supp. 8-267 relates to the disposition and use of moneys from driver licensing. Portions of moneys collected during any transaction involving driver licensing (e.g., driver’s license issuance and reinstatement) are directed to the State Safety Fund, the Motorcycle Safety Fund, the Truck Driver Training Fund, the Photo Fee Fund, the Hazmat Fee Fund, the Division of Vehicles Operating Fund, and the Correctional Services Special Revenue Fund, but “the state treasurer shall credit the balance of all moneys received under this act [the Motor Vehicle Drivers’ License Act], including all moneys received from commercial driver’s license endorsements, to the [SHF].”

Miscellaneous Revenues

- KSA 68-2324 directs interest from investing the SHF: “Notwithstanding anything to the contrary, all interest or other income of the investments, after payment of any management fees, shall be considered income of the [SHF].”
- KSA 68-413(d) and KSA 68-423a(c) direct all proceeds from the sale of real estate not needed for specified activities related to highway construction to the SHF.
- KSA 2017 Supp. 68-2236(f) directs all fees received by the Secretary of Transportation for sign permits and licenses to the SHF.

Statutory Uses of the State Highway Fund

KSA 2017 Supp. 68-416 states that, after the Secretary of Transportation annually distributes SHF moneys at the rate of \$3,000 per year per lane per mile for the maintenance of streets and highways in cities designated by the Secretary as city connecting links, the SHF is to be used for these purposes:

- (1) The construction, improvement, reconstruction and maintenance of the state highway system;
- (2) improvements in transportation programs to aid elderly persons, persons with disabilities and the general public;

(3) for any purpose specified in K.S.A. 68-2314b [activities authorized under the Transportation Works for Kansas program], and amendments thereto;

(4) the support and maintenance of the department of transportation;

(5) the expenses of administering the motor vehicle registration and drivers' license laws; and

(6) the payment of losses to department of transportation employees authorized by K.S.A. 75-5062 [theft of employee-owned tools or equipment], and amendments thereto.

KSA 68-2324 states the SHF is subject to appropriations: "Subject to appropriations acts, the secretary shall have responsibility for the management of the [SHF]. . . ." Appropriations acts have appropriated SHF moneys to additional purposes (as outlined in the Kansas Legislative Research Department spreadsheet "State Highway Fund Revenue Adjustments, FY 1999-FY 2019," available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>).

Other Statutory Uses

Other statutes on various topics direct the SHF to be used for various purposes, as summarized below by category. Some of the uses are directive, and some are permissive (directive and permissive language is emphasized below).

- As payment for projects:
 - KSA 2017 Supp. 68-402b(a), relating to local federal aid projects: "The secretary of transportation may determine amounts to be paid from the [SHF] on account of any federal-aid project on the highway system. . . ."
 - KSA 68-412, relating to apportionment of costs for city connecting links: "The portion of such cost to be paid by the secretary [of transportation] shall be paid from that portion of the [SHF] provided for construction of state highways. . ." (The amount is established in KSA 2017 Supp. 68-416.)
 - KSA 68-2325, relating to highway bond debt service: "The secretary [of transportation] is hereby authorized . . . to transfer from the [SHF] to the highway bond debt service fund . . . such amounts as shall be required for paying the interest on all bonds and refunding bonds issued by the secretary under this act. . . ."
- Transfers for specific uses:
 - KSA 2017 Supp. 75-5035(b), specifying the Coordinated Public Transportation Assistance Fund: "On July 1, 2013, and each July 1, thereafter, the director of accounts and reports shall transfer \$11,000,000 from the [SHF] to the coordinated public transportation assistance fund."

- KSA 2017 Supp. 75-5048(f) and KSA 2017 Supp. 75-5061(d) contain wording similar to that in KSA 2017 Supp. 75-5035 to direct, each year, \$5 million to the Rail Service Improvement Fund and \$5 million to the Public Use General Aviation Airport Development Fund, respectively.
- Acquisition of right-of-way for certain purposes:
 - KSA 2017 Supp. 68-406(d), relating to acquisition of right-of-way to certain types of facilities: “The secretary of transportation may use moneys appropriated from the [SHF] for the purchase of right-of-way, construction, improvement, reconstruction and maintenance of a highway over the most direct and practicable routes from state highways to” facilities including recreation areas at lakes and reservoirs, monuments or historical sites, military reservations, motor carrier inspection stations, and state institutions, and within state parks.
 - KSA 68-412a, relating to city connecting link right-of-way acquisition: “Whenever it becomes necessary for the proper construction, maintenance, or improvement of streets in cities, which streets have been designated as connecting links in the state highway system, to acquire right-of-way for said streets, the secretary of transportation may assist said cities in paying for said right-of-way and may pay from the [SHF] to said cities for such purpose such part of the amounts necessary for the payment for such right of way as may be agreed upon by the secretary and the governing bodies of said cities.”
- Miscellaneous uses:
 - KSA 8-1,104(b), specifying return of overpayments of vehicle fleet registration fees: “Whenever the director [of vehicles] shall determine that an owner has paid a larger fleet registration fee than is required under the provisions of this act, the director shall prepare a voucher showing the net amount of the overpayment refund due and the director of accounts and reports **shall** draw a warrant upon the state treasurer against the [SHF] for the amount certified by the director.”
 - KSA 8-266b, specifying costs of the Kansas driver’s manual: “The cost of such manuals **shall** be paid from the [SHF].”
 - KSA 2017 Supp. 75-5065, KSA 2017 Supp. 75-5075, and KSA 2017 Supp. 75-5083, specifying transfers to various funds: the Secretary of Transportation may transfer money between the SHF and the Transportation Revolving Fund, the Communication System Revolving Fund, and the Kansas Intermodal Transportation Revolving Fund, respectively.

Recent Constitutional Amendments in Other States

While the *Kansas Constitution* protects certain revenues for “road and highway purposes,” amendments to other states’ constitutions since 2010 have directed certain revenue sources to transportation uses and specified how those funds may be used (sometimes referred to as “lockbox” provisions).

California. Section 1 of Article XIX of the *California Constitution* reads, “The Legislature shall not borrow revenue from the Highway Users Tax Account, or its successor, and shall not use these revenues for purposes, or in ways, other than those specifically permitted by this article.” Section 2 of Article 19, as amended, directs revenues from taxes on motor vehicle fuels to the “research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic),” and Section 3 of Article 19 directs fees and taxes “imposed by the State upon vehicles or their use or operation” to be used for “state administration and enforcement of laws regulating the use, operation, or registration of vehicles used upon the public streets and highways of this State.” Section 7 states any replacements for fuel taxes (e.g., road user fees) also are so directed. [Note: These sections were added or renumbered according to the ballot measure approved by California voters in 2010.]

Illinois. In 2016, Illinois voters added Section 11 (quoted below) (2016 House Joint Resolution Constitutional Amendment 36) to Article IX of the *Illinois Constitution*.

(a) No moneys, including bond proceeds, derived from taxes, fees, excises, or license taxes relating to registration, title, or operation or use of vehicles, or related to the use of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or to fuels used for propelling vehicles, or derived from taxes, fees, excises, or license taxes relating to any other transportation infrastructure or transportation operation, shall be expended for purposes other than as provided in subsections (b) and (c).

(b) Transportation funds may be expended for the following: the costs of administering laws related to vehicles and transportation, including statutory refunds and adjustments provided in those laws; payment of highway obligations; costs for construction, reconstruction, maintenance, repair, and betterment of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or other forms of transportation; and other statutory highway purposes. Transportation funds may also be expended for the State or local share of highway funds to match federal aid highway funds, and expenses of grade separation of highways and railroad crossings, including protection of at-grade highways and railroad crossings, and, with respect to local governments, other transportation purposes as authorized by law.

(c) The costs of administering laws related to vehicles and transportation shall be limited to direct program expenses related to the following: the enforcement of traffic, railroad, and motor carrier laws; the safety of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, or airports; and the construction, reconstruction, improvement, repair, maintenance, operation, and administration of highways, under any related provisions of law or any purpose related or incident to, including grade separation of highways and railroad crossings. . . .

(d) None of the revenues described in subsection (a) of this Section shall, by transfer, offset, or otherwise, be diverted to any purpose other than those described in subsections (b) and (c) of this Section.

(e) If the General Assembly appropriates funds for a mode of transportation not described in this Section, the General Assembly must provide for a dedicated source of funding. . .”

Louisiana. In 2017, Louisiana voters approved an amendment to Section 27(B) of Article VII of the state’s constitution, to establish the Construction Subfund in the state’s Transportation Trust Fund, “in which shall be deposited the avails of any new taxes that become effective and are levied on gasoline, motor fuels, or special fuels on or after July 1, 2017. The monies in the subfund shall be appropriated and dedicated solely for the direct costs associated with actual project delivery, construction, and maintenance of transportation and capital transit infrastructure projects of the state and local government.” This amendment specifies moneys in the subfund shall not be utilized for employee wages or benefits. No new fuel taxes have been approved since the amendment was adopted.

Maryland. In 2014, Maryland voters approved the addition of Section 53 to Article III of the state’s constitution, placing what had been the statutory Transportation Trust Fund into the constitution. The section states the Trust Fund may be used only for “paying the principal of and interest on transportation bonds as they become due and payable” and, after meeting those bond requirements, “for any lawful purpose related to the construction and maintenance of an adequate highway system in the State or any other purpose related to transportation.” The article states the section does not apply to certain allocations or revenues for the counties, municipalities, or Baltimore City or to transfers to the Maryland Transportation Authority or its fund. The article allows for transfers out of the Trust Fund under certain circumstances: “Funds in the Transportation Trust Fund may be used for a purpose not related to transportation or transferred to the General Fund or a special fund of the State if: (1) The Governor, by executive order, declares a fiscal emergency exists; and (2) The General Assembly, by legislation passed on a ye and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, concurs with the use or transfer of the funds.”

New Jersey. In 2016, New Jersey voters approved amendments to Section 2 of Article VIII of the state’s constitution. Those amendments dedicate all state motor fuels taxes, replacing \$0.105 per gallon, to a special transportation account in the general fund. The previous version of the section also had stated a minimum of \$200 million was to be transferred into that account. [Note: New Jersey increased its tax on motor fuels in 2016 by \$0.23 per gallon to raise an amount determined by the State Treasurer; the legislation also provided for annual adjustments to the tax.]

Wisconsin. At the general election in 2014, Wisconsin voters approved the addition of two sections to the state’s constitution related to transportation. The first, Section 9(2) of Article IV, requires the legislature to “provide by law for the establishment of a department of transportation and a transportation fund.” The second added Section 11 to Article VIII to specify moneys to be placed into the transportation fund:

All funds collected by the state from any taxes or fees levied or imposed for the licensing of motor vehicle operators, for the titling, licensing, or registration of motor vehicles, for motor vehicle fuel, or for the use of roadways, highways, or bridges, and from taxes and fees levied or imposed for aircraft, airline property, or aviation fuel or for railroads or railroad property shall be deposited only into the transportation fund or with a trustee for the benefit of the department of transportation or the holders of transportation-related revenue bonds, except for collections from taxes or fees in existence on December 31, 2010, that were not

being deposited in the transportation fund on that date. None of the funds collected or received by the state from any source and deposited into the transportation fund shall be lapsed, further transferred, or appropriated to any program that is not directly administered by the department of transportation in furtherance of the department's responsibility for the planning, promotion, and protection of all transportation systems in the state except for programs for which there was an appropriation from the transportation fund on December 31, 2010. In this section, the term "motor vehicle" does not include any all-terrain vehicles, snowmobiles, or watercraft.

At the November 2018 general election, **Connecticut** voters will decide whether to add this section to the state constitution: "The Special Transportation Fund shall remain a perpetual fund. The general assembly shall direct the resources of said fund solely for transportation purposes, including the payment of debt service on obligations of the state incurred for transportation purposes. Sources of funds, moneys and receipts of the state credited, deposited or transferred to said fund by state law on or after the effective date of this amendment shall be credited, deposited or transferred to the Special Transportation Fund, so long as such sources are authorized by statute to be collected or received by the state, or any officer thereof, and the general assembly shall enact no law authorizing the resources of said fund to be expended other than for transportation purposes." (2017 House Joint Resolution No. 100)