Linda S. Crawford *Legislative Service Commission*

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(As Passed by the General Assembly)

Reps. Buehrer (by request), Setzer

Sen. Armbruster

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ACT SUMMARY

State OMVI law

- Reduces the prohibited *per se* concentrations of alcohol in a person's blood, breath, or urine for purposes of the state OMVI law, the state law relating to boating while under the influence of alcohol, and the Implied Consent Law.

Revenue provisions

- Imposes additional fees for the purpose of defraying the Department of Public Safety's costs associated with the administration and enforcement of motor vehicle and traffic laws at the rates of $12 for driver's licenses, $11 for vehicle registrations, and $5 for temporary license placards.

- Increases one component of the motor vehicle fuel tax, which previously was at 2¢ per gallon, by 2¢ per gallon effective July 1, 2003, an additional 2¢ per gallon effective July 1, 2004, and an additional 2¢ per gallon effective July 1, 2005.

- Provides that a portion of this motor vehicle fuel tax component, which previously went entirely for state purposes, be distributed to municipal corporations, counties, and townships according to a distribution formula to pay for local highway-related purposes, but allows only 10% of the tax money to supplant other local funds used for highway purposes.

- Provides for the cancellation of the third of the three 2¢ increases in the motor fuel tax rate if Ohio's share of federal fuel taxes meets certain conditions.

- Requires the Tax Commissioner to reimburse a school district for the amount of the new gas tax increases paid by the district for fuel used to transport students in buses owned or leased by the district.

- Phases out the additional 3¢ per gallon fuel use tax rate by reducing it to 2¢ per gallon on July 1, 2004, and eliminating the additional tax rate on July 1, 2005; also deducts some of the gas tax revenue from local governments and credits it to the state as the fuel use tax is reduced and eliminated.

- Increases the commercial bus safety inspection fee from not more than $100 to not more than $200 and authorizes the Director of Budget and Management to reimburse the State Highway Safety Fund from the GRF up to the annual amount of bus safety inspection fees certified by the Director of Public Safety as having been collected.

- Eliminates the requirement for annual reimbursement from the General Revenue Fund to the Auto Registration Distribution Fund and the State Highway Safety Fund of the amount of revenue lost because boat trailers owned and registered by disabled veterans, Congressional Medal of Honor winners, and former prisoners of war are exempt from all registration taxes and fees.

Public Safety provisions

- Requires the Registrar to adopt rules for reassigning commercial motor vehicles and rental car fleets to registration expiration dates beginning in 2004 that will evenly spread out the number of expirations each month of the year and establishes requirements and procedures necessary to implement those rules.

- Requires the Registrar of Motor Vehicles to adopt rules permitting the owners of noncommercial vehicles to register their vehicles on a biennial basis upon payment of the annual taxes and specified fees.

- Permits the Registrar of Motor Vehicles to adopt rules allowing owners of motor vehicles not used in interstate commerce to register vehicles for up to five years at a time.

- Eliminates 13 separate special license plate funds and creates one combined License Plate Contribution Fund and requires all contributions that motor vehicle registrants pay when receiving special license plates (that previously were deposited into their respective separate funds) be paid into the new Contribution Fund, to be distributed in the same amounts as previously provided.

- Creates in codified law the Emergency Management Agency Service and Reimbursement Fund, and requires money in the Fund to be used to pay the costs of administering programs of the Emergency Management Agency.

- Creates the Public Safety Investigative Unit Salvage and Exchange Fund, and provides that money the Department of Public Safety's Investigative Unit receives from the sale of motor vehicles and other related equipment must be deposited into the Fund to be used solely for the purchase of replacement motor vehicles and other equipment for the Investigative Unit.

Transportation provisions

- Makes permanent the pilot program of ODOT whereby the Director of Transportation may combine the design and construction elements of a highway or bridge project into a single "design-build" contract and limits the total dollar value of such ODOT design-build contracts to $250 million per biennium.

- Permits a county engineer to utilize one contract that combines the design and construction elements of a bridge, highway, or safety project, but only if the cost of the project as bid does not exceed $1.5 million.

- Permits the Director of Transportation to pay a contractor a lump sum under an incentive provision in a construction contract for completing critical work ahead of schedule.

- Allows the Director of Transportation to convey or transfer unneeded highway lands to, or permit their use by, the federal government without competitive bidding.

- Clarifies the requirements for conveyances by the Director of Transportation of real property no longer required for highway purposes.

- Makes the Career Professional Service pilot program of ODOT permanent.

- Requires the Department of Transportation to contract with a neutral third-party entity to conduct an analysis of the Department's pavement selection process.

- Expands the sources of federal moneys that can be used for payment of bond service charges in connection with the issuance of State Infrastructure Bank obligations.

- Allows any person to contribute money to the state, counties, or townships to pay the expenses related to the maintenance and repair of highways and roads upon which animal-drawn vehicles travel and specifies how the state and counties and townships must expend the contributions.

- Modifies the civil and criminal liability of state and local government employees when driving snow removal and road surface maintenance equipment.

- Allows the Department of Transportation and political subdivisions to provide snow and ice removal on any public road regardless of who controls the road.

- Extends until June 30, 2005, a provision specifying that for the purposes of the law governing the issuance of special permits for overweight vehicles, three or fewer steel coils are deemed to be a "nondivisible" load if the overall gross vehicle weight of the vehicle and load is less than 92,000 pounds.

- Increases the prior vehicle weight tolerances applicable to farm trucks and log trucks from 5% to 7.5% of the vehicle weight limits otherwise

applicable for those vehicles and also extends the 7.5% weight tolerance to coal trucks.

- Requires ODOT to open and mark the third lane of travel in both the northbound and southbound lanes of Interstate Route 71, from one mile south of State Route 18 to the interchange with State Route 303.

Force account projects

- Increases force account limits as follows: (1) for ODOT, from $10,000 per mile to $25,000 per mile for maintenance or repair of a state highway and from $20,000 to $50,000 for bridges, culverts, and traffic control signals, (2) for counties, from $10,000 per mile to $30,000 per mile for construction or reconstruction of roads and from $40,000 to $100,000 for construction, reconstruction, improvement, maintenance, or repair of bridges or culverts, (3) for townships, from $15,000 to $45,000 overall and from $5,000 to $15,000 per mile for maintenance and repair of roads, and (4) for municipal corporations, from $10,000 to $30,000 for construction, reconstruction, or repair of a street.

- Requires the Auditor of State to audit a sample of force account projects of state and local government entities at such times as the Auditor otherwise is conducting an audit of the public office; requires the Auditor to develop forms that the state and local government entities must use to estimate the costs of force account projects; subjects local government entities to reduced force account limits if the Auditor finds that the local governments violated the force account limits either during a regular audit or as a result of an investigation following a complaint and imposes a monetary penalty of 20% of the project cost for a third or subsequent force account violation.

- Regulates joint force account projects and imposes penalties for force account violations in joint projects.

- Provides for a 2006 Legislative Service Commission study of the effects of changes to the force account limits.

Motor vehicle emissions program

- With respect to contracts for the implementation of the E-Check program, prohibits new contracts that would expand the program to any new counties.

- Requires the exemption of a motor vehicle that is less than five years old, regardless of whether legal title to the vehicle is transferred during that five-year period, from any program for the inspection of motor vehicle emissions that is authorized by the General Assembly after the contracts for the continuing motor vehicle inspection and maintenance program terminate or expire.

- Would have extended the new car exemption under the E-Check program from two to five years (VETOED).

Other provisions

- Specifies that a motor transportation company that engages in the towing of disabled or wrecked vehicles is subject to regulation by the Public Utilities Commission of Ohio and is not subject to licensing and regulation by political subdivisions.

- Provides that units of farm machinery produced during or after 2002 when traveling on a street or highway must meet the lighting, illumination, and marking standards established by the American Society of Agricultural Engineers in 2001, and any subsequent revision of those standards.

- Creates the Biofuel and Renewable Energy Task Force, and requires it to submit a report by March 1, 2004, containing specified information regarding the industries of biofuel and other renewable energy sources in Ohio and recommendations for expanding those industries and funding projects or studies.

- Delays the effective date of changes in the Ohio Charitable Bingo Law from April 3, 2003 to July 1, 2003.

- Establishes a new formula, to be effective for two years, for the distribution of money from the salvage and sale of timber and other forest products from the state forests other than the Shawnee Wilderness Area that have been felled or damaged by weather or other natural forces or conditions.

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CONTENT AND OPERATION

STATE OMVI LAW

Prior law

In addition to general prohibitions against operating a motor vehicle while under the influence of alcohol, the state OMVI law establishes prohibited concentrations of alcohol in the blood, breath, or urine ("state OMVI"). Under prior state OMVI provisions, a person of any age was prohibited from operating a vehicle within Ohio if the person had a concentration of .10 of 1% or more by

weight of alcohol in the blood, a concentration of .10 of one gram or more by weight of alcohol per 210 liters of breath, or a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of urine (R.C. 4511.19(A)). A person under 21 years of age was prohibited from operating a motor vehicle within Ohio with a concentration of at least .02 of 1%, but less than .10 of 1% by weight of alcohol in the blood, a concentration of at least .02 of one gram, but less than .10 of one gram by weight of alcohol per 210 liters of breath, or a concentration of at least .028 of one gram, but less than .14 of one gram by weight of alcohol per 100 milliliters of urine (R.C. 4511.19(B)). A person who violated any of these latter prohibitions was guilty of the offense of operating a motor vehicle after underage alcohol consumption ("state OMVUAC").

Similarly, state law also prohibits anyone of any age from operating or being in physical control of any vessel or manipulating any water skis, aquaplane, or similar device ("boating") on Ohio waters if the person is under the influence of alcohol or has an alcohol concentration in the blood, breath, or urine in a prohibited amount. The prohibited amount in each case is identical to that established for OMVI. (R.C. 1547.11(A).) The law also prohibits boating after underage alcohol consumption in the same manner as for the operation of a motor vehicle (R.C. 1547.11(B)).[1]

Previously, in both the OMVI and BUI statutes, if a person had a concentration of less than .10 of 1% by weight of alcohol in the blood, a concentration of less than .10 of one gram by weight of alcohol per 210 liters of breath, or a concentration of less than .14 of one gram by weight of alcohol per 100 milliliters of urine, that fact could be considered with other competent evidence in determining whether the person was "under the influence" of alcohol (R.C. 1547.11(D) and 4511.19(D)(2)).

Operation of the act

The act modifies the offenses of state OMVI, state OMVUAC, and state BUI laws by reducing the specified concentrations of alcohol that must be present in a person's blood, breath, or urine *per se* in order for the person to have committed the offense. It prohibits a person of any age from operating a motor vehicle within this state and from boating on the waters of this state with a concentration of .08 of 1% or more by weight of alcohol in the blood, a concentration of .08 of one gram or more by weight of alcohol per 210 liters of breath, or a concentration of .11 of one gram or more by weight of alcohol per 100 milliliters of urine (R.C. 1547.11(A) and 4511.19(A)). The act also prohibits a person who is under 21 years of age from operating a motor vehicle within Ohio

[1] *These prohibitions will be referred to collectively as "BUI law."*

and from boating on the waters of this state with a concentration of at least .02 of 1%, but less than .08 of 1% by weight of alcohol in the blood, a concentration of at least .02 of one gram, but less than .08 of one gram by weight of alcohol per 210 liters of breath, or a concentration of at least .028 of one gram, but less than .11 of one gram by weight of alcohol per 100 milliliters of urine (R.C. 1547.11(B) and 4511.19(B)).

The act also provides in both the OMVI and BUI statutes that if a person has a concentration of less than .08 of 1% by weight of alcohol in the blood, a concentration of less than .08 of one gram by weight of alcohol per 210 liters of breath, or a concentration of less than .11 of one gram by weight of alcohol per 100 milliliters of urine, that fact may be considered with other competent evidence in determining whether the person is "under the influence" of alcohol (R.C. 1547.11(D) and 4511.19(D)(2)).

Corresponding changes in Implied Consent Law and OMVI initial appearance provision

In the motor vehicle Implied Consent Law, if a person is arrested for OMVI and submits to a chemical test of the blood, breath, or urine to determine its alcohol content, and the test shows that the person has a concentration of alcohol in the blood, breath, or urine at or above the concentrations specified in the law, the person's driver's or commercial driver's license, permit, or nonresident operating privilege is suspended immediately under the administrative license suspension provision of the Implied Consent Law. The act reduces these concentrations, which appear several times in the Implied Consent Law, to the same lower levels contained in the state OMVI and BUI statutes, as modified by the act. (R.C. 4511.191(D)(1), (D)(1)(c)(iv), (F), and (H)(1)(d)(ii).)

Corresponding reduction in prohibited concentrations that will become effective January 1, 2004

Amended Substitute Senate Bill 123 of the 124th General Assembly (effective January 1, 2004), included a new *per se* concentration prohibition for blood serum or plasma in both the state OMVI and BUI laws. Under that act, this prohibited concentration would have been .12 of 1% or more by weight per unit volume of alcohol in a person's blood serum or plasma (future versions of R.C. 1547.11(A)(4) and 4511.19(A)(3)). Effective January 1, 2004, the act makes a reduction in these blood serum or plasma prohibitions, reducing the amount from .12 to .096.

REVENUE PROVISIONS

New fees for defraying costs of enforcing motor vehicle and traffic laws

(R.C. 4503.10 (and future version of 4503.10), 4503.182 (and future version of 4503.182), 4506.08, 4507.23, and 5502.02)

For the purpose of defraying the Department of Public Safety's costs associated with the administration and enforcement of motor vehicle and traffic laws, beginning on October 1, 2003, the act imposes several new fees for various motor vehicle-related transactions. Each of the new fees is deposited into the existing State Highway Safety Fund. The rates of the new fees and transactions to which the new fees apply are as follows:

(1) An additional $12 fee for driver's licenses, including, a temporary instruction permit, driver's license, motorcycle operator's endorsement, driver's license renewal, duplicate driver's license, motorized bicycle license or duplicate, commercial driver's license (CDL), CDL temporary instruction permit, CDL renewal, and duplicate CDL; this fee is collected by a deputy registrar and transmitted to the Registrar in accordance with continuing procedures, but, in the same manner as previously existing driver's license fees, is not charged if the applicant for a license is a totally disabled veteran.

(2) An additional $11 fee for registration of a motor vehicle or commercial motor vehicle, including registration and registration renewal, and transfer of a registration (R.C. 4507.12, not in the act); this fee is collected by a deputy registrar and transmitted to the Registrar in accordance with continuing procedures.

(3) A new $5 fee for issuance of a temporary license placard.

The act provides that these additional fees generally go into effect October 1, 2003. However, in cases involving the *renewal* of motor vehicle registrations, driver's licenses, and commercial driver's licenses, the act provides that the additional fees apply to these items if they *expire* on or after October 1, 2003.

The act also modifies language of law that specifies the expenditures of the Department of Public Safety that are to be paid from fees and taxes relating to the registration, operation, or use of vehicles on public highways. Under the act, the Department's expenditures for the *administration and enforcement of motor vehicle and traffic laws*, rather than the Department's "operation and maintenance" expenses as under prior law, are to be paid from these fees. The act also specifically acknowledges that these fees and taxes are constitutionally restricted and must be used for specified highway purposes (Ohio Constitution, Article XII, Section 5a).

Increase in one component of the motor vehicle fuel tax

(R.C. 5735.27, 5735.29, and 5735.291)

Prior fuel tax components

The state motor vehicle fuel tax, which is levied on all dealers in motor vehicle fuel, is an excise tax on the use, distribution, and sale within the state of fuel used in the operation of motor vehicles. Formerly totaling 22¢ per gallon, it was composed of one levy of 1¢ per gallon, three levies each of 2¢ per gallon, and one levy of 15¢ per gallon. Expenses such as highway bond payments and other specified payments are first paid from the proceeds; the state retains a portion of the balance and distributes some proceeds to local governments according to statutory formulas.

All of the revenue from one of the three 2¢ levies comprising components of the fuel tax formerly was used only for *state* purposes such as state highway bond retirement; repairing and erecting traffic signs and control devices; enforcing state vehicle registration and operation laws; and other purposes related to the state highway system. (R.C. 5735.29.)

Operation of the act

The act increases the tax of 2¢ per gallon levied by the tax component formerly limited to state purposes to 4¢ per gallon on July 1, 2003, and will increase it to 6¢ per gallon on July 1, 2004, and to 8¢ per gallon on July 1, 2005.

The act also modifies the stated highway-related purposes for this component by adding provisions relating to local governments, thus permitting the revenue raised by that component to be distributed to local governments for expenditure by those entities. In addition, the proceeds of this component may be used for constructing certain railroad crossing devices. Specifically, the additional purposes are:

(1) To enable the counties, townships, and municipal corporations to properly plan, construct, widen, reconstruct, and maintain their public highways, roads, and streets;

(2) To enable counties and municipal corporations to pay principal, interest, and charges on bonds and other obligations issued for highway improvements;

(3) To provide revenue for the installation of certain railroad crossing protective devices (R.C. 4907.47, not in the act).

Fuel tax "trigger"

(R.C. 5735.292, 5728.06, and 5735.29)

The act establishes a "trigger" that would cancel the act's final 2¢ increase in the motor fuel tax rate scheduled to take effect July 1, 2005 (and the corresponding reduction in the fuel use tax--see "***Fuel use tax***" below). The rate increase (and the corresponding fuel use tax reduction) would not occur if both of the following conditions are satisfied:

(1) The Director of Transportation determines that the amount of federal motor fuel excise taxes appropriated to this state and available for basic highway programs is equal to or greater than 95% of the amount of federal fuel taxes paid within this state;

(2) The Director of Transportation determines that this state no longer receives a net loss of federal fuel tax returns caused by any federal tax reduction, tax rebate, or tax assistance on behalf of ethanol-based or alcohol-based motor fuels.

Reimbursement of school districts for new gas taxes

(R.C. 5735.142)

The act permits any city, local, or exempted village school district that pays any of the act's gas tax increases to file applications with the Tax Commissioner for reimbursement of the amount of new taxes paid on motor fuel used for providing transportation for pupils in a vehicle the district owns or leases. Applications may be filed for any gas purchased after July 1, 2003 (when the first tax increase takes effect) and must be filed within one year of purchase of the gas, stating the quantity of fuel purchased for operating school buses it owns or leases to transport students, and including evidence of purchase.

Distribution of the tax money raised by affected component

Under continuing law, the Treasurer of State first transfers to the Tax Refund Fund the amount of money generated by the affected fuel tax component necessary to pay certain tax refunds. Next, 7/8 of 1% of the total amount generated is credited to the Waterways Safety Fund and 1/8 of 1% is credited to the Wildlife Boater Angler Fund.[2] Finally, any amounts needed for highway bond

[2] *Under R.C. 5735.051, the General Assembly has found as a fact that of the revenues raised by the motor vehicle fuel tax, 1% is attributable to the operation of motor vehicles upon Ohio waters.*

debt service are transferred to the proper funds or accounts. Under prior law, the remaining balance was credited to the Highway Operating Fund, used solely for state purposes.

As noted above, the act modifies the permissible uses of the revenue raised by this tax component to include expenditures by local governments of revenue raised by that component. Under the act, after the above mandatory transfers are made, a "specified portion" of the remaining balance of the taxes collected under the relevant motor fuel tax component is credited to the Gasoline Excise Tax Fund.[3] This "specified portion" is a percentage of that remaining balance that increases (as the tax increases) each of the three fiscal years beginning August 15, 2003. The following chart illustrates the percentages and amounts prescribed by the act:

Total amount of tax per gallon	**"Specified portion" (fractional amount of the *total tax* credited to the Gasoline Excise Tax Fund)[4]**	**Amount in cents credited to the Gasoline Excise Tax Fund (for distribution to local governments)**	**Total amount of new tax money (in cents) for use by the state**	**Approximate percentages of the *total new increases* that go to local governments/to the state**
Two cents (existing tax)	None	None	Not applicable	Not applicable
Four cents (after first two-cent increase of 8/15/03)	One-eighth	One-half cent	One and one- half cents	25/75
Six cents (after second two-cent increase of 8/15/04)	One-sixth	One cent	Three cents	25/75
Eight cents (after third two-cent increase of 8/15/05)	Three-sixteenths	One and one-half cents	Four and one-half cents	25/75

[3] The Gasoline Excise Tax Fund, contains the revenue from the local government motor fuel tax distribution formulas.

[4] Amounts are approximate because it is not known how much of the increases, if any, will be credited to the Tax Refund Fund, etc.

Under the act, the specified portions in the Gasoline Excise Tax Fund, irrespective of amount, are distributed in the following manner:

(1) Forty-two and eighty-six hundredths percent (42.86%), minus a possible designated amount for townships, is distributed among municipal corporations in accordance with one of the formulas in the Gasoline Excise Tax Fund law.

(2) Thirty-seven and fourteen hundredths percent (37.14%), minus a possible designated amount for townships, is distributed among the counties in accordance with one of the formulas in the Gasoline Excise Tax Fund.

(3) The remaining 20% of the specified portion is paid to townships, but it is not distributed according to any existing formula but rather according to a new formula contained in the act.

The state's share of the increases, minus a possible designated amount for townships, must be expended in the manner prescribed in current law for revenues raised by the affected tax component.

Distribution of a designated portion of the new motor vehicle fuel tax revenues to townships

The act specifies that the "formula amount" for any township in any year is the amount that would be allocated to that township if 50% of the total revenues credited to townships under the act's provisions were allocated among townships in the state proportionate to the number of lane-miles within the boundaries of the respective townships, as determined annually by ODOT, and the other 50% of the revenues credited pursuant to the act's provisions were allocated among townships in the state proportionate to the number of motor vehicles registered within the respective townships, as determined annually by ODOT.

The amount credited to townships under the act includes the 20% that is the townships' share of the specified portion, plus 20% of any amounts transferred from the Highway Operating Fund to the Gasoline Excise Tax Fund through biennial appropriations acts of the General Assembly pursuant to the planned phase-in of a new source of funding for the State Highway Patrol (this combined amount will hereinafter be referred to as the "combined township pot"). This phase-in is scheduled to occur over the next four years, although constitutionally the relevant appropriations portions of the bill can address only the first two years of the phase-in. For year five and thereafter, this second portion of the combined township pot presumably will be zero.

Beginning on August 15, 2003, each township will annually receive the greater of the following two calculations:

(1) The combined township pot divided by the number of townships in the state at the time of the calculation;

(2) 70% of the formula amount for that township.

The act provides that if, after calculating the *total* amount *all* townships are to receive (for each township, either a *pro rata* share of the combined township pot or 70% of the formula amount), the amount of money in the combined township pot is insufficient to cover the total amount owed to townships under the act, this "township deficit" will be made up in accordance as follows: prior to the crediting to municipal corporations, counties, and the state of any new revenues generated by the act's fuel tax increase, money will be deducted from each of these three shares and credited to the combined township pot in amounts sufficient to make up the township deficit. The deductions from the shares of municipal corporations, counties, and the state are made on an equal basis. Effective August 15, 2003, prior to the distribution from the Gasoline Excise Tax Fund of the share otherwise allocated to municipal corporations and counties, the Department of Taxation ("Taxation") must deduct one-third of the township deficit from the municipal corporations' share and one-third of the township deficit from the counties' share and use it for distribution to townships. Similarly, effective August 15, 2003, prior to crediting to the Highway Operating Fund any revenue resulting from the component of the fuel tax that the act increases, Taxation must deduct one-third of the township deficit from the state's share and use it for distribution to townships.

Uses of new local revenues

The act contains a "nonsupplant" clause that requires municipal corporations, counties, and townships to use at least 90% of the revenue they receive from the new tax to "supplement, rather than supplant" other local funds used for highway-related purposes.

Fuel use tax

(R.C. 5728.06)

Continuing law levies an additional fuel use tax on the amount of fuel consumed by commercial trucks in Ohio that was purchased outside of Ohio. The current fuel use tax is 3¢ per gallon. The act phases out the additional 3¢ per gallon highway use tax rate by reducing it to 2¢ per gallon on July 1, 2004, and totally eliminating the additional tax on July 1, 2005. The total elimination of the

fuel use tax on July 1, 2005, may not occur on that date if the fuel tax cancellation trigger (discussed previously in this portion of this analysis) goes into effect instead.

Deduction of local gas tax revenues when fuel use tax is reduced

(R.C. 5735.23)

Beginning August 15, 2004, the first year of reduction in the fuel use tax, the act provides that the following amounts annually be deducted from current local government shares of the 22¢ per gallon of current gas tax:

--$248,625 each year from the amounts distributed to municipal corporations based on numbers of vehicles registered in the various municipal corporations;

--$87,750 each year from the amounts distributed equally among all townships;

--$248,625 each year from the amounts distributed equally among all counties.

The money deducted from municipal corporations, townships, and counties each year is credited to the Highway Operating Fund.

Commercial bus safety inspection fees

(R.C. 4513.52 and 4513.53)

The commercial bus safety inspection program was established in October of 2000; it applies to most commercial buses, but does not apply to church buses or school buses unless those buses also are used for commercial purposes. The State Highway Patrol conducts the inspections and collects a fee for each inspection in an amount not to exceed $100, as established by the Director of Public Safety by rule. Continuing law specifies that the fees collected by the patrol be paid into the GRF.[5]

Under the act, the Director of Public Safety may establish a fee of up to $200 for each bus inspected. The act continues the requirement that bus inspection fees be paid to the GRF, but requires the Director of Public Safety,

[5] *Section 5a of Article XII of the Ohio Constitution requires that moneys derived from fees relating to the operation or use of vehicles on public highways be expended only for specified highway purposes. The fees for bus inspections may be subject to this constitutional restriction.*

annually on the first day of June, to determine the amount of bus inspection fees collected and certify the amount to the Director of Budget and Management. The Director of Budget and Management then is authorized by the act to transfer cash from the GRF to the State Highway Safety Fund in an amount "up to" the amount certified.

Elimination of the annual reimbursement from the General Revenue Fund to the Auto Registration Distribution Fund and the State Highway Safety Fund

Under prior law, any owner of a boat trailer who was a disabled veteran, had been awarded the Congressional Medal of Honor, or was a prisoner of war could apply to the Registrar of Motor Vehicles for the registration of the boat trailer without the payment of any registration tax, service fee, or any applicable local motor vehicle license tax. Every year by January 15, the Registrar was required to determine the amount of taxes and fees so exempted from payment and certify the amount to the Director of Budget and Management for reimbursement. The Director then had to transfer the amount certified from the General Revenue Fund (GRF) to the Auto Registration Distribution Fund and the State Highway Safety Fund in the same proportions as would be the case if the boat trailer registrations were not exempted.

The act eliminates this reimbursement from the GRF to the Auto Registration Distribution Fund and the State Highway Safety Fund. (R.C. 4503.173.)

PUBLIC SAFETY PROVISIONS

Registration dates for commercial motor vehicles and rental car fleets

(R.C. 4503.101)

Continuing law requires the Registrar of Motor Vehicles to adopt rules governing the registration of motor vehicles. Under prior law motor vehicles generally were required to be registered upon the motor vehicle owner's date of birth. Also, pursuant to rules adopted under prior law, the Registrar established certain specific dates for the expiration of the registration of various commercial and special vehicles.[6]

Under the act, the Registrar must adopt new rules governing motor vehicle registration based upon the following: (1) the type of vehicle to be registered, (2) the type of ownership of the vehicle, (3) the class of license plate to be issued, and (4) any other factor the Registrar determines to be relevant. In general, the act

[6] *OAC 4501:1-7-03.*

requires a motor vehicle owned by an individual to continue to be registered based upon the motor vehicle owner's date of birth; registration based on the owner's date of birth does not apply to commercial cars, buses, trailers, and semitrailers taxed under the International Registration Plan, rental vehicles owned by motor vehicle renting dealers, and other situations determined by the Registrar by rule.

The act also requires the Registrar to adopt rules for reassigning commercial motor vehicles and rental car fleets to registration expiration dates beginning in 2004 that will evenly spread out the number of expirations each month of the year and permits a commercial motor vehicle owner or motor vehicle renting dealer who owns at least two vehicles to request the Registrar to divide the total number of vehicles into groups (up to four) for purposes of establishing different registration expiration dates. The act authorizes a transition period if necessary, and provides for registration taxes to be prorated if a vehicle is registered for less than a year during the transition period (which may be extended over a two-year period). The new $8 registration fee established by the act may not be prorated and will be charged in full for each registration renewal of a vehicle during the transition period.

The act also makes some generally technical modifications in the requirements to notify the registrar whenever the address of the owner of a motor vehicle changes. The modifications require an address change to be reported for an owner or "lessee" (in lieu of the current law's reference to an owner or "chauffeur"); permit *electronic* notification of an address change; require an owner that is a business to report the county where the place of business is located, in lieu of the county of "residence"; and permit a business to report a federal tax identification number instead of a social security number.

Registration periods

Overview

The act revises two options of prior law expanding the registration period beyond one year. Where prior law allowed the Registrar to establish optional biennial registration of noncommercial vehicles, the act *requires* the Registrar to establish such a biennial registration option. Where prior law allowed the Registrar to establish multi-year registration (up to five years) of multiple numbers of certain types of vehicles used in business, the act continues this as a permissive program for the Registrar, but extends the option to anyone other than a person registering under the International Registration Plan.

Voluntary biennial registration for noncommercial motor vehicles

(R.C. 3704.14, 4503.103, and 4503.11; Section 28)

Prior law authorized the Registrar to adopt rules to permit any person, other than a person receiving an apportioned license plate for commercial vehicles (under the International Registration Plan), to file an application for registration for the next two succeeding registration years. The act *requires* the Registrar to adopt such rules, but delays operation of the biennial registration until January 1, 2004.

At the time of application, the person must pay the annual taxes and specified fees, provided that the taxes may be prorated (see below). A person who is registering a vehicle under the voluntary biennial registration must pay the act's additional $11 fee for each year of registration and also must pay one and one-half times the deputy registrar service fee or a BMV service fee. As of January 1, 2004, when the program goes into effect, the service fee will be $3.50, so a person voluntarily registering for two years will pay a $5.25 service fee.

If a person registers a vehicle for less than a full registration year, continuing law authorizes prorating the taxes based on the type of tax and the amount of time remaining on the registration period. Under continuing law, state registration taxes may be prorated on a monthly basis while local motor vehicle registration taxes are prorated only on a semi-annual basis. Under the act, the tax due is the sum of the state tax due as may be prorated on a monthly basis, plus the local motor vehicle registration taxes due as may be prorated on a semi-annual basis for the *first* year, plus the *full* amount of the state and local taxes for the second year.

No person applying for a multi-year registration under continuing law or under the act is entitled to a refund of any taxes or fees paid.

Additionally, in regard to the motor vehicle inspection and maintenance program ("E-Check"), if an owner's vehicle is subject to E-Check and the owner has voluntarily chosen to register the vehicle biennially, the act requires the owner to have the vehicle inspected annually or biennially, as applicable, in accordance with rules adopted by the Director of Environmental Protection.

The act specifies that the owner of a commercial car used solely in intrastate commerce may not register vehicles biennially; this is in addition to the continuing law provision specifying that persons who register commercial vehicles under the International Registration Plan may not register biennially.

Multiyear registrations

(R.C. 4503.103)

Prior law also permitted the Registrar to adopt rules allowing a person who owned or leased at least ten motor vehicles used principally in connection with any established business (other than vehicles engaged in interstate commerce)[7] to register their vehicles for up to five years at a time. The act permits the Registrar to adopt rules for such multiyear registration for anyone who owns or leases just one vehicle (not engaged in interstate commerce). The act eliminates the requirement for the vehicle to be used principally in connection with a business.

Consolidation of a number of special license plate funds into one fund

(R.C. 4501.20, 4501.21, 4501.22, 4501.29, 4501.30, 4501.311, 4501.32, 4501.33, 4501.39, 4501.40 4501.41, 4501.61, 4501.71, 4503.251, 4503.50, 4503.51, 4503.55, 4503.561, 4503.591, 4503.67, 4503.68, 4503.69, 4503.71, 4503.711, 4503.72, 4503.73, and 4503.75)

Under continuing law, whenever a person obtains one of a number of special license plates for his vehicle, he must pay to the Registrar of Motor Vehicles or deputy registrar a contribution in a specified amount. Under prior law this contribution went into a special fund in the state treasury and then was distributed to the organization specified in statute whose logo or name appeared on the special license plate. Under continuing law, the contributions must be expended by the organizations in specified ways. The special license plates that had their own funds in the state treasury and are addressed by the act are as follows: (1) Future Farmers of America, (2) Collegiate, (3) Pro Football Hall of Fame, (4) Ducks Unlimited, (5) Professional sports team, (6) Boy Scouts of America, (7) Girl Scouts of the United States of America, (8) National Organization of Eagle Scouts, (9) Fraternal Order of Police, (10) Fraternal Order of Police Associates of Ohio, (11) Ohio CASA/GAL (Court-appointed special advocate/guardian ad litem), (12) Leader in Flight, and (13) Rotary International.

The act eliminates these 13 separate funds and creates the License Plate Contribution Fund. All the contributions that formerly were deposited into the separate funds are paid under the act into the new Contribution Fund, which retains the distribution language of the respective funds for each kind of contribution.

All investment earnings of the new fund are credited to it. Not later than May 1 of every year, the Registrar must distribute to each of the 13 entities that

[7] *These vehicles are required to register annually under federal regulations.*

sponsor the affected special license plates the investment income the Fund earned the previous calendar year. The amount paid to each entity is proportionate to the amount of money it received from the Fund for license plates during the previous calendar year.

Emergency Management Agency Service and Reimbursement Fund

(R.C. 5502.39)

Previously, two funds created in uncodified law--the EMA Utility Payment Fund and the Salvage and Exchange-EMA Fund--could be used by the Emergency Management Agency to pay specified costs. The act instead creates in codified law a new fund in the state treasury, the Emergency Management Agency Service and Reimbursement Fund, which consists of money collected under the Emergency Management Agency Law. Money in the Fund must be used to pay the costs of administering programs of the Agency.

Creation of the Public Safety Investigative Unit Salvage and Exchange Fund

(R.C. 4501.10)

As is the case with all state agencies, the Department of Public Safety may dispose of excess and surplus supplies, including motor vehicles. Generally, the money the Department previously received from the sale of motor vehicles and related equipment was required to be deposited into either the Highway Safety Salvage and Exchange Administration Fund or the Highway Safety Salvage and Exchange Highway Patrol Fund. Money in these funds can be used only to purchase replacement motor vehicles and related equipment.

The act creates the Public Safety Investigative Unit Salvage and Exchange Fund in the state treasury and provides that money that the Department of Public Safety's Investigative Unit receives from the sale of motor vehicles and other related equipment must be deposited into the new Fund and must be used solely for the purchase of replacement motor vehicles and other equipment for the Investigative Unit.

TRANSPORTATION PROVISIONS

Design-build authority of ODOT

Since 1995, ODOT has had a pilot program whereby each biennium the design and construction elements of a number of highway and bridge projects are combined into a single "design-build" contract. By the end of 2002, the Director of ODOT was to report on the effectiveness of the pilot program to the General Assembly. The report was to evaluate whether the program saved costs and time

in the completion of these projects. Under the pilot program, for each biennium, the total dollar value of the design-build contracts was limited to $250 million. The Director was required to award these design-build contracts in accordance with ODOT's general competitive bidding law, except that, in lieu of the plans required by that law, the Director had to prepare and distribute a "scope of work document" upon which the bidders could base their bids.

The act makes this pilot program permanent and retains the biennial $250 million limit and scope of work provision of that program.

Design-build authority of county engineers

(R.C. 5543.22)

Section 14 of Substitute House Bill 73 of the 124th General Assembly authorized a county engineer, until July 1, 2003, to combine the design and construction elements of a bridge project into one contract. A maximum of 15 bridge projects statewide were authorized to be completed using such "design-build" contracts, and the contracts could not exceed $2 million each.[8]

Under the act, notwithstanding continuing law governing contracts for professional design services, a county engineer may utilize a design-build contract for an unlimited number of bridge, highway, or safety projects, but only if the cost of each project as bid does not exceed $1.5 million. When a county engineer is required to use competitive bidding, he must award a design-build contract in accordance with the general county competitive bidding law. In lieu of plans, the county engineer must prepare and distribute a scope of work document upon which bidders can base their bids.

A county engineer may request the Director of Transportation to review and comment on the scope of work document or the construction plans for conformance with state and federal requirements. Upon such a request, the Director must review and comment on the documents or plans.

Lump sum payment under an incentive provision in an ODOT construction contract

(R.C. 5525.20)

Continuing law permits the Director of Transportation to include incentive and disincentive provisions in contracts for projects or phases of projects that

[8] *The specific 15 projects were to be selected by the County Engineers Association of Ohio, in consultation with the Director of Transportation.*

involve factors such as a lengthy detour, excessive disruption to traffic, or a significant impact on public safety. Under an incentive provision, the contractor is compensated a certain amount for each day specified critical work is completed ahead of schedule; under a disincentive provision, the contractor is assessed a deduction for each day the specified critical work is completed behind schedule. Under the act, the Director may elect to compensate the contractor in the form of a lump sum incentive for completing critical work ahead of schedule.

Payment of bond service charges on State Infrastructure Bank obligations

(R.C. 5531.10(A)(6))

Continuing law authorizes the issuance of obligations of the state for any of the purposes for which the Department of Transportation's State Infrastructure Bank may be used. Bond service charges on the obligations are to be paid from pledged receipts and any applicable special funds. "**Pledged receipts**" is defined as (1) moneys accruing to the state from the disposition or use of qualified projects and from the repayment of loans made from proceeds received from the sale of obligations, (2) accrued interest received from the sale of obligations, (3) income from the investment of the special funds, (4) any donations available for the payment of bond service charges, and (5) any amounts in the State Infrastructure Bank pledged to the payment of such charges.

The act adds that, if the amounts in the State Infrastructure Bank are insufficient for the payment of such bond service charges, "**pledged receipts**" also means moneys that are apportioned by the United States Secretary of Transportation under Title 23 of the United States Code (or any successor legislation) or under any other federal law relating to aid for highways, and that are to be received as a grant by the state, to the extent the state is not prohibited by state or federal law from using such moneys *and* the moneys are pledged to the payment of the bond service charges.

Conveyances, transfers, and permits pertaining to unneeded highway lands

(R.C. 5501.45)

Current law allows the Director of Transportation to convey or transfer, or permit the use of, lands that are owned by the state, that are acquired or used for the state highway system or highways, and that are no longer needed by the state for highway or recreation purposes (R.C. 5501.45(A)). Conveyances, transfers, and grants of and permits to use the unneeded highway lands may be made for a fair consideration as determined by the Director, without competitive bidding, to state institutions, agencies, commissions, or instrumentalities; to political

subdivisions; to taxing districts of the state; or to institutions receiving financial assistance from the state (R.C. 5501.45(E)(1)).

The act adds the federal government to the list of entities that may receive or use unneeded highway lands without competitive bidding (R.C. 5501.45(E)(1)). It also establishes that these conveyances, transfers, or grants of unneeded highway lands must be by deed executed by the Director and must be in the form prescribed by the Attorney General. Additionally, under the act, the Director must keep a record of each conveyance, transfer, grant, or permit to use pertaining to unneeded highway lands. (R.C. 5501.45(E)(1).)

Sales of unneeded highway property

(R.C. 5501.34)

Under continuing law, if the Director of Transportation acquires real property for highway purposes and if circumstances subsequently alter the highway requirements so that the property, or a portion of it, is no longer needed, the Director may sell all the right, title, and interest of the state in any of the property in a specified manner (by public auction or by private sale to abutting property owners under certain circumstances). These conveyances are to be by a deed (1) executed by the Governor, (2) bearing the Great Seal of the State, and (3) in the form prescribed by the Attorney General. The Director must keep a record of them. (R.C. 5501.34.)

Prior law exempted conveyances of such unneeded property by ODOT from several requirements that are *generally applicable to all conveyances* of state-owned property. These general provisions specify that all conveyances must be (1) drafted by the Auditor of State, (2) executed in the name of the state, (3) signed by the Governor, (4) countersigned by the Secretary of State, (5) sealed with the Great Seal of the State, and (6) recorded by the Auditor of State. (R.C. 5301.13--not in the act.) The act removes ODOT's exemption from these general requirements (R.C. 5501.34(G)).

ODOT's Career Professional Service

(R.C. 5501.20)

Since 1998, ODOT has had a pilot program within the department known as the "Career Professional Service" (CPS). This program includes ODOT employees who, regardless of job classification, meet both of the following conditions:

(1) They are supervisors, professional employees who are not in a collective bargaining unit, confidential employees, or management level employees.

(2) They exercise authority that is not merely routine or clerical in nature and report only to a higher level unclassified employee or employee in the CPS.

Every other year the Director of Transportation must adopt a business plan for ODOT that states the department's mission, business objectives, and strategies and that establishes a procedure by which employees in the CPS will be held accountable for their performance. After an employee is appointed to a CPS position, the employee's direct supervisor provides the employee with a written performance action plan that describes ODOT's expectations for that employee in fulfilling the department's business plan. CPS employees receive written performance reviews based on the employee's fulfillment of the mission, business objectives, and strategies of the business plan. ODOT must give an employee whose performance is unsatisfactory an opportunity to improve his performance for a period of at least six months before the department can take any disciplinary action. Under conditions imposed by law for the pilot program, no person may be appointed to a position in the CPS after June 30, 2003, including for the purpose of filling a CPS vacancy that occurs for any reason.

The act makes the CPS pilot program permanent and permits persons to be appointed to CPS positions after June 30, 2003.

ODOT pavement selection process analysis

(Section 12)

The act requires ODOT, subject to Controlling Board approval, to contract with a neutral third-party entity to conduct an analysis of ODOT's pavement selection process, including but not limited to life cycle cost analysis, user delay, constructability, and environmental factors. The entity, which is appointed by an advisory council (see below), must be an individual or an academic, research, or professional association with an expertise in pavement selection processes. Additionally, the entity may not be a research center for concrete or asphalt pavement. The analysis conducted by the third-party entity must compare and contrast ODOT's pavement selection process with those of other states and with model selection processes as described by the American Association of State Highway and Transportation Officials and the Federal Highway Administration.

No later than July 31, 2003, the act requires ODOT to appoint an advisory council to approve the scope of study and to select the neutral third-party entity. The advisory council must consist of the following members:

(1) The Director of ODOT, who must act as Chairman of the council;

(2) A member of the Ohio Society of Certified Public Accountants;

(3) A member of a statewide business organization representing major corporate entities from a list of three names submitted to and appointed by the Speaker of the House of Representatives;

(4) A member of the Ohio Society of Professional Engineers;

(5) A member of a business organization representing small or independent businesses from a list of three names submitted to and appointed by the President of the Senate;

(6) A representative of the Ohio Concrete Construction Association;

(7) A representative of Flexible Pavements Association of Ohio, Inc.

Members of the advisory council representing the Ohio Society of Certified Public Accountants, the Ohio Society of Professional Engineers, the small or independent businesses, and the major corporate entities must have no conflict of interest with the position.

The advisory council must select the neutral third-party entity and determine the scope of the study no later than September 1, 2003. Once appointed, the council must meet, at a minimum, every 30 days to direct and monitor the work of the neutral third-party entity, including responding to any questions raised by that entity. The council must publish a schedule of meetings and provide adequate public notice of these meetings. The meetings are subject to the applicable public meeting requirements. The council must allow a comment period of not less than 30 days before issuing its final report, which is required by December 31, 2003. Upon issuing its final report, the council ceases to exist.

The Department must make changes to its pavement-selection process based on the recommendations included in the third-party entity's report.

Contributions for repair of roads used by animal-drawn vehicles

(R.C. 5501.53)

The act allows any organization, individual, or group of individuals to make a monetary contribution to the state or to any county or township to pay the expenses the state or county or township incurs in maintaining, repairing, or reconstructing highways and roads upon which animal-drawn vehicles travel. The

act then specifies how the state and counties and townships are to handle any money received for this purpose.

The act requires the state to credit all private money that it receives under its provisions to the Highway Operating Fund. It further requires ODOT to expend these private monies as follows: (1) if the donor has directed that the contribution be used to pay the expenses of a particular state highway, which the act authorizes, ODOT must expend the contribution for that highway, (2) if the donor did not designate a highway, ODOT must use the contribution to pay the expenses of a portion of a state highway located within the county in which the donor resides or in which the organization maintains property and upon which animal-drawn vehicles regularly travel. The act allows ODOT to accumulate contributions designated for a particular highway until such time as the contributions can be expended in a meaningful manner.

The act does not allow a person who makes a donation to a county or township to designate that the funds be used for a specific road or highway. However, the county or township is required to expend all contributions it receives to maintain, repair, or reconstruct any road located within the county or township upon which animal-drawn vehicles travel. The act allows a county or township to accumulate contributions until such time as the contributions can be expended in a meaningful manner.

Not later than the first day of April of every year, the act requires ODOT and every county and township that has received money to issue a written report detailing the following in regard to private funds received for the repair of roads used by animal-drawn vehicles: (1) the amount of money received during the previous calendar year, (2) the amount of money expended during the previous calendar year, (3) the amount of money received but not expended during the previous calendar year, (4) the highway or road projects for which the expenditures were made, and (5) any other relevant data.

Transportation of steel coils

(Section 9)

Continuing law establishes weight limits for trucks operating on highways, but includes a process for permits to be issued for vehicles to exceed the weight limits (R.C. 4513.34, not in the act). One of the main factors determining the issuance of a special permit is whether the load is capable of being divided into two or more smaller loads. Generally the Director of Transportation and local authorities determine whether a vehicle or load is nondivisible on a case-by-case basis (OAC 5501:2-11-03). Prior law provided that from July 1, 2001, through July 1, 2003, three or fewer steel coils were deemed to be a nondivisible load for

purposes of the special permits, provided that the maximum overall gross vehicle weight of the vehicle and load did not exceed 92,000 pounds. The act extends this determination from July 1, 2003, through June 30, 2005.

Vehicle weight tolerances

(R.C. 5577.042)

With specified exceptions described below, law primarily retained by the act allows farm trucks and farm machinery transporting farm commodities, and log trucks transporting timber to exceed motor vehicle weight limits by no more than 5% without the imposition of the criminal penalties for violating the established vehicle weight limits. This weight tolerance applies from the place of production to the first point of delivery where the products are weighed and title to the products or timber is transferred. If a farm truck or farm machinery transporting farm commodities, or a log truck transporting timber, exceeds the weight limits by more than the weight tolerance allowed by law, both of the following apply without regard to the allowance: (1) the applicable criminal penalty for violating the weight limits (R.C. 5577.99, not in the act) and (2) the civil liability established in continuing law for damages to streets, roads, bridges, or culverts as a result of violating any law regulating the use of improved public roads (R.C. 5577.12, not in the act).

The exemption from the criminal penalties for violating weight limits does not apply (1) during the months of February and March, and (2) regardless of when the delivery occurs, with regard to a highway that is part of the interstate system or to a highway or bridge on which weight limits have been reduced by the Department of Transportation or board of county commissioners under law not affected by the act. (R.C. 5577.042(C).)

The act increases the weight tolerances applicable to farm and log trucks from 5% to 7.5%. The act also extends this 7.5% weight tolerance to coal trucks, which the act defines as trucks transporting coal from the site where it is mined. The penalties described above apply under the act to farm trucks, log trucks, and coal trucks; specifically, if the vehicle exceeds the weight limits by more than the 7.5%, both the criminal penalty for violating the weight limits and the civil liability for damages to streets, roads, bridges, or culverts as a result of violating any law regulating the use of improved public roads apply to the violation. However, the restriction about the weight tolerance not applying during the months of February and March is limited to farm and log trucks, as under prior law; this restriction does not apply to the operation of coal trucks.

Opening of a third lane of I-71 in particular area

(Section 23)

The act requires the Department of Transportation, in accordance with its existing schedule for reconstruction of Interstate Route 71, to open and mark the third lane of travel in both the northbound and southbound lanes of that highway, from one mile south of State Route 18 to the interchange with State Route 303.

Public employee liability when operating road maintenance equipment

(R.C. 4511.04)

Prior law declared that most state traffic and vehicle equipment laws did not apply to persons and vehicles "while actually engaged in work on the surface of a highway within an area designated by traffic control devices." It further specified that the traffic and vehicle equipment laws did apply to these persons and vehicles when traveling to or from such work. The act modifies this provision to specify that such persons and vehicles are subject to the state OMVI laws even while engaged in work on the surface of a highway. (R.C. 4511.04(A).)

Prior law also established immunity from criminal prosecutions for "the drivers of snow plows, traffic line stripers, road sweepers, mowing machines, tar distributing vehicles, and other vehicles utilized in snow and ice removal or road surface maintenance" who violated specified traffic laws if both of the following applied: (1) the vehicle operators were engaged in work on a highway, and (2) the vehicles were equipped with flashing lights and the lights were in operation. The specified traffic laws included driving too slowly and various laws relating to driving in marked lanes and passing other vehicles. The prior law exempting these vehicle operators from criminal law further stated that *this law* does not exempt the operators from civil liability for violating the specified traffic laws. (See **COMMENT** 1.)

In addition to the traffic laws described above, the act establishes immunity from criminal prosecution for the driver of a highway maintenance vehicle who operates a vehicle in an unsafe condition or who violates vehicle size and weight restrictions while engaged in the performance of official duties (R.C. 4511.04(B)). The statement of civil liability similarly is modified to specify that the exemption from criminal prosecution does not exempt the vehicle operators from civil liability in regard to the operation of an unsafe vehicle or vehicle size and weight violations (R.C. 4511.04(C)(1)). The act further specifies that the driver of a vehicle *transporting* highway maintenance equipment is not exempt from criminal liability for vehicle size and weight violations (R.C. 4511.04(C)(2)).

The act retains the requirement that the immunity from criminal prosecution applies only when the flashing lights on the vehicle are operating, but specifically requires the vehicle operator to be engaged in the "performance of official duties" on a street or highway and also specifies that the highway maintenance vehicle must be owned by the state or a political subdivision (R.C. 4511.04(B)). The act defines "highway maintenance vehicle" as a "vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities" (R.C. 4511.04(D)).

Snow and ice removal

(R.C. 5535.16)

Continuing law generally assigns responsibility for maintenance of a public road to the state or the political subdivision having control of it. The act authorizes the Department of Transportation or a political subdivision, notwithstanding the existing statutory responsibility for road maintenance, to provide snow and ice removal on the roads under the control of the state or any political subdivision. The act thus allows the Department and political subdivisions to provide snow and ice removal on any public road regardless of who controls the road.

FORCE ACCOUNT PROJECTS

Force accounts

(R.C. 117.16, 117.161, 723.52, 723.53, 5517.02, 5543.19, and 5575.01; Section 8)

Overview

In general, "force account" is a term used in regard to the cost of a highway project; below the amount established for a force account project, a governmental agency may use its own labor force and equipment; above the amount established by law, the governmental agency must competitively bid a project. Although each of the force account statutes is structured differently, the act generally increases force account limits that apply to ODOT road and bridge projects, county road and bridge projects, township road maintenance and repair, and municipal street repair. The act requires the Auditor of State to develop forms that ODOT and the political subdivisions must use in determining whether they may proceed by force account. It also requires the Auditor of State to examine a sample of force account projects whenever ODOT or a political subdivision is being audited and reduces force account cap levels for subdivisions that fail to comply with the act's limits.

Force account limits

ODOT. The act increases the force account limits for ODOT from $20,000 to $50,000 for construction of a bridge or culvert, or the installation of a traffic control signal, or for any single structure. It also increases the force account limits from $10,000 per mile to $25,000 per mile for road maintenance or repair work. The Director must let the contract to the lowest competent and responsible bidder unless he is able to proceed by force account. (R.C. 5517.02.)

Counties. The act increases the county force account limits from $40,000 to $100,000 for construction or repair of a bridge or culvert. It also increases the force account limits from $10,000 to $30,000 per mile for construction or reconstruction of a road. When the estimated cost of the work exceeds these amounts, the county must proceed through competitive bidding. (R.C. 5543.19.)

Townships. Continuing law allows a board of township trustees to proceed either by contract or force account in the maintenance and repair of roads. When, under prior law, the board proceeded by contract and the amount involved exceeded $15,000, the board was required to let the contract to the lowest responsible bidder; if the amount was $15,000 or less, prior law stated that the contract could be let without competitive bidding. Under the act, this amount is increased to $45,000. The act also specifies that if the maintenance or repair of the road is $45,000 or less, the contract may be let without competitive bidding or *the work may be done by force account*. The act also increases the $5,000 per mile limit for the construction or reconstruction of a township road to $15,000 per mile, above which amount a township is required to receive competitive bids before either accepting a bid or deciding to proceed by force account. (R.C. 5575.01.)

Municipal corporations. Under prior law, when the estimated cost of construction, reconstruction, or repair of a street exceeded $10,000, the proper municipal officers were required to receive competitive bids for furnishing all the labor, materials, and equipment and doing the work, after newspaper advertisement as provided by law, and also were required to *consider and reject* such bids before ordering the work done by force account. The act increases the force account limit from $10,000 to $30,000. If the total estimated cost of a street project is $30,000 or less, the municipal corporation may immediately proceed by force account. The act also rephrases the statute so that, if the estimated cost exceeds $30,000, the officers must consider and *may* reject the bids. If the bids are rejected, the municipal corporation may proceed by force account. Law unaffected by the act specifies that the municipal force account statutes "do not apply to any municipal corporations having a charter form of government." (R.C. 723.52 and 723.53.)

Auditor of State

The act requires the Auditor of State to do all of the following:

(1) Develop a force account project assessment form that ODOT and each political subdivision must use to estimate or report the cost of a force account project;

(2) Make the form available to public offices by any cost-effective, convenient method accessible to the Auditor and the public offices;

(3) When conducting a regularly scheduled audit, examine a sample of the forms and records of any force account project that a public office has completed since the last time the Auditor conducted an audit, to determine compliance with force account limits and other force account provisions. If the Auditor of State finds a violation of the force account limits, the act requires the Auditor to conduct an audit of each force account project completed since an audit was last conducted.

The form developed by the Auditor of State to assess projects, which generally replaces specific references to "cost estimates" in the various force account provisions, must include (1) costs for employee salaries and benefits, (2) any other labor costs, (3) materials, (4) freight, (5) fuel, (6) hauling, (7) overhead expenses, (8) workers' compensation premiums, and (9) all other items of cost and expense, including (10) a reasonable allowance for the use of all tools and equipment used in connection with the work and (11) for the depreciation on the tools and equipment (R.C. 117.16(A)(1)).

Under the act, if the Auditor of State receives a complaint from any person that a public office has violated the force account limits established for that office, the Auditor may conduct an audit in addition to the regular audit, if the Auditor has reasonable cause to believe that an additional audit is in the public interest (R.C. 117.16(B)).

The act subjects local government entities (but not ODOT) to reduced force account limits if the Auditor of State finds that the local governments violated the new force account limits. If the Auditor finds one violation, the Auditor must notify the political subdivision that for one year from the date of the notification, the force account limits applicable to that subdivision are reduced as follows: (1) for a county, the limit is $10,000 per mile for road construction or reconstruction and $40,000 for bridge or culvert construction, (2) for a township, the limit is $15,000 for road maintenance and repair and $5,000 per mile for construction projects, and (3) for a municipal corporation, the limit is $10,000 for street construction or repair. These reduced force account limits correspond to the force

account limits in effect under prior law. If the Auditor finds a second or subsequent violation, the reduced force account limits are in effect for two years. These reduced force account limits are in addition to any other action the Auditor is authorized to take. (R.C. 117.16(C).)

The act imposes a monetary penalty if the Auditor of State finds that the local government entity violated the force account limits a third or subsequent time. In addition to the reduced force account limits described above, the act requires the political subdivision to pay the Auditor an amount the Auditor determines to be 20% of the total cost of the force account project that is the basis of the violation. The act requires the Auditor to certify any money due for collection in accordance with an existing procedure where the Auditor of State certifies amounts owed by local governments to OBM to deduct the debt from future state payments to the local government.

Joint force account projects

The act specifies that if ODOT, a county, a township, or a municipal corporation proposes a joint force account project with one or more other entities, the controlling force account limit is the higher limit that applies among the participating entities. The act expressly prohibits the participating entities from aggregating their respective force account limits and also establishes that each participating entity may not exceed its respective force account limits. Prior to proceeding with a joint force account project, one of the participating entities must complete the Auditor of State's force account project assessment form.

The act also prohibits ODOT and any county, township, or municipal corporation from proceeding with a joint force account project if any one of the participating entities is subject to reduced force account limits imposed on a subdivision after an audit by the Auditor of State. In regard to force account violations that may occur during a joint force account project, the act specifies that if the Auditor finds that any local government violated its force account limit when participating in a joint force account project, the Auditor of State must impose any reduction in force account limits on all entities participating in the joint project.

LSC force account study

(Section 8)

The act requires the staff of the Legislative Service Commission, upon the approval of the Commission, to conduct a study beginning in January, 2006, of the force account limits established by the act for ODOT and counties, townships, and municipal corporations. The study must consider the number of force account

projects completed by ODOT and the political subdivisions and must assess the use of taxpayer funds for those projects. The study must discuss any measurable effects on economic development that may relate to specific force account projects and also must address findings of the Auditor of State, including whether ODOT or any political subdivisions were found to have violated the force account limits and whether any political subdivisions were subject to reduced force account limits as a result of the audits.

If approved by the Commission, the staff must submit a report to the General Assembly not later than January 1, 2007.

MOTOR VEHICLE EMISSIONS PROGRAM

E-Check program

(R.C. 3704.14 and 3704.143)

Law unchanged by the act requires the Director of Environmental Protection to implement a motor vehicle inspection and maintenance program, commonly referred to as "E-Check," for the purpose of conducting emissions inspections. The inspections are conducted by private operators under contracts with the state. The act makes several changes to the statutes governing the program.

First, continuing law prohibits the Director of Administrative Services or the Director of Environmental Protection, as applicable, from renewing any E-Check contract that was in existence on September 5, 2001. Further, the Director of Administrative Services or the Director of Environmental Protection, as applicable, is prohibited from entering into any new contract upon the expiration or termination of any contract that was in existence on September 5, 2001. The act adds that either Director also is prohibited from entering into any new contract for the implementation of a motor vehicle inspection and maintenance program in a county in which such a program was not operating on that date.

Continuing law also prohibits the Director of Environmental Protection from implementing a new motor vehicle inspection and maintenance program after the expiration or termination of all contracts in existence on September 5, 2001, unless such a program is authorized by the General Assembly. The act states that notwithstanding any section of the Revised Code that requires emissions inspections to be conducted or proof of such inspections to be provided, if the General Assembly so authorizes such a new program, a motor vehicle, the legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser, must be exempt from any emissions inspections that are

required under the new program for a period of five years.[9] A motor vehicle that is so exempt from those inspections must remain exempt during the five-year period regardless of whether legal title to the motor vehicle is transferred during that period. Under the E-Check program, new motor vehicles are exempt for two years. The Governor vetoed a provision that would have extended the new car exemption under that program to five years.

Former law required an initial contract to be awarded for not more than ten years, allowed a contract to be renewed for not more than five years, stated that any contract was subject to Controlling Board approval, and provided for the modification of the former tailpipe inspections contract in Cuyahoga County to an E-Check contract in that county so that the length of the contract coincided with the length of E-Check contracts in neighboring counties. The act repeals all of those provisions and instead states that the Director of Administrative Services has awarded an initial contract for a period of not more than ten years.

OTHER PROVISIONS

Regulation of tow trucks by the Public Utilities Commission

(R.C. 4921.02 and 4921.30)

Background

Under continuing law, the Public Utilities Commission (PUCO) regulates the operation of for-hire motor carriers (*see generally*, R.C. Chapter 4921.).

General effects of PUCO regulation. Among other requirements, a motor transportation company that is regulated by PUCO must do all of the following: (1) register annually and obtain a certificate of public convenience and necessity, (2) pay an annual tax determined by whether it is transporting persons or property or both, or whether it is a commercial tractor, (3) comply with the insurance, inspection, audit, and safety rules of the PUCO, (4) in accordance with PUCO rules, restrict a driver's hours of service and use only drivers who qualify by passing a road test, passing a medical examination, submitting to drug and alcohol testing, and having a driving record free of disqualifying offenses, and (5) use vehicles that meet equipment standards and are appropriately marked with required information.

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[9] *"Ultimate purchaser" means, with respect to any new motor vehicle, the first person, other than a dealer purchasing in the capacity of a dealer, who in good faith purchases the new motor vehicle for purposes other than resale. (R.C. 4517.01.)*

In general, if a motor transportation company is subject to PUCO regulation, all fees, license fees, annual payments, license taxes, or other taxes (except the general property tax) charged to such company by local authorities such as municipal corporations, townships, and counties are "illegal." If a motor transportation company complies with PUCO laws and rules, "all local ordinances, resolutions, by-laws, and rules in force shall cease to be operative as to such company, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with such sections." (R.C. 4921.25, not in the act.)

Additional effects of being subject to PUCO regulation include (1) potential civil penalties for violation of the PUCO rules with fines of not more than $10,000 for each day of a violation of specified PUCO rules, including the safety rules (R.C. 4905.83, not in the act) and (2) sales tax exemptions for the vehicles and parts (see **COMMENT** 2).

Tow truck exclusion. Vehicles "engaged in the towing of disabled or wrecked motor vehicles" generally are excluded from the definition of a "motor transportation company" and thus are excluded from regulation by the PUCO as described above. However, vehicles that also engage in towing vehicles that are not disabled or wrecked (for example, towing vehicles that are illegally parked) *are* within PUCO regulatory authority.

Any motor transportation company that operates *exclusively* within the limits of a municipal corporation and contiguous municipal corporations also is excluded from the definition of a motor transportation company and is not subject to PUCO regulation (R.C. 4921.02(A)(2)).

The act

The act eliminates the prior exemption for vehicles "engaged in the towing of disabled or wrecked motor vehicles" (R.C. 4921.02(A)(8)).

Under the act, any person or business that is engaged in the towing of disabled or wrecked motor vehicles is subject to regulation by the PUCO as a for-hire motor carrier (unless the towing is confined to one municipal corporation and contiguous territory). Such a person or business is not, under the act, "subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow disabled or wrecked motor vehicles." (R.C 4921.30.)

Farm machinery lighting and marking standards

(R.C. 4513.111)

Continuing law establishes lighting, illumination, and marking standards regarding the operation of farm machinery on a street or highway. The act provides that units of farm machinery produced during or after 2002 when traveling on a street or highway must meet lighting, illumination, and marking standards established in American Society of Agricultural Engineers standard ANSI/ASAE S279.11 APR01 or any subsequent revision of that standard. (The current standard is ANSI/ASAE S279.10 OCT98.)

Biofuel and Renewable Energy Task Force

(Section 25)

The act creates the Biofuel and Renewable Energy Task Force consisting of two members of the Senate appointed by the President of the Senate, one from each party, two members of the House of Representatives appointed by the Speaker, one from each party, one member appointed by the Governor, one by the Director of Agriculture, one by the Director of Development, and one member appointed by the Chairperson of the Ohio Air Quality Development Authority. Appointments must be made, and the Task Force must hold its first meeting, by September 1, 2003. The member appointed by the Director of Agriculture is to serve as the chairperson, and the Task Force must elect a vice-chairperson from its members.

Not later than March 1, 2004, the Task Force must submit a report to the General Assembly and the Governor that: (1) provides an overview of the industries of biofuel and other renewable energy sources in Ohio, (2) describes the conditions of those industries in Ohio and describes state programs that are providing aid or financial assistance to them, (3) provides a comparison of the status of those industries in Ohio and in the surrounding states, and (4) includes recommendations for expanding those industries in this state and for providing methods to fund biofuel and renewable energy projects or studies. The Task Force ceases to exist after submitting its report.

Effective date of Charitable Bingo Law changes

(Section 24)

Am. Sub. H.B. 512 of the 124th General Assembly, effective April 3, 2003, made a number of changes to Ohio's Charitable Bingo Law. The act essentially:

--Defined "bingo" to include instant bingo, punch boards, and raffles;

--Created separate licenses for charitable organizations to conduct instant bingo at a bingo session or "other than at a bingo session" and based the license fees for these licenses on the gross annual revenues from instant bingo;

--Authorized the use of electronic bingo aids to assist participants in playing regular bingo and licensed manufacturers and distributors of bingo supplies;

--Regulated the conduct of instant bingo and raffles;

--Governed the distribution of the net profit of instant bingo conducted by veteran's organizations and fraternal organizations and of the net profit of instant bingo conducted by other charitable organizations.

The act delays the effective date of these provisions until July 1, 2003.

Timber sales

(Section 16)

The act authorizes the Chief of the Division of Forestry in the Department of Natural Resources to salvage and sell, with the approval of the Attorney General and the Director of Natural Resources, timber and other forest products from the state forests, other than the Shawnee Wilderness Area, that have been felled or damaged by weather, natural forces, or other conditions. Except as discussed below, such a sale must be executed in compliance with continuing Division of Forestry Law requirements governing the sale of timber and other forest products from the state forest and state forest nurseries (R.C. 1503.05, not in the act).

The continuing requirements include a distribution formula for the money received from such sales. In pertinent part, all money received from the sale of forest products, other than standing timber, must be paid into the State Forest Fund.[10] The state retains 20% of this money. Of the remaining 80%, one-fourth is distributed to the applicable county, one-fourth to the applicable township, and one-half to the applicable school district.

The act specifies that the 20% of the money received from the salvage and sale of timber and forest products that were felled or damaged as described above must be used for restoring public access to and within state forests, including highway and road cleaning, reconstruction, and maintenance. That portion also

[10] *All money received from the sale of standing timber is credited to the General Revenue Fund.*

may be used for forest management programs, including reforestation, forest reclamation, and forest management practices. Ten per cent of the money so received must be credited to the General Revenue Fund. The remaining 70%, rather than 80% as in the existing statute, must be distributed to counties, townships, and school districts as described above.

Under the act, the Chief must estimate the proportion of damaged timber to total timber harvested when both damaged and undamaged timber are harvested. The Chief must credit and allocate the portion of money from the sale of undamaged timber to the General Revenue Fund in the manner specified in the continuing statute. The Chief must credit and allocate the portion of moneys from the sale of damaged timber in accordance with the act.

These provisions take effect immediately and expire two years after their effective date.

COMMENT

1. The general liability of a public employee for specific acts in the performance of the employee's duties may be governed elsewhere in law. *See* R.C. 9.87 and Chapter 2743. of the Revised Code for liability of state employees or Chapter 2744. of the Revised Code for liability of political subdivision employees.

2. The sales tax does not apply to "[t]he sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire" (R.C. 5739.02(B)(32), not in the act). "Highway transportation for hire" is defined for sales tax purposes to mean the transportation of personal property belonging to others for consideration by "[t]he holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration" (R.C. 5739.01(Z), not in the act).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-25-03	p. 168
Reported, H. Finance & Appropriations	03-11-03	pp. 222-223
Passed House (63-34)	03-12-03	pp. 244-249

Reported, S. Highways & Transportation	03-25-03	p.	205
Passed Senate (20-12)	03-25-03	pp.	205-206
House refused to concur in Senate amendments (0-95)	03-25-03	pp.	285-286
Senate requested conference committee	03-25-03	p.	217
House acceded to request for conference committee	03-25-03	p.	288
House agreed to conference committee report (62-34)	03-26-03	pp.	295-300
Senate agreed to conference committee report (20-12)	03-26-03	pp.	228-232

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