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# OHIO LEGISLATIVE SERVICE COMMISSION

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<p style="text-align: center;"><b>H.B. 62</b> <b>133<sup>rd</sup> General Assembly</b></p>	<h2 style="margin: 0;">Final Analysis</h2> <p style="margin: 0;"><a href="#">Click here for H.B. 62's Fiscal Analysis</a></p>
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CORRECTED VERSION\*

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\* This version of the final analysis correctly states that the per-gallon rate of the motor fuel excise and use tax for gasoline will rise from 28¢ to 38.5¢, instead of from 28¢ to 34¢ as indicated in a prior version.

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## DEPARTMENT OF TAXATION

### Motor fuel excise tax

- Increases the per-gallon rates of the motor fuel excise and use taxes from 28¢ to 38.5¢ for gasoline and to 47¢ for diesel and other fuels, effective July 1, 2019.
- Extends the taxes, over a five-year phase-in, to compressed natural gas (CNG) that is used to propel vehicles on public roads.
- Maintains current revenue distribution proportions and amounts for revenue derived from the first 28¢ of the per-gallon rate.
- Allocates 55% of the revenue from the rate increases to the state Highway Operating Fund (HOF) and 45% to local governments (Gasoline Excise Tax Fund), with the local shares being divided among counties, townships, and municipalities in the same proportions as current law; however, the HOF share is increased by 2% of new revenue in the FY 2021-FY 2022 biennium.
- Continues the 1% fuel dealer and 0.5% retailer shrinkage allowances in effect biennially since 2008, superseding the 3% and 1% allowances in permanent codified law.
- Increases the refund for fuel used in transit, school, and county developmental disabilities board buses by the same amount implied by the increase in the tax rate.
- Extends the motor fuel tax refunds for transit systems, school districts, and county developmental disabilities boards to persons contracting with them to provide services on their behalf.

### Motor fuel tax notices

- Requires certain information related to federal and state motor fuel tax rates to be displayed at retail gas stations.
- Requires the Director of Agriculture to design and produce official notices displaying that information in accordance with the act's specifications, which are to be affixed on fuel pumps by local sealers who are responsible for inspecting the pumps, or otherwise displayed by the pump operator.

### Use of motor fuel tax revenue

- States that motor fuel tax revenue "shall be used for construction, maintenance, and repair of roads and bridges, the operational costs of applicable state agencies, or used to match other revenue for these purposes."
- Requires that the amount deposited to the Motor Fuel Tax Administration Fund be determined by appropriation rather than as a percentage of motor fuel tax receipts.

### Sales tax exemption for nonroad use fuel

- Exempts from the sales tax any motor fuel used solely for cargo refrigeration.

## **Transit authority: tax levy and agreements to fund infrastructure**

- Authorizes a regional transit authority in a county with population between 750,000 and 900,000 (Hamilton County) to levy a tax specifically to fund road and bridge infrastructure projects.
- Requires that, after levying such a tax, a regional transit authority must enter into agreements with local governments to fund such projects.
- Requires the agreements to be approved by the appropriate public works district integrating committee by at least six affirmative votes in order to go into effect.

## **Earned income tax credit (EITC)**

- Removes a mechanism limiting the state EITC to not more than 50% of the taxpayer's income tax liability if the taxpayer's taxable income exceeds \$20,000.
- Increases the state EITC credit amount from 10% to 30% of the taxpayer's federal EITC.

## **Use of joint ambulance district funds**

- Specifically authorizes a joint ambulance district to construct, or enter into a lease-purchase agreement to acquire, buildings or equipment necessary for the district.

## **Motor fuel excise tax**

(R.C. 5735.01, 5735.011, 5735.05, 5735.051, 5735.053, 5735.142, 5735.27, and 5736.01; Sections 757.20, 757.30, 757.40, 757.70, and 812.30)

### **Tax rate**

(R.C. 5735.05)

The act increases the motor fuel tax rate from 28¢ to 38.5¢ per gallon for gasoline and to 47¢ per gallon of diesel and all other forms of motor fuel other than gasoline. The rate increases begin to apply July 1, 2019.

The tax rate on compressed natural gas (CNG), which becomes taxable under the act, is phased in over five years, beginning July 1, 2019. The per-gallon tax rate for the first 12 months is 10¢, and the rate increases by 10¢ on July 1 of 2020, 2021, and 2022, and by 7¢ on July 1, 2023, to a total of 47¢.

The state's motor fuel use tax rate will increase by the same amount by operation of law. The fuel use tax applies to fuel purchased outside Ohio but used within the state by large commercial trucks – i.e., trucks with at least three axles or weighing more than 26,000 pounds, and commercial tractors (i.e., trucks used to pull semi-trailers).<sup>1</sup>

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<sup>1</sup> See, R.C. Chapter 5728, not in the act.

## **Addition to tax base**

(R.C. 5735.01(JJ), 5735.011, and 5735.05)

The act extends the motor fuel tax to CNG that is held in high-pressure containers at a pressure of at least 2,900 PSI and used to propel vehicles on public roads or on waterways. The tax will apply to diesel gallon equivalents of CNG. The diesel gallon equivalent standard is 139.30 cubic feet or 6.38 pounds.

Since the petroleum activity tax (PAT) base is linked to the kinds of fuel subject to the motor fuel tax, adding a new kind of fuel to the motor fuel tax base implicitly adds it to the PAT base; so CNG becomes part of the PAT base. Also, adding CNG to the motor fuel excise tax base removes CNG, by implication, from the commercial activity tax (CAT) base.<sup>2</sup>

## **Revenue distribution**

(R.C. 5735.051 and 5735.27; Section 757.10)

Revenue generated from the first 28¢ per gallon of the motor fuel excise tax rate will be distributed among state funds and among local governments in the same proportions as under prior law. In FY 2018, approximately 56% of the revenue was credited to the Highway Operating Fund (HOF), which is the primary state source of road and highway funding; about 6% was committed to highway debt service; and 2.75% was for transportation-related spending by various state agencies other than the Department of Transportation. About 31.5% was distributed by statutory formula among counties, townships, and municipal corporations through the Gasoline Excise Tax Fund. An additional 3.4% was devoted to local funding of roads and bridges through the state's local infrastructure program (LTIP) on a grant basis. Some of the revenue initially credited to the HOF has, since 2003, been circulated back to local governments in uncodified law as funding for the Department of Public Safety was shifted off the fuel tax (in the act, this is continued into the FY 2020-FY 2021 biennium by Section 757.30).

Revenue generated from the act's rate increase – after subtracting amounts issued in refunds, reserved for waterway-related purposes, and for the Motor Fuel Tax Administration Fund – will be divided as follows: 55% to the HOF and 45% to the Gasoline Excise Tax Fund. However, for the FY 2020-FY 2021 biennium, 2% of the new revenue will be credited first to the HOF; this 2% preemptive credit to the HOF follows the practice of the two previous biennia, whereby 2% of all revenue was credited to the HOF before being divided between the HOF and Gasoline Excise Tax Fund (see Section 757.10 of the act).

The local portion of the new motor fuel excise tax revenue will be divided among the three classes of political subdivisions in the same proportions that apply under current law: 42.86% to municipal corporations, 37.14% to counties, and 20% to townships. As under current law, the municipal corporation share is divided proportionally by vehicle registrations and the county share is divided equally among counties.

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<sup>2</sup> See R.C. 5751.01(F)(2)(r).

## **Township distribution**

The township share of the additional revenue is allocated in such a way that each township receives the greater of (1) what it would receive of the additional township share if it were allocated equally among all 1,308 townships, or (2) 70% of what the township would receive if one-half of the additional township share were allocated in proportion to township road mileage and one-half in proportion to township vehicle registrations. (The latter amount is known as the “formula amount” or “large township” share because townships with larger territory or populations tend to receive more than if the revenue were allocated in equal amounts.) Under prior law, about 48% of the total township share of revenue was distributed in this “greater of” manner, and the remaining 52% was distributed equally among townships. This 48/52 ratio will continue to govern the distribution of the township portion of revenue from the first 28¢-per-gallon.

The extra money needed to cover the “large township” allocation is contributed by the HOF, counties’ shares, and municipalities’ shares, in equal one-third amounts from each, as is currently the case with the 48% share distributed under the “greater of” method.

## **Allowances, discounts, and refunds**

(Section 757.20)

Since FY 2008, each motor fuel dealer that properly files and pays monthly taxes may deduct from the payment the tax otherwise due on 1% of the fuel the dealer received, minus 0.5% of the fuel sold to retail dealers.<sup>3</sup> This allowance is to cover the costs of filing the report and to compensate for evaporation, shrinkage, and other “unaccounted for” losses. Under permanent codified law, however, the percentages are 3% and 1%, respectively.<sup>4</sup> But each of the last six transportation appropriation acts reduced the 3% discount to 1% (minus 0.50% of fuel sold to retail dealers). The act continues the allowance at the reduced 1% level throughout the FY 2020-FY 2021 biennium.

Retail fuel dealers who have purchased fuel on which the excise tax has been paid may receive a refund to account for evaporation and shrinkage.<sup>5</sup> In permanent codified law, the refund equals 1% of the taxes paid on the fuel each semiannual period. But, as with the dealer shrinkage allowance, the retailer refund has been reduced to 0.5% for each fiscal year from 2008 through 2019 by uncodified provisions in the last six transportation appropriation acts. The act continues the reduced percentage at this level through the FY 2020-FY 2021 biennium.

## **Transit and school buses**

(R.C. 5735.142)

Under continuing law, transit systems, school districts, and county developmental disability boards are entitled to refunds for a portion of the fuel excise tax that was paid on the

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<sup>3</sup> Section 757.20 of H.B. 26 of the 132<sup>nd</sup> General Assembly.

<sup>4</sup> R.C. 5735.06(B)(1)(c), not in the act.

<sup>5</sup> R.C. 5735.141, not in the act.

fuel used by those entities in their operations. The refunds are not assignable to any other person. Under prior law, transit systems were refunded 27¢ per gallon of the 28¢ per gallon tax, while school districts and developmental disability boards were refunded 6¢ per gallon (i.e., the amount by which the tax rate was last increased, between 2003 to 2005).

The act increases the refund amounts for these entities by the same amount implied by the increase in the motor fuel excise tax rate. Consequently, transit systems will continue to absorb 1¢ per gallon of fuel (after the refund) and school districts and developmental disability boards will continue to absorb 22¢ per gallon, but will not absorb any of the act's rate increase.

### **Contractor refund**

(R.C. 5735.142)

The act extends the refund available for transit systems, school districts, and county DD boards to persons contracting with those agencies to perform the agency's operations on the agency's behalf. Such a contractor is entitled to claim a refund for the tax paid on fuel used by the contractor in performing agency operations under the contract. The refund amount is the same amount as the agency's refund: in the case of a transit system, all but 1¢ per gallon, and in the case of a school district or county DD board, all but 22¢ per gallon.

As with the agencies themselves, a contractor must apply to the Department of Taxation for the refund and may not claim a refund for less than 100 gallons.

### **Motor fuel tax notices**

(R.C. 5735.50; Section 757.90)

The act requires retail gas stations to display the federal and state excise taxes imposed on each gallon of gasoline and diesel fuel in one of the following manners, as chosen by the gas station's owner:

1. The information would appear either on video monitors visible to fuel pump users, on customer receipts, or on a notice displayed conspicuously at the entrance to the service station;
2. An official notice containing the information would be produced by the Department of Agriculture and affixed on the gas station's fuel pumps by local officials who currently are charged with inspecting those pumps, i.e., a county auditor or municipal sealer (collectively referred to herein as "local sealers").

With regard to the official notices, the Director of Agriculture must design and produce them according to specifications prescribed by the act. The first notices would have to be produced within 90 days after the provision's 90-day effective date. Thereafter, whenever the state or federal tax rate on gasoline or diesel changes, the Director must notify local sealers of the forthcoming change in the notice and, within 90 days after the tax rate change, produce new notices reflecting the change. Upon the order of each sealer, the Director must deliver enough notices to allow them to be placed on each pump the sealer is charged with inspecting, except pumps at those stations that display the information by any of the three alternate means described above. Each sealer must affix the notices within 14 months after receiving them.

However, if a motor fuel tax rate changes within six months after another rate change, the sealer is only required to affix a notice that reflects the effects of both changes within 14 months after the second change.

A sealer is required to replace a notice if it becomes unreadable or if the same notice has been displayed on a pump for three years. The sealer may obtain additional notices from the Director upon request. A gas station owner or operator is not liable for affixing or maintaining the notices.

The act prescribes several design attributes of the official notice. For example, the act specifies its minimum dimensions (neither side can be greater than 4½" or less than 4") and several visual requirements, e.g., how information is to be arranged and the colors that may be displayed on the notice (red, white, or blue). The notice also must display the state seal and include the statement "This notice is required by the Ohio Fuel Tax Transparency Act, O.R.C. 5735.50." The act prohibits the notice from displaying any information other than that prescribed by law, including the name of a public official or state agency.

### **Use of motor fuel tax revenue**

(R.C. 5735.05(F))

The act states that motor fuel excise tax (MFT) revenue "shall be used for construction, maintenance, and repair of roads and bridges, the operational costs of applicable state agencies, or used to match other revenue for these purposes." It is unclear whether and to what extent this provision affects the manner in which existing law and the act otherwise allocate MFT revenue.

### **Tax Administration Fund**

(R.C. 5735.053)

Under prior law, 0.275% of motor fuel tax receipts was credited to the Motor Fuel Tax Administration Fund and used to pay the expenses of the Department of Taxation in administering the tax. The act instead requires that the amount deposited to the Fund be determined by appropriation and transferred to the fund in equal monthly amounts.

### **Sales tax exemption for nonroad use fuel**

(R.C. 5739.02(B)(6); Section 757.80)

The act creates a new sales tax exemption for motor fuel used for cargo refrigeration in a motor vehicle and not to propel the vehicle. The exemption begins with the first month that begins at least 30 days after the provision's effective date.

The provision modifies a limitation on an existing sales tax exemption. Under this limitation, if motor fuel is purchased at retail and it is not taxable under the motor fuel tax (because it is not used to propel vehicles on public roads or waterways), the sales tax generally applies. If the motor fuel excise tax has already been paid on the fuel (typically by the upstream fuel distributor), but the fuel is not used to propel a vehicle on the public highways, the purchaser may obtain a refund of the motor fuel excise tax paid (R.C. 5735.14). But the refund is reduced by the sales tax due on that fuel unless a separate sales tax exemption applies (e.g., the fuel is

used in providing public utility service, such as a railroad). The offset is credited to the General Revenue Fund.

## **Transit authority: tax levy and agreements to fund infrastructure**

(R.C. 306.353, 306.70, 5739.023, and 5741.022; Section 703.71)

The act authorizes a regional transit authority (RTA) to levy a sales tax specifically to fund road and bridge infrastructure projects related to its operations. The authority applies only to a county with a population of between 750,000 and 900,000 (currently only Hamilton County).

Under continuing law, a transit authority may levy a sales tax within its territory. The authority may levy the tax, at a rate of up to 1.5%, to raise general revenue, to fund a regional transportation improvement project (RTIP), or both. The act adds that, in addition to those purposes, an RTA may also levy a tax for the express purpose of funding road and bridge construction or maintenance projects, provided that funding such projects is not the sole purpose of the tax. Projects may involve the construction or maintenance of county, municipal, or township roads and bridges related to the RTA's provision of service.

Once an RTA levies a tax specifically for infrastructure projects, the RTA must enter into one or more agreements with counties, municipalities, or townships located within the RTA's territory to fund the projects. To implement such agreements, the transit authority first must submit agreements to the appropriate public works integrating committee, which must approve or deny them and notify the transit authority. (The act specifies that only six members of an integrating committee are required to approve or deny an agreement.) If an agreement is approved, the transit authority may expend the funds only as authorized in the agreement and only after the agreement is entered into.

If an RTA proposes a tax that will, in part, fund infrastructure projects as the act authorizes, the ballot language proposing the tax must state that information. In the ballot language and the resolution proposing the tax a transit authority may also specify the percentage of tax revenue that will be allocated among a tax levy's several purposes (i.e., general revenue, RTIPs, and/or infrastructure projects). If a portion of the proceeds will be used as general revenue, the resolution and ballot may also specify the percentage of such revenue that will be allocated to specific functions, projects, and other activities of the transit authority.

The act states that its provision authorizing a tax levy specifically for infrastructure projects is not intended to prohibit RTAs that do not levy such a specific-purpose tax from spending general revenue on infrastructure projects, when otherwise authorized by law.

## **Earned income tax credit (EITC)**

(R.C. 5747.71; Section 757.100)

The act makes two modifications to an existing income tax credit based on the taxpayer's federal EITC. Under prior law, the state EITC equaled 10% of the taxpayer's federal EITC; if the taxpayer's individual or joint Ohio adjusted gross income exceeded \$20,000, then the credit may not exceed 50% of the taxpayer's tax liability.

The act removes this 50% limitation and increases the allowable credit to 30% of the taxpayer's federal EITC. The credit remains nonrefundable.

The changes apply to taxable years beginning on or after January 1, 2019.

## **Use of joint ambulance district funds**

(R.C. 505.267 and 505.71)

The act specifically authorizes a joint ambulance district to use its tax revenue to construct, or enter into a lease-purchase agreement to acquire, buildings or equipment.

Under prior law, a joint ambulance district could use its funds only to “purchase, lease, maintain, and use” buildings and equipment. By comparison, other districts – including joint fire districts, township fire districts, and joint police districts – may use funds for those purposes and also for constructing property or acquiring property through a lease-purchase agreement. The act extends the authority to use funds for these latter purposes to joint ambulance districts.

Joint ambulance districts may be created by a combination of townships and municipal corporations. The districts are taxing authorities that may levy property taxes and incur debt, similar to those other joint districts.

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## **DEPARTMENT OF TRANSPORTATION (ODOT)**

### **Speed limits**

- Expands the Director of Transportation's authority to establish variable speed limits to two additional highways (continuing law allows variable speed limits on three specific interstate highways).
- Before establishing a variable speed limit on the additional highways, requires the Director to adopt rules establishing the criteria for and the parameters of any necessary engineering study concerning the variable speed limits.
- Requires changes to a statutory speed limit (because it is either too high or too low for a particular location) to be based on criteria established by an engineering study, as defined by the Director, rather than by specific types of studies as required under prior law.
- Makes clarifying changes to the statutory speed limits, including consolidating a repetitive speed limit and creating consistency in the language and terminology.

### **Overweight vehicles**

- Removes the 150-mile radius restriction for travel under a special regional heavy hauling permit, thus allowing vehicles under the permit to travel further distances while exceeding standard size and weight restrictions.
- Allows a vehicle fueled solely by compressed natural gas or liquid natural gas to exceed the gross vehicle weight and axle load limits by up to 2,000 pounds on an interstate highway.

- Exempts certain towing vehicles from statutory vehicle size and weight limits while traveling to or returning from removing a motor vehicle from an emergency on a public highway.
- Requires the Director to study the fees associated with overweight vehicle permits and the general impact of overweight vehicles on Ohio's infrastructure and submit findings and recommendations for fee structure changes to the Governor, Speaker of the House, and Senate President by March 1, 2020.

### **Ohio's Road to Our Future Joint Legislative Study Committee**

- Creates the Ohio's Road to Our Future Joint Legislative Study Committee, composed of three majority members and two minority members each from the House and Senate.
- Requires the committee to review ODOT's revenue sources, expense mitigation, technology, finance techniques, asset leverage and conditions, and employee demographics.
- Requires the committee to conduct a variety of studies and analyses to assist in the overall review.
- Requires the committee to submit and present a report to the Senate President and Speaker of the House by December 1, 2020.

### **ODOT study of Ohio River's impact**

- Requires the Director to conduct a study of the Ohio River's economic impact on Ohio, including determining the amount of steel, fertilizer, and coal delivered by barges and submit findings to the Governor, Speaker of the House, and Senate President by December 30, 2019.

### **Eastern Bypass update report**

- Requires the Director to submit a report by December 31, 2019, to the Senate President and Speaker of the House that provides an update on Kentucky's Eastern Bypass Study, details pertaining to coordination between Ohio and Kentucky, and the next steps necessary for planning and constructing the Eastern Bypass.

### **Highway construction, maintenance, and snow removal**

- Requires ODOT to install devices in construction areas that intentionally slow down traffic, such as arrow boards, channelizing devices, and rumble strips.
- Permits the Director to provide road salt (at the Director's purchase price) to a political subdivision under specified circumstances.
- Permits the Director to remove snow and ice from, and to maintain, repair, improve, or provide lighting on, interstate highways located within a municipal corporation or to reimburse a municipal corporation for such improvements.

- Creates the Catastrophic Snowfall Program to provide monetary aid for snow removal costs for municipal corporations, counties, and townships that receive 18 or more inches of snow in a 24-hour period.
- Authorizes money in the Roadwork Development Fund to be used by the Development Services Agency for the construction and maintenance of public roads that provide or improve access to tourism attractions.
- For the next two years, permits ODOT to close a rest area only if the parking lot remains available for commercial motor vehicles.

## **Performance audit of ODOT**

- Requires the State Auditor to provide for the completion of a performance audit of ODOT by January 1, 2020.

## **State audits of regional transit authorities**

- Requires the State Auditor to annually audit one large and two small regional transit authorities and submit audit reports to the Governor, Speaker of the House, Senate President, and Director of Budget and Management 90 days after completing the audits.

## **Court proceedings**

- Specifies that the Director need not produce, for evidence in a court, an original electronic record, plan, drawing, or other document.
- Eliminates the presumed authorization to depose the Director in all pending lawsuits.

## **Indefinite delivery indefinite quantity (IDIQ) contracts**

- Authorizes the Director to enter into IDIQ contracts for up to two projects in FYs 2020 and 2021.

## **Speed limits**

(R.C. 4511.21)

### **Variable speed limits**

The act makes several changes to Ohio's speeding law. First, it expands the Director of Transportation's authority to establish variable speed limits to two additional highways. A variable speed limit is a highway speed limit that can vary from the normal speed limit depending on conditions such as time of day or weather. Under prior law, the Director could only establish a variable speed limit on all or portions of Interstate 670, Interstate 275, and Interstate 90 (between Interstate 71 and the Pennsylvania border).

Second, before the Director may establish a variable speed limit on the two additional highways, the Director must adopt rules to:

1. Specify the criteria the Director will use to establish variable speed limits, based on the criteria already authorized by statute (for example, time of day, weather conditions, or traffic incidents); and
2. Define the parameters of any engineering study that will be used to determine when variable speed limits are appropriate.

### **Other speed limit changes**

In addition to variable speed limits, when ODOT or a local authority seeks to alter a speed limit established in statute, the act requires the change be based on criteria established by an engineering study, as defined by the Director. Prior law required changes to statutory speed limits to be based on either a “geometric and traffic characteristic study” or an “engineering and traffic investigation.” Thus, the act standardizes the method of determining whether a change in the statutory speed limit is appropriate for a particular location. Under continuing law, the Director or a local authority with the Director’s approval may raise or lower a speed limit if local conditions make the current speed limit either greater or less than is reasonable or safe.

Finally, the act also makes clarifying changes to the statutory speed limits. The changes include consolidating a repetitive speed limit and creating consistency in the language and terminology.

### **Special regional heavy hauling permit**

(R.C. 4513.34)

The act removes the mileage restriction for a special regional heavy hauling permit. Prior law restricted travel under the permit to highways within 150 miles from the applicant’s point of origin. Thus, permittees may now travel greater distances with vehicles that exceed standard size and weight restrictions.

Under continuing law, a person may apply to the Director (for state highways) or a local authority (for highways within the authority’s jurisdiction) for a special regional heavy hauling permit. The permit allows the holder to drive a vehicle or combination of vehicles that exceed the standard size or weight restrictions on any highway under the jurisdiction of the authority granting the permit, except highways that cannot bear the excess weight. The Director or local authority must issue the permit to any applicant that pays the established fee.

### **CNG and LNG vehicle axle weight and load limits**

(R.C. 5577.044)

The act allows a vehicle fueled solely by compressed natural gas (CNG) or liquid natural gas (LNG) to exceed the gross vehicle weight and axle load limits by up to 2,000 pounds on an interstate highway. This change makes Ohio law consistent with federal law.

The act retains law that prohibits a CNG or LNG vehicle from exceeding the weight and load limits on a highway, road, or bridge that is subject to reduced maximum weights.

## **Size and weight exemptions for towing vehicles**

(R.C. 5577.15)

The act makes permanent what was once a temporary exemption from statutory vehicle size and weight limits that apply to certain towing vehicles – ones traveling to and returning from removing a motor vehicle from an emergency on a public highway. Specifically, those size and weight limitations do not apply in the following circumstances:

1. When a person is engaged in the initial towing or removal of a wrecked or disabled motor vehicle from the site of an emergency on a public highway to the nearest storage facility or qualified repair facility;
2. When the person is en route to the site of an emergency on a public highway to tow a wrecked or disabled motor vehicle; or
3. When the person is returning from delivering a wrecked or disabled motor vehicle to the nearest storage facility or qualified repair facility after removing the motor vehicle from the site of an emergency on a public highway.

Prior to the temporary exemption (now permanent), the law only provided an exemption while the vehicle was engaged in scenario (1), but not scenarios (2) or (3). Thus, a towing vehicle was exempt while towing the wrecked or disabled vehicle, but not while traveling to the emergency or returning to its “home” location.

## **ODOT study on overweight vehicles**

(Section 755.80)

The act requires the Director to conduct a study of the fees charged for overweight vehicle permits, and the general impact of overweight vehicles on Ohio’s infrastructure. The Director must determine the following for purposes of the study:

1. The additional highway, bridge, and safety infrastructure design requirements (and their associated costs) that are needed because of the operation of overweight vehicles;
2. The extent of the wear that overweight vehicles cause on roads, bridges, and safety infrastructure;
3. The overall construction and maintenance costs associated with overweight vehicles;
4. Whether the current permit fees are sufficient to pay for the additional highway, bridge, and safety infrastructure costs caused by the operation of overweight vehicles; and
5. If the fees are not sufficient, the amount the fees need to be increased to offset those additional costs.

The Director must submit a report to the Governor, Speaker of the House, and Senate President by March 1, 2020, describing the study’s findings and recommendations for changes to the existing permit fee structure.

## Ohio's Road to Our Future Joint Legislative Study Committee

(Section 755.20)

The act creates the Ohio's Road to Our Future Joint Legislative Study Committee consisting of the following ten members:

1. Five Senate members, appointed by the Senate President (three majority party members and two minority party members – the President must appoint one of those members to be a co-chairperson); and
2. Five House members appointed by the Speaker (three majority party members and two minority party members – the Speaker must appoint one of those members to be a co-chairperson).

ODOT must provide the committee with any administrative assistance the committee requests.

### Purpose and duties

The committee is to review the following as they pertain to ODOT:

1. Alternative sources of revenue;
2. Expense mitigation;
3. Evolving technology;
4. Exploration of innovative finance techniques;
5. Asset leverage and conditions; and
6. The demographics of employees within ODOT.

To accomplish its purpose, the committee must conduct:

1. An analysis of the future needs of ODOT and the state's infrastructure, including local infrastructure;
2. An analysis of all ODOT personnel, with an emphasis on future retirements and possible attrition, which must include a list of technology that will provide greater efficiency for ODOT;
3. A cost-benefit analysis of leasing versus purchasing vehicles weighing more than 12,000 pounds gross vehicle weight;
4. A cost-benefit analysis of leasing versus purchasing construction equipment that has a lifespan of five years or more;
5. A review of evolving technology and its incorporation into traditional engineering and infrastructure solutions, as applied to planning, capacity enhancement, risk management, system operations, safety, and system reliability;
6. An analysis of ODOT's debt policies, structures, and practices;

7. An analysis of methods for leveraging state assets, including cell towers, light poles, rights-of-way, rest areas, buildings, and garages. The analysis must include the methods ODOT is currently using to leverage its assets and whether there are any impediments to leveraging, such as restrictions in advertising, constraints in renting spaces, or other impediments;
8. An analysis of all ODOT-maintained transportation systems. The analysis must include:
  - An inventory of the structure ratings versus ODOT's target ratings;
  - The urban, rural, general, and priority pavement condition ratings versus ODOT's target ratings; and
  - A cost analysis of the funds necessary to maintain, improve, and expand the current transportation system under ODOT's jurisdiction.
9. An analysis of using a vehicle-miles-traveled approach to transportation funding and the feasibility of starting a pilot program or fully using the vehicle-miles-traveled approach;
10. An analysis of technological advancements related to the display of front license plates, vehicle identification, and public safety generally; and
11. A review of ODOT's functions and whether those functions accomplish and further ODOT's mission.

## **Report**

The committee must complete a report of its findings by December 1, 2020. After completion, it must present the report to the Speaker of the House and the Senate President. Once the report is presented, the committee ceases to exist.

## **ODOT study of Ohio River's impact**

(Section 755.70)

The act requires the Director to conduct a study of the Ohio River's economic impact on Ohio. As part of the study, the Director must:

1. Determine the tonnage of steel and fertilizer delivered by barges on the river; and
2. Determine the tonnage of coal delivered by barges that travel the river and the megawatt capacity generated by that coal.

The Director must submit a report of the study's findings to the Governor, Speaker of the House, and Senate President by December 30, 2019.

## **Eastern Bypass update report**

(Section 755.60)

The act requires the Director to submit a report to the Senate President and Speaker of the House by December 31, 2019, providing a "commentary" on the Kentucky Transportation Cabinet's study pertaining to the Eastern Bypass. Additionally, it must detail the extent ODOT assisted and coordinated with the study, including the information ODOT provided to the

Cabinet. Finally, the report must include details on the next steps ODOT is taking or needs to take to coordinate with the Cabinet to plan and construct the bypass.

The Eastern Bypass is a proposed four-lane outer loop highway that would be located outside the Cincinnati outer loop (Interstate 275). It would extend approximately 70 miles, connecting at I-75 in Springboro, Ohio, and reconnecting to I-75 in Crittenden, Kentucky. The bypass potentially could ease congestion and divert some traffic away from the Brent Spence Bridge, which spans the Ohio River along I-71 and I-75. It would be a multi-state project involving Kentucky and Ohio.

## **Traffic control devices in construction areas**

(R.C. 5517.07)

The act requires ODOT to install the following in construction zones if not already present: signs and other traffic control devices, including arrow boards, channelizing devices, temporary raise pavement markers, portable changeable message signs, temporary traffic barriers, screens, and rumble strips. Placement and usage of the signs and devices must conform to ODOT's Manual of Uniform Traffic Control Devices. The requirement codifies current ODOT practices for traffic control in construction zones.

## **Emergency road salt**

(R.C. 5501.41)

The act permits the Director to provide road salt to a political subdivision that is in an emergency situation, if the Director has excess salt and the political subdivision is unable to acquire road salt. The Director must seek reimbursement for the same price at which the Director purchased the road salt.

Pre-existing law, unchanged by the act, permits the Director to remove snow and ice from state highways (including state highways within a municipal corporation, if the Director receives prior consent from the municipal corporation's legislative authority). Otherwise, each political subdivision is responsible for snow and ice removal in its respective jurisdiction (i.e., a board of county commissioners is responsible for county roads, a board of township trustees is responsible for township roads, etc.).

## **Maintenance of interstate highways**

(Section 203.70)

The act permits the Director to remove snow and ice from and to maintain, repair, improve, or provide lighting on interstate highways within the boundaries of a municipal corporation, in order to meet federal highway requirements. Additionally, if there is a written agreement with the legislative authority of the municipal corporation, ODOT may reimburse that municipal corporation for all or part of the costs incurred by the municipal corporation in making the improvements to the interstate highways in its boundaries. This permissive authority is an extension of authority granted to the Director in 2017 in H.B. 26 of the 132<sup>nd</sup> General Assembly (the prior transportation budget).

## **Catastrophic Snowfall Program**

(Section 755.40)

The act creates the Catastrophic Snowfall Program to provide monetary aid for snow removal costs for municipal corporations, counties, and townships that receive 18 or more inches of snow in a 24-hour period and that request the aid. The Director must establish procedures for implementing and administering the Program. The procedures must include:

1. An application process;
2. A system for verifying the amount of snow the applicant received; and
3. A process for administering snow removal aid to a qualified applicant.

## **Roadwork Development Fund**

(R.C. 122.14)

The act authorizes the Development Services Agency to use money from the Roadwork Development Fund for construction, reconstruction, maintenance, or repair of public roads that provide or improve access to tourism attractions. The fund's overall purpose is to make road improvements associated with retaining and attracting business. Continuing law specifies that the fund may be used towards public roads that provide access to a public airport or are located within a public airport. The money in the fund comes from the Highway Operating Fund.

## **ODOT rest areas**

(Section 755.30)

The act stipulates that, during FYs 2020 and 2021, ODOT may close a rest area under its jurisdiction only if it keeps the parking lot open for use by commercial motor vehicles.

## **Performance audit of ODOT**

(Section 755.90)

The act requires the Auditor of State to complete performance audit of ODOT by January 1, 2020. The Auditor must conduct the performance audit in accordance with the laws governing performance audits.

Under Ohio law, the Auditor must conduct at least four performance audits each biennium of four different state agencies (or one of the audits may be of a state institution of higher education). The Auditor has discretion to audit the entire agency or a portion of it. Any state agency must implement the recommendations of the performance audit within three months after a comment period (the 14 days following the audit's release). Otherwise, the agency is subject to specified reporting requirements to the Governor, Auditor, and the leadership of the General Assembly.

## State audits of regional transit authorities

(R.C. 5501.09)

The act also requires the Auditor of State to audit the accounts and transactions of one large and two small regional transit authorities at least once a year. The Auditor must submit copies of the audit reports to the Governor, the presiding officers of each house of the General Assembly, and the Director of Budget and Management within 90 days after completing the audits.

Generally, continuing law requires the Auditor to make a biennial audit of each public office that includes examining (1) the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports, (2) whether the laws, rules, ordinances, and orders pertaining to that public office have been observed, and (3) whether that public office has complied with the requirements and rules of the Auditor.<sup>6</sup>

## Court proceedings

(R.C. 5501.21)

As part of court proceedings, ODOT may produce, in lieu of an original, a copy of a **paper** record, plan, drawing, or other document (“document”) as evidence in a court, as long as the copy is stamped with ODOT’s seal. Under the act, ODOT also may produce, in lieu of an original, a copy of an **electronic** document that is stamped with ODOT’s seal.

Additionally, under prior law, any party to any pending lawsuit was permitted to depose the Director as long as the deposition took place in the Director’s office. The act eliminates the presumed authorization that the Director may be a deponent in **any** lawsuit, relevant to the Director or not. (The act does not prohibit the Director from being deposed – it merely removes the prior broad grant of authority.)

## Indefinite delivery indefinite quantity (IDIQ) contracts

(Section 203.100)

The act requires the Director to advertise, seek bids for, and award IDIQ contracts for up to two projects in FYs 2020 and 2021. This extends a requirement from previous transportation budgets. An IDIQ contract is a contract for an indefinite quantity, within stated limits, of supplies or services from the bidder over a defined period. To enter into IDIQ contracts, the Director must prepare bidding documents, establish contract forms, determine contract terms and conditions, develop and implement a work order process, and take any other action necessary to fulfill the Director’s duties and obligations related to the contracts. The Director must ensure that an IDIQ contract includes the maximum overall value of the contract, which may include an allowable increase of \$100,000 or 5% of the advertised contract value, whichever is less, and the term of the contract, including a time extension of up to one year if determined appropriate by the Director.

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<sup>6</sup> R.C. 117.11, not in the act.

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## DEPARTMENT OF PUBLIC SAFETY (DPS)

### Registration taxes and fees

- Imposes an additional \$200 registration fee on a plug-in electric motor vehicle and an additional \$100 registration fee on a hybrid motor vehicle.
- Requires the registration fees for plug-in electric and hybrid motor vehicles to be credited 55% to the Highway Operating Fund, and 45% divided among municipal corporations, counties, and townships.
- Authorizes municipal corporations and townships to levy an additional \$5 motor vehicle registration tax.
- Requires the Registrar of Motor Vehicles to adopt rules, by October 1, 2019, establishing a deputy registrar service fee between \$3.50 and \$5.25.

### Lamination, document authentication fees

- Removes all references to laminating a driver's license, commercial driver's license, motorcycle operator's license, motorized bicycle license, temporary instruction permit, probationary license, or identification card.
- Replaces the \$1.50 lamination fee with a \$1.50 document authentication fee, to be charged for each application to issue, renew, or replace the various licenses and the identification card.

### Financial responsibility random verification

- Eliminates the Financial Responsibility Random Verification Program managed by the Bureau of Motor Vehicles (BMV).

### Online driver's license renewal for military personnel

- Requires the Registrar to allow a person on active duty in the military (while stationed outside of Ohio), that person's spouse, and that person's dependents (while living outside of Ohio) to renew their driver's licenses or motorcycle operator's endorsements online.

### Disabled veteran license plates

- Specifies that a disabled veteran may obtain "Disabled Veteran" license plates for all vehicles owned by that veteran, rather than for only one vehicle.
- Requires a disabled veteran to pay for all registration-related taxes and fees for each vehicle after the first registration.

### Single license plate

- Effective July 1, 2020, requires a motor vehicle to display only one license plate, generally on the rear of the vehicle, rather than two license plates.

## Skateboards

- Prohibits a person riding on a skateboard from attaching the skateboard or himself or herself to a moving vehicle.

## Traffic cameras

- Grants municipal and county courts original and exclusive jurisdiction over every civil action concerning a traffic law violation within the court's territory, including those civil actions involving a traffic law photo-monitoring device ("traffic camera").
- Eliminates the administrative hearing process for a civil traffic law violation involving a traffic camera, which was presided over by a hearing officer.
- Requires all filings, affidavits, and forms concerning a civil traffic law violation involving a traffic camera to be handled by the municipal or county court with jurisdiction over the civil action.
- Specifies that the court with jurisdiction must require a local authority bringing a civil action concerning a traffic law violation involving a traffic camera to make an advance deposit of all filing fees and court costs, except for violations in a school zone.
- Requires the court to retain the advance deposit regardless of which party prevails in the civil action.
- Requires local authorities that operate traffic cameras to report information on traffic fines annually with the Tax Commissioner.
- Requires the reports to detail only the traffic fines collected rather than all of the traffic fines billed and to specify the amount of traffic camera fines collected on violations in school zones.
- Reduces Local Government Fund (LGF) payments to all local authorities that collect fines from operating traffic cameras regardless of whether a local authority is complying with the state's traffic camera laws.
- Ceases LGF payments to local authorities that fail to comply with the act's reporting requirements for the term of noncompliance.
- Reimburses local authorities for the portion of LGF reductions attributed to traffic camera fines collected on violations in school zones.
- Requires LGF money withheld from a local authority to be earmarked for use by ODOT "to enhance public safety" on roads and highways within the same transportation district.
- Prohibits townships from using traffic cameras on interstate highways.

## Other changes

- Authorizes a person who has a physical impairment and is exempt from the requirement to wear a seatbelt to register to have the physical impairment noted in the Law Enforcement Automated Data System.

- Clarifies that a commercial driver's license (CDL) holder, who (1) is operating **any** motor vehicle (commercial or not), (2) is arrested for a violation of the law governing operating a vehicle while impaired (OVI), and (3) refuses an officer's request to submit to a drug or alcohol test, will be disqualified from driving a commercial motor vehicle.
- Increases the maximum cap (from \$85 to \$115) that an entity may charge for administering a commercial driver's license skills test (including the appointment fee).

## **Registration taxes and fees**

### **Electric and hybrid vehicle registration fees**

(R.C. 4503.10, 4503.103, and 4501.01)

The act imposes, starting January 1, 2020, an additional \$200 registration fee on a plug-in electric motor vehicle and an additional \$100 registration fee on a hybrid motor vehicle.

A "plug-in electric motor vehicle" is a passenger car powered wholly or in part by a battery cell energy system that can be recharged via any external source of electricity. A "hybrid motor vehicle" is a passenger car powered by an internal propulsion system consisting of both (1) a combustion engine, and (2) a battery cell energy system that cannot be recharged via an external source of electricity, but can be recharged by other vehicle mechanisms that capture and store electric energy.

The Registrar must transmit the fees to the State Treasurer. The Treasurer must divide the money in the same manner as revenue attributable to the bill's increase in the motor fuel tax rate (see above) – 55% into the state Highway Operating Fund, and 45% among municipal corporations, counties, and townships. The money may only be used for (1) construction, maintenance, and repair of roads and bridges, (2) operational costs of applicable state agencies, and (3) as a match for other revenue for these purposes.

Thus, starting January 1, 2020, the owner or lessor of a plug-in electric motor vehicle will pay at least \$234.50 in state registration taxes and fees (\$20 registration tax, \$11 BMV fee, \$200 plug-in electric motor vehicle fee, \$3.50 deputy registrar fee), plus up to \$30 in permissive local registration taxes. The owner or lessor of a hybrid motor vehicle will pay at least \$134.50 in state registration taxes and fees (\$20 registration tax, \$11 BMV fee, \$100 hybrid motor vehicle fee, \$3.50 deputy registrar fee), plus up to \$30 in permissive local registration taxes.<sup>7</sup>

### **Permissive municipal, township registration tax**

(R.C. 4501.031, 4501.042, 4501.043, 4504.10, 4504.173, 4504.181, and 4504.201)

The act authorizes municipal corporations and townships to levy and retain an additional \$5 motor vehicle registration tax on motor vehicles registered in the municipal corporation or the unincorporated area of the township. (The authorization is similar to the additional \$5 motor

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<sup>7</sup> The \$3.50 deputy registrar fee may potentially increase depending on rules adopted by the Registrar (see "**Deputy registrar service fee**").

vehicle registration tax on motor vehicles that may be levied in counties as enacted in 2017 by H.B. 26 of the 132<sup>nd</sup> General Assembly, the prior transportation budget.)

A municipal corporation may levy the tax through an ordinance, resolution, or any other measure specified in its charter, but the tax is subject to referendum. A board of township trustees may levy the tax by first holding two public hearings, then providing public notice of those hearings in a newspaper of general circulation, and last by adopting a resolution levying the tax. The township tax is also subject to referendum.

The additional \$5 tax may only be used for specified purposes. Municipal corporations may use the tax for enforcing and administering the tax and paying (1) costs associated with public roads, highways, bridges, and viaducts, (2) costs associated with street and traffic signs, markers, and signals, (3) debt service obligations, and (4) similar costs. Townships may use the tax for enforcing and administering the tax, and paying (1) costs associated with township roads, bridges, and culverts, (2) the costs associated with street and traffic signs, markers, and signals, (3) the cost of purchasing road machinery and equipment, and (4) the cost of certain railroad crossings.

Under current law, unchanged by the act, municipal corporations, townships, and counties may establish a combination of local motor vehicle permissive registration taxes up to \$25 per taxing district. The taxes authorized under the act increase the maximum local permissive taxes that may be levied per taxing district to \$30.

### **Deputy registrar service fee**

(R.C. 4503.038)

The act requires the Registrar to adopt new rules, by October 1, 2019, to establish a deputy registrar service fee that is between \$3.50 and \$5.25. Under prior law, the Registrar had the authority to establish, by March 30, 2018, and through rule, the deputy registrar service fee, which compensates deputy registrars for performing certain transactions on behalf of the Registrar (e.g., issuing driver's licenses and vehicle registrations). The fee was not allowed to exceed \$5.25 and was set at \$3.50. The purpose of this provision is to require the Registrar to revisit the previously established deputy registrar fee.

### **Lamination, document authentication fees**

(R.C. 4506.11, 4507.01, 4507.13, 4507.23, 4507.50, 4507.52, and 4511.521)

The act eliminates the requirement that a driver's license, commercial driver's license, motorcycle operator's license, motorized bicycle license, temporary instruction permit, probationary license, or identification card be laminated. The act replaces the \$1.50 lamination fee with a \$1.50 "document authentication fee" for each application for issuance, renewal, or replacement of the various licenses and the identification card.

A deputy registrar may retain the document authentication fee, while the Registrar must deposit the fee into the Public Safety – Highway Purposes Fund, in the same manner as lamination fees collected by the Registrar were deposited under prior law. Finally, the act exempts a disabled veteran from the document authentication fee, in the same way that prior law exempted a disabled veteran from the lamination fee.

## **Financial responsibility random verification**

(R.C. 4509.101 and 4510.04; Section 610.20 (repealing Section 3 of S.B. 20 of the 120<sup>th</sup> G.A.))

The act eliminates the Financial Responsibility Random Verification Program, which was managed by the BMV.

Under the program, the BMV randomly selected motor vehicle owners whose vehicles were registered in Ohio to provide proof of financial responsibility (automobile insurance). Owners who either failed to respond to the BMV's request or who could not produce evidence of having automobile insurance for the date in question were subject to the standard civil penalties for failure to have automobile insurance. Civil penalties included various fees and an administrative driver's license suspension.

## **Online driver's license renewal for military personnel**

(R.C. 4507.18)

The act requires the Registrar to allow a person on active duty in the U.S. armed forces who is stationed outside Ohio to renew the person's driver's license or motorcycle operator's endorsement online. The Registrar likewise must permit the person's spouse and dependents who are also outside Ohio to renew their licenses or endorsements online. As part of the online renewal, the applicant must provide:

1. A digital copy of the applicant's military ID card or military dependent ID card;
2. A digital copy of a form provided by the Registrar demonstrating that the applicant (if a spouse or dependent) passed a vision examination;
3. A digital copy of a current 2x2 color passport-quality photograph with a white background to be used as the new license or endorsement photograph; and
4. A digital copy of all identification documents and supporting documents required by state law or administrative rule to comply with state and federal requirements.

The Registrar must make it possible for applicants to electronically send all supporting documents and photographs for renewal. The online option, however, does not impact continuing law's exemption from the licensing requirements for active duty military personnel, their spouses, and dependents, or prevent them from renewing in person at a deputy registrar's office, if they choose to do so.

The Registrar must adopt rules in order to implement and administer the online registration requirements.

## **Disabled veteran license plates**

(R.C. 4503.41)

Under continuing law, a disabled veteran with a service-connected disability rated at 100% by the federal Veterans' Administration may register the veteran's personal vehicle and obtain "Disabled Veteran" license plates. The disabled veteran is not required to pay any registration-related fees or taxes (i.e., the general registration tax, the local motor vehicle tax,

and the deputy registrar fee) when registering that vehicle. Although prior law was unclear, a disabled veteran was allowed to register only one vehicle with “Disabled Veteran” plates. The act allows a disabled veteran to register all the vehicles owned by that veteran and obtain “Disabled Veteran” plates for them. However, the veteran must pay all registration taxes and fees for each vehicle after the first registered vehicle.

## **Single license plate**

(R.C. 4503.19, 4503.193, 4503.21, 4503.23, and 4549.10)

Effective July 1, 2020, the act requires only one license plate to be displayed on most motor vehicles, including passenger vehicles. Until then, most motor vehicles must continue to display two license plates (one front and one rear). When the single license plate requirement becomes effective, the license plate must be displayed on the rear of the vehicle. Commercial tractors, however, must display the license plate on the front of the motor vehicle.

When issuing a single license plate, the Registrar and each deputy registrar must collect a fee of \$6.50, which is the same cost for a single license plate under prior law. If desired, a person may request two license plates, and the cost is \$7.50 for a front and rear plate.

Accordingly, the act removes criminal penalties for failing to display two license plates on a motor vehicle. Failing to properly display the single license plate, however, is a minor misdemeanor and a strict liability offense. The act also standardizes the single license plate requirement for state-owned motor vehicles and requires manufacturer- or dealer-owned motor vehicles to display a single placard, rather than two.

The act does not affect any of the following in any substantive way:

1. Motorcycles, motorized bicycles, trailers, semi-trailers, apportioned vehicles under the International Registration Plan, manufactured homes, mobile homes, and historical motor vehicles, all of which are issued only one license plate.
2. School buses, which are not issued license plates, but must display identifying numbers issued by the State Highway Patrol.

## **Skateboards**

(R.C. 4511.54)

The act prohibits a person riding on a skateboard from attaching the skateboard or himself or herself to a moving vehicle, streetcar, or trackless trolley. Additionally, it prohibits the operator of a moving vehicle, streetcar, or trackless trolley from knowingly permitting a person riding a skateboard from attaching the skateboard or himself or herself to the vehicle, streetcar, or trackless trolley. Continuing law applies the same prohibition to individuals riding bicycles, coasters, roller skates, sleds, or toy vehicles.

## **Penalty**

Whoever violates the prohibition is guilty of a minor misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to one additional predicate motor vehicle or traffic offense, the offender is guilty of a fourth degree misdemeanor.

If within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle offenses, the offender is guilty of a third degree misdemeanor.

## **Traffic cameras**

(R.C. 1901.18, 1901.20, 1907.02, 1907.031, 4511.092, 4511.093, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 5747.502, 5747.51, and 5747.53; repeals 4511.0915)

### **Court jurisdiction over civil traffic law violations**

The Ohio Constitution gives the General Assembly the authority to both create courts that are inferior to the Ohio Supreme Court and to determine the power and jurisdiction of those courts (Ohio Constitution Article IV, Sections 1 and 18). The Ohio Supreme Court addressed the issue of court jurisdiction in relation to civil actions concerning traffic law violations in the 2014 case, *Walker vs. City of Toledo*.<sup>8</sup> In that case, the Court determined that a municipal court does not have *exclusive* jurisdiction over misdemeanor cases or the violation of any ordinance of a municipal corporation, including civil traffic law violations involving a traffic law photo-monitoring device (“traffic camera”). Thus, the Court held that “Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, in furtherance of [civil traffic law violation] ordinances, that must be exhausted before offenders or the municipality can pursue judicial remedies.”

The act expressly grants both a municipal court and a county court original and exclusive jurisdiction over *every* civil action concerning a violation of a state traffic law or a municipal traffic ordinance within the court’s jurisdictional territory. Such a violation includes, but is not limited to, a traffic law violation recorded by a traffic camera.

Under continuing law unchanged by the act, a municipal court has general jurisdiction over misdemeanor cases and the violation of any ordinance of a municipal corporation within the court’s territory. A county court has general jurisdiction over all misdemeanor cases. The misdemeanor cases for both a municipal and a county court include criminal actions concerning a violation of a state traffic law or a municipal traffic ordinance, except for certain parking violations. Prior law, enacted after *Walker v. City of Toledo*, excluded from both a municipal and a county court’s jurisdiction civil violations based on evidence recorded by a traffic camera. That jurisdiction was instead granted to a hearing officer and the civil violation was adjudicated through an administrative process, with the municipal and county court hearing appeals of those cases.

### **Hearing officer administrative process**

The act eliminates the process that required a hearing officer to conduct an administrative hearing when a person contested a ticket for a civil traffic violation that was based on a traffic camera recording. Rather than contesting a ticket in an administrative hearing, the act requires the person to contest it in either the municipal or county court with jurisdiction over the civil

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<sup>8</sup> 143 Ohio St.3d 420, 39 N.E.3d 474 (2014).

action, where the local authority bears most of the costs (see below). It makes conforming changes throughout the laws governing traffic cameras to reflect this change.

### **Court costs and filing fees**

The act requires a municipal corporation, county, or township to file a certified copy of a ticket charging a vehicle owner with a civil traffic violation based on a traffic camera recording with the municipal or county court having jurisdiction. Additionally, when the local authority files the certified copy, the court with jurisdiction must require the local authority to make an advance deposit of all court costs and fees that apply to the civil action, except for tickets issued for school zone violations. Generally, the court retains the advance deposit, regardless of which party prevails in the civil action. In most of those civil actions, the court is not permitted to charge the owner or the driver who committed the violation any court costs or fees. If the owner or driver contests the ticket and does not prevail in the civil action, that owner or driver is only responsible for paying the required civil penalty. For school zone violations, however, the losing party (either the local authority or the owner or driver) is responsible for paying the court costs and fees.

### **Traffic camera reports and penalties**

The act repeals and replaces prior law that established reporting requirements for local authorities operating traffic cameras and that penalized them for not complying with the law governing traffic camera use by offsetting their Local Government Fund (LGF) distributions. The replacement provisions are similar to prior law in some respects, but change the reporting requirements, revise the conditions under which LGF distributions are offset, provide for returning offset money attributed to traffic camera fines collected on school zone violations, and earmark the offset money for traffic safety.

#### **Reporting requirements**

The act requires every local authority that operates a traffic camera during a fiscal year to file a report with the Tax Commissioner by the following July 31, regardless of whether it complied with the state traffic camera laws. The report must show:

1. A detailed statement of the civil fines collected from drivers for violations of local ordinances based on traffic camera evidence;
2. A statement of the gross traffic camera fines collected during that period; and
3. A statement of the gross traffic camera fines collected during that period for violations that occurred in school zones. (The “gross amount” includes the entire amount paid by drivers.)

In contrast, prior law required quarterly, rather than annual, reporting, and required the report to be filed with the Auditor of State. If a local authority was not complying with the traffic camera law, it had to report all traffic camera fines that were *billed* to drivers rather than the fines that were *collected* from them. Prior law did not differentiate between traffic camera fines for violations in school zones and other traffic camera fines. If a local authority was complying with the traffic camera law, prior law did not require it to report fines; instead, the local authority had to file only a statement affirming its compliance.

## **LGF offsets**

The act modifies the law that reduces LGF distributions to local authorities that operate traffic cameras. As under prior law, LGF payments are to be reduced by the amount of fines reported to have resulted from using traffic cameras, and the payments are suspended entirely if a local authority using traffic cameras does not file the report. But unlike prior law, the act reduces LGF payments even for local authorities complying with the state requirements (e.g., having an officer present, posting signs, and conducting safety studies and public information campaigns). Also, the act's reduction in LGF payments is based on reported fine collections rather than reported fine billings, consistent with the change in how fines are to be reported. Finally, the act provides for a refund to local authorities for the portion of withheld LGF payments attributed to traffic camera fines on violations that occurred in school zones, on the condition that the refunded amounts are used for school safety purposes.

Under the act, each of the 12 monthly LGF payments following the annual traffic camera fine report would be reduced by one-twelfth of the gross fines collected by a local authority in the preceding fiscal year. If the local authority is a municipal corporation receiving direct LGF payments, the offset is first deducted from the direct payment and, if necessary to cover the whole offset, from the municipality's share of distributions made through the county undivided LGF. For other local authorities, the offset is deducted from their respective shares of the county undivided LGF.

Local authorities that reported traffic camera fines for violations in school zones would then receive a payment equal to one-twelfth of the gross amount of those fines. The act requires that this refunded amount be used for school safety purposes.

If a local authority operating traffic cameras fails to report its traffic camera fines as the act requires, all LGF payments to that subdivision are suspended until the report is filed. Once the report is filed, the next twelve LGF payments are then reduced to account for the fines reported.

The total amount offset or withheld from local authorities for their fines or failure to report, minus any amount refunded to local authorities based on fines for school zone violations, will be credited to the Ohio Highway and Transportation Safety Fund, which the act creates. The fund will be divided into separate accounts – one for each transportation district in which a local authority operating traffic cameras is located. The Department of Transportation must use the fund “to enhance public safety on public roads and highways” within the transportation district from which the LGF funds were withheld. Under prior law, any LGF amount that is offset or withheld from a local authority is distributed among other subdivisions and taxing units in the county.

## ***LGF background***

Under continuing law, 1.66% of general revenue tax receipts are credited monthly to the LGF to provide revenue to political subdivisions and other local taxing units.<sup>9</sup> About 92% of that

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<sup>9</sup> R.C. 131.51(B), not in the act.

money is divided between the undivided local government funds of each county and distributed to the county and subdivisions in that county under a formula either prescribed in state law or adopted by the county budget commission; most of the remaining money is distributed directly to municipal corporations that levied a municipal income tax in 2006. Distributions are made monthly. (In the FY 2018-FY 2019 biennium the direct municipal distributions were pre-empted by various other distributions by H.B. 49 of the 132<sup>nd</sup> G.A.)

### **Traffic cameras on interstate highways**

The act prohibits a township law enforcement officer or any other township representative from using traffic cameras on interstate highways. In general, Ohio law authorizes a local authority to utilize traffic cameras for the purpose of detecting specific traffic violations (failure to comply with a red light and the speed limit), subject to statutory conditions. The prior statutory conditions, however, did not limit the use of traffic cameras to specific highways or prevent their use on interstate highways.

### **Seatbelt exemption**

(R.C. 4507.13, 4507.52, and 4513.263)

Under continuing law unchanged by the act, generally any person operating or sitting in the front seat of an automobile must wear a seatbelt. However, the seatbelt requirement does not apply to a person who has an affidavit signed by a licensed physician or chiropractor that the person has a physical impairment that makes use of a seatbelt impossible or impractical. The act expands the details that must be included in the affidavit to include the following:

1. Whether the physical impairment is temporary, permanent, or reasonably expected to be permanent; and
2. If the physical impairment is temporary, how long the physical impairment is expected to make the use of a seatbelt impossible or impractical.

Additionally, the act permits a person with an affidavit (if the person's physical impairment is permanent or reasonably expected to be permanent) to register with the Registrar to have information concerning the physical impairment available through the Law Enforcement Automated Data System (LEADS). If the person is included in LEADS, that person does not need to possess the affidavit while operating or occupying the automobile.

The Registrar must adopt rules to establish the process for including the information in LEADS. The information is not a public record.

### **Civil immunity**

The act specifies that a physician or chiropractor who issues an affidavit generally is immune from any civil liability if the person who is issued the affidavit is injured or dies because of not wearing a seat belt. The exemption from civil immunity does not apply if the physician or chiropractor acts in a manner that is willful, wanton, or reckless in issuing the affidavit.

## Implied consent for CDL holders

(R.C. 4506.17)

Generally, a person is disqualified from operating a commercial motor vehicle if all of the following apply:

1. The person holds a commercial driver's license (CDL) or commercial temporary instruction permit (CDL permit) or the person operates a commercial motor vehicle that requires a CDL or CDL permit;
2. The person is arrested for violating the law governing operating a vehicle while impaired (OVI); and
3. The person refuses to submit to a blood, urine, or breath test despite being deemed to have consented under the implied consent statute.

Although R.C. Chapter 4506 requires the Registrar to disqualify a CDL holder who refuses to comply with a request for a blood, breath, or urine test under Ohio's implied consent statute, several lower courts found that CDL holders may only be disqualified if the holder is operating a commercial motor vehicle at the time of arrest.<sup>10</sup> These decisions created uncertainty regarding the disqualification of a CDL holder who refused to submit to a test while driving a **noncommercial** vehicle.

Consequently, the act clarifies that refusal to submit to a test (when arrested for OVI) leads to disqualification when a CDL holder is driving **any** type of motor vehicle, not just a commercial motor vehicle.

Relatedly, the U.S. Supreme Court has found that the implementation of implied consent laws that impose a **civil** penalty, such as license disqualification, on motorists who refuse to comply with a request for a blood, breath, or urine test is constitutional.<sup>11</sup>

## CDL skills test fee

(R.C. 4506.09)

Under continuing law, any person, agency of this or another state, or agency, department, or instrumentality of a local government may administer the skills test required for a commercial driver's license. The act increases, from \$85 to \$115, the maximum divisible fee that each testing entity may charge, as follows:

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<sup>10</sup> *Lachowski v. Petit*, Portage C.P. No. 2018-CV-430; *Vaughn v. Petit*, Franklin C.P. No. 18CV007834.

<sup>11</sup> *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2165 (2016), citing *McNeely v. Missouri*, 133 S. Ct. 1552 (2013).

CDL Testing Fee		
Portion of Test	Prior Law	The Act
Pre-trip inspection	Up to \$20	Up to \$27
Off-road maneuvering	Up to \$20	Up to \$27
On-road	Up to \$45	Up to \$61
<b>Maximum total</b>	<b>\$85</b>	<b>\$115</b>

The act likewise increases the maximum appointment fee that a testing entity may charge from \$85 to \$115.

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## LOCAL GOVERNMENT

- Exempts from competitive bidding any county purchase of used supplies made at a public auction, including equipment, materials, and other tangible assets.
- Authorizes a county that has a population between 350,000 and 375,000 (Butler County only) to contract – with the county sheriff or a fire department chief that has countywide authority – to implement a countywide emergency management program as an alternative to implementing a program under the countywide emergency management agency’s authority.
- Authorizes an officer or employee of a county, township, or municipal corporation to simultaneously serve as a member or officer of the board of trustees of a transportation improvement district.
- Specifies that, notwithstanding Ohio common law or any contrary statute, the simultaneous holding of those positions does not constitute the holding of incompatible offices or employment.
- Specifies that the financial or contractual relationship between a county, township, or municipal corporation and a transportation improvement district is permissible and does not constitute an unlawful interest in a public contract by an officer or employee of a county, township, or municipal corporation.
- Authorizes a port authority to take certain actions regarding the towing of motor vehicles.
- Eliminates the requirement that contracts between a port authority and a contractor be executed in triplicate.
- Requires the Director of Mental Health and Addiction Services and the board of county commissioners to make initial appointments to a newly formed Alcohol, Drug Addiction, and Mental Health Services Board from members jointly recommended by the county’s community mental health board and the alcohol and drug addiction services board.

## County competitive bidding

(R.C. 307.86)

The act exempts from the County Competitive Bidding Law any purchase of used supplies the county makes at a public auction. It defines “supplies” to include equipment, materials, and other tangible assets. Under continuing law, a county must make purchases of over \$50,000 through competitive bidding, subject to numerous exemptions.

## Countywide emergency planning

(Section 755.15)

The act establishes an alternative to the existing process by which a countywide program for emergency management may be established. However, the alternative process only applies to a county with a population between 350,000 and 375,000 as of July 3, 2019. Only Butler County meets that qualification.

### Background

Under continuing law, each county, township, or municipal corporation (political subdivision) must participate in one of the following:

1. A countywide program for emergency management, which is governed by a countywide emergency management agency that is established, via written agreement, by the board of county commissioners and the chief executive of all or a majority of the other political subdivisions within the county;
2. A regional program for emergency management, which is governed by a regional authority for emergency management that is established, via written agreement, by the boards of county commissioners of two or more counties, with the consent of the chief executives of a majority of the participating political subdivisions of each county involved; or
3. A program for emergency management established by the political subdivision.

A countywide emergency management agency is governed by an executive committee, which consists of at least: one county commissioner; five chief executives representing the municipal corporations and townships in the agreement; and one nonelected representative. The countywide agreement must specify if any additional members will serve on the executive committee. The executive committee appoints a director/coordinator who is responsible for coordinating, administering, and operating emergency management in accordance with the countywide agency’s program. The director/coordinator may be an official or employee of any participating political subdivision, but may not be the chief executive of any of them.

### Butler County alternative

The act allows the Butler County Board of County Commissioners to establish a countywide program for emergency management without establishing a countywide emergency management agency. It may contract with the county sheriff or the chief of a fire department

that has countywide authority in order to implement a countywide emergency management program. The contract may not last longer than four years.

The sheriff or fire chief must appoint a director/coordinator of emergency management. The director/coordinator must complete a professional development program in accordance with rules adopted by the Director of Public Safety, and coordinate, administer, and operate emergency management in accordance with the program for emergency management (which is established by contract), subject to the direction of the sheriff or fire chief. The program for emergency management must:

1. Comply with the laws, rules, and regulations governing emergency management, including the requirement to cooperate with other state agencies and political subdivisions;
2. Include an all-hazards emergency operations plan that has been coordinated with all agencies, boards, and divisions with emergency management functions within the county; and
3. Include an annual exercise of the county's all-hazards emergency operations plan.

All agencies, boards, and divisions that have emergency management functions within each political subdivision within the county must cooperate in the development of the all-hazards emergency operations plan and cooperate in the preparation and conduct of the annual exercise. However, a political subdivision is not required to be a part of the contract so long as it establishes its own program for emergency management.

The board of county commissioners may appropriate money from its general fund to meet its obligations under the contract, including development and maintenance of a countywide public safety communication system. The money may be used to purchase and maintain the assets and equipment of the county or of the sheriff or fire chief.

## **Simultaneous office holding**

(R.C. 3.112)

The act provides that an elected official or employee of a county, township, or municipal corporation may simultaneously serve as a member or officer of the board of trustees of a transportation improvement district (TID). The simultaneous holding of the two positions does not constitute the simultaneous holding of incompatible offices, despite Ohio common law or any other Ohio statute indicating anything to the contrary.

The act specifies that a financial or contractual relationship between the county, township, or municipal corporation and the TID is permissible and does not constitute an unlawful interest in a public contract by an elected official or employee of a county, township, or municipal corporation. (Ohio law generally prohibits public officials from having an interest in a contract entered into by the official's political subdivision.)<sup>12</sup>

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<sup>12</sup> R.C. 2921.42, not in the act.

Ohio common law prohibits the simultaneous holding of two public offices or employment when the two are determined to be “incompatible.” The Ohio Attorney General makes these determinations by using a common law test that in part examines impermissible conflicts of interest between the two positions. In 2018, the Attorney General issued an opinion finding a county commissioner and member of the TID board of trustees incompatible.<sup>13</sup> The Attorney General addressed scenarios where the commissioner is a voting trustee of the TID appointed by the board of county commissioners or a nonvoting trustee of the TID appointed by the Speaker of the House or Senate President.

The Attorney General concluded that the voting TID trustee is incompatible because the commissioner, as a trustee of the TID, is subordinate to the board of county commissioners because of the commissioners’ appointment authority. The nonvoting TID trustee is incompatible because impermissible conflicts of interest result from the TID trustee’s position as a commissioner. The Attorney General noted these conflicts specifically arise from: (1) the board of county commissioners providing funds to the TID and the commissioner’s possible bias, as a TID trustee, against providing TID funds to areas outside the commissioner’s county, (2) the TID’s authority to enter into contracts in which a commissioner is prohibited from having a direct or indirect concern, and (3) the TID’s authority to accept grants or loans from the county. Sometimes the potential for conflict may be remote and the Attorney General may find the conflict can be sufficiently avoided or eliminated. However, the Attorney General determined that the potential for conflict between the positions of county commissioner and member of a TID<sup>14</sup> is not remote and cannot be avoided.

The act reflects the General Assembly’s policy to allow the simultaneous holding of the positions despite one position being subordinate to the other and despite conflicts of interest that cannot be reconciled. The issues identified by the Attorney General remain but are permissible under the act because the General Assembly is statutorily condoning the simultaneous holding of the positions.<sup>15</sup>

Despite this provision, a municipal corporation or a chartered county, through its home-rule authority to self-govern, likely can decide to disallow the simultaneous holding of these positions for its elected officials or employees.<sup>16</sup>

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<sup>13</sup> Ohio Attorney General Opinion (O.A.G.) No. 2018-024.

<sup>14</sup> There is no Attorney General determination for a township trustee or municipal legislative authority member serving simultaneously on a TID, but to the extent those positions may pose similar conflicts, an analogous outcome may be anticipated.

<sup>15</sup> See, for example, O.A.G. 2009-005 (although conflicts of interest may exist between the positions of member of a city legislative authority and member of the governing board of a community improvement corporation that has been designated under R.C. 1724.10 as the agency of the city, “the General Assembly has legislatively sanctioned a person serving in both positions at the same time” under R.C. 1724.10(A)).

<sup>16</sup> Ohio Constitution, Article XVIII, Section 3 and Article X, Section 3.

Finally, because the act includes employees, which the Attorney General’s opinion did not address, there could be: (1) a conflict with Ohio’s Little Hatch Act,<sup>17</sup> (2) a possible breach of contract if the employee is subject to a collective bargaining agreement, and (3) to the extent any person is paid through federal grant money received by a TID, a violation of the federal Hatch Act.<sup>18</sup> Although the amendment attempts to “notwithstanding” common law and any contrary statute, it is questionable whether the General Assembly may enact legislation that violates provisions of the Ohio Constitution or federal law.

## **Port authority**

### **Towing authorization**

(R.C. 4505.101, 4513.60, 4513.601, 4513.61, 4513.62, 4513.63, 4513.64, 4513.65, 4513.66, and 4513.69)

The act authorizes a port authority’s police department to take certain actions regarding towing motor vehicles – previously, only entities such as county sheriffs and municipal police departments were allowed to take these actions, but not port authority police departments.

Specifically, under the act, a port authority police department may order into storage the following vehicles within the port authority’s jurisdiction: (1) an abandoned junk motor vehicle, (2) a vehicle that has come into the port authority police department’s possession, (3) a vehicle that has been left on public streets or other public property for more than 48 hours or on private property without the property owner’s permission for more than four hours, and (4) a vehicle that has been in an accident.

The act also requires a port authority police department to comply with existing law regarding the towing of motor vehicles, such as maintaining proper records of the vehicles stored by the port authority police department.

A towing service is required to notify the appropriate law enforcement agency about a vehicle that comes into the entity’s possession after the vehicle is towed from a private tow-away zone. The act requires notice to be given to a port authority police department if the tow occurs within the port authority’s jurisdiction.

### **Carbon copies**

(R.C. 4582.12 and 4582.31)

The act eliminates the requirement that contracts for the construction of a building, structure, or other improvement exceeding \$150,000 entered into by a port authority be executed in triplicate, thus eliminating the need for the contract to be carbon copied.

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<sup>17</sup> R.C. 124.57, not in the act.

<sup>18</sup> 5 United States Code (U.S.C.) 7321 *et. seq.*

## **ADAMH board appointments**

(R.C. 340.021)

The act requires the Director of Mental Health and Addiction Services and a board of county commissioners to make their initial appointments to a newly formed Alcohol, Drug Addiction, and Mental Health Services Board (ADAMH board) from members jointly recommended by the county's community mental health board and the alcohol and drug addiction services board, unless the appointment is otherwise prohibited by law.

Under prior law, the Director and county commissioners had to make the appointments from those recommendations "to the greatest extent possible." Under continuing law, any county or combination of counties with a population of at least 50,000 must establish an alcohol, drug addiction, and mental health services district. An ADAMH board must be established for each alcohol, drug addiction, and mental health services district. An ADAMH board generally consists of 18 members, unless the board of county commissioners approves a 14-member board.

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## OTHER PROVISIONS

- Requires the Governor to submit the biennial transportation budget to the General Assembly four weeks after the General Assembly's organization.
- Requires an entity that receives funding from the motor fuel tax, and either spends the funds on a project that takes more than seven days to complete, or spends \$500,000 or more of those funds, to post annual updates on its website regarding how the funding is being used.
- Exempts an individual who provides services for or on behalf of a motor carrier transporting property from coverage under Ohio's Workers' Compensation Law, Unemployment Compensation Law, Overtime Law, and Minimum Wage Law, if specified conditions apply to the individual.
- Allows the motor carrier to elect coverage under those laws for an individual who satisfies certain conditions.
- Requires a person who erects or replaces a sign containing the International Symbol of Access to do so with a logo that depicts a dynamic character leaning forward with a sense of movement.
- Eliminates the exemption to the Opened Container Law that allowed a person to possess an open container of alcohol in or on a stationary vehicle that was not being operated in a traffic lane and was in an outdoor refreshment area.
- Allows the governing authority of a chartered nonpublic school to charge a child's parents or guardians a fee to transport the child to and from school-sponsored activities, including extracurricular activities, if the governing authority did not purchase the vehicle with state or federal funds.
- Allows a chartered nonpublic school to own and operate, or contract with a vendor that supplies, a vehicle designed for up to nine passengers, to transport students to and from school under certain circumstances.
- Starting in FY 2022, changes from 2% to 6% the financial assistance the Public Works Commission may allocate to local subdivisions for capital improvements related to public emergencies.
- When a board of county commissioners expends appropriate funds for social services in the county, authorizes the county to use those funds as local matching funds for county transit systems.

### **Governor's transportation budget deadline**

(R.C. 107.03)

The act requires the Governor to submit the biennial transportation budget – the budget that primarily includes motor fuel excise tax-related appropriations for ODOT, the Public Works

Commission, and the Development Services Agency, and other transportation and infrastructure-related appropriations – to the General Assembly within four weeks of the General Assembly’s organization.

Under pre-existing law, unchanged by the act, the Governor is required to submit the main operating budget to the General Assembly, within four weeks of its organization. In years of a new governor, the main operating budget must be submitted by March 15.

## **Website updates for transportation funds**

(Section 755.50; codified, as ordered by the LSC Director, in R.C. 5735.43)

The act requires any agency or entity, including a local government entity, that receives funding from the motor fuel tax and either (1) spends the funds on a project that takes more than seven business days to complete, or (2) spends \$500,000 or more of the funds, to place annual updates on its website regarding how the funds are being used. The updates may include information concerning how much money is spent, when the money is spent, on what projects the money is spent, and similar information that demonstrates the use of the funds.

## **Motor carrier independent contractor agreements**

(R.C. 4111.03, 4111.14, 4121.01, 4123.01, and 4141.01, with conforming changes in R.C. 119.14 and 1349.61; Section 741.10)

The act exempts an individual to whom all of the following conditions apply from coverage under Ohio’s Workers’ Compensation Law, Unemployment Compensation Law, Overtime Law, and Minimum Wage Law:

- The individual operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property (“motor carrier” generally refers to a person engaged in the business of transporting persons or property by motor vehicle for hire or compensation).
- All of the following factors apply to the individual:
  - The individual owns the vehicle or vessel used in performing the services for or on behalf of the carrier, or the individual leases it under a bona fide lease agreement that is not a temporary replacement lease agreement (a bona fide lease agreement does not include an agreement between the individual and the carrier for which, or on whose behalf, the person provides services).
  - The individual is responsible for supplying the necessary personal services to operate the vehicle or vessel.
  - The individual's compensation is based on factors related to work performed and not solely on the time spent.
  - The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.

- The individual enters into a written contract with the carrier that describes the relationship between the individual and the carrier to be that of an independent contractor and not that of an employee.
- The individual is responsible for substantially all principal operating costs of the vehicle or vessel and equipment, including maintenance, fuel, repairs, supplies, insurance, and personal expenses, except that the individual may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.
- The individual is responsible for any economic loss or economic gain from the arrangement with the carrier.

The act's exemption does not apply under the Unemployment Compensation Law if the individual is performing certain services exempt from the federal unemployment tax imposed by the Federal Unemployment Compensation Tax Act<sup>19</sup> (FUTA). Those services are services performed in the employ of the state, political subdivisions, federally recognized Indian tribes, or nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.<sup>20</sup> FUTA requires, however, that state unemployment compensation systems cover those services to receive the full FUTA tax credit for employers in that state.<sup>21</sup> Under continuing law, Ohio's Unemployment Compensation Law covers those services, and employers for whom those services are performed may elect to be reimbursing employers who reimburse the state Unemployment Compensation Fund rather than pay state unemployment contributions.<sup>22</sup>

The act's exemption does not apply to any claim or cause of action pending under the laws listed above on July 3, 2019 (the provision's effective date). Additionally, the act allows a motor carrier to elect coverage under any of the laws listed above for an individual who is otherwise exempt under the act.

Ohio courts use different tests to determine whether an individual performing services for another is "employed by" or an "employee of" the other for purposes of the laws amended by the act. Although the tests vary, the determination is generally based on how much direction and control the "employer" has over the individual performing the services. The following list summarizes the tests normally used under each law amended by the act:

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<sup>19</sup> 26 U.S.C. 3301 *et seq.*

<sup>20</sup> 26 U.S.C. 3306(c)(7) and (8).

<sup>21</sup> 26 U.S.C. 3304(a)(6) and 3309(a).

<sup>22</sup> R.C. 4141.241 and 4141.242, not in the act.

- Workers' compensation – whether the employer reserves the right to control the manner or means of doing the work (workers' compensation has a separate test for individuals in the construction industry).<sup>23</sup>
- Unemployment compensation – a 20-factor test similar to the “common law test” used by the Internal Revenue Service to determine whether a person is an independent contractor under the federal income tax and federal unemployment tax laws.<sup>24</sup>
- Minimum wage and overtime – an “economic realities” test<sup>25</sup> that is used to determine an individual's employment status under the federal minimum wage and overtime laws.

## International Symbol of Access

(R.C. 9.54 and 9.57, repealed)

The act requires a person who erects or replaces a sign containing the International Symbol of Access to do so with a logo that depicts a dynamic character leaning forward with a sense of movement, like the one shown here:



Prior law did not specify what the International Symbol of Access logo must look like; however, many signs containing the symbol depict a stationary character, like the one shown here:



## Opened container of alcohol exemption

(R.C. 4301.62)

The act eliminates the exemption to the Opened Container Law that allowed a person to possess an opened container of beer or intoxicating liquor in or on a motor vehicle within a

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<sup>23</sup> *Gillum v. Industrial Comm.*, 141 Ohio St. 373, 374 (1943). See also *Bostic v. Connor*, 37 Ohio St.3d 144 (1988).

<sup>24</sup> R.C. 4141.01(B)(2)(k) and Ohio Administrative Code 4141-3-05.

<sup>25</sup> See *Donovan v. Brandal*, 736 F.2d 1114 (6th Cir. 1984) and *Solis v. Cascom, Inc.*, 2011 U.S. Dist. LEXIS 122573, case No. 3:09-cv-257 (S.D. Ohio 2011).

designated outdoor refreshment area (DORA) when the vehicle was stationary and was not being operated in a lane of vehicular traffic. A DORA is a designated area created by a municipal corporation or township where a person may purchase beer or intoxicating liquor from a designated liquor permit holder and walk around outdoors.

The prior exemption was not in compliance with the federal opened container law. As a result, the state was subject to both limitations on the use of some federal transportation funds and to additional procedural requirements. The act's elimination of this exemption makes Ohio's law compliant with the federal law.

## **Student transportation**

(R.C. 3327.07 and 4511.76)

Under pre-existing law, unchanged by the act, a chartered nonpublic school may charge parents or guardians a fee to transport students to and from school, as long as the vehicle was not purchased with state or federal funds. The act further allows chartered nonpublic schools, under the same circumstances, to also charge a fee to transport students to and from school-sponsored activities, including extracurricular activities.

Additionally, the act allows a chartered nonpublic school to own and operate, or contract with a vendor that supplies, a vehicle originally designed for up to nine passengers (not including the driver) to transport students to and from regularly scheduled school sessions when:

1. The student's school district of residence has declared that transporting the student is impractical; or
2. A student does not live within 30 minutes of the chartered nonpublic school and the student's school district is not required to transport the student.

## **Public improvement funds for emergency purposes**

(R.C. 164.08)

Starting July 1, 2021, the act increases from 2% to 6% the portion of net proceeds from general obligations issued under the State Capital Improvement Program that may be allocated to local subdivisions for capital improvements necessary for the immediate preservation of public health, safety, and welfare. In the past, qualified projects have included repairs related to floods, sinkholes, bridge collapses, and other emergency road and bridge-related problems.<sup>26</sup>

## **Transit authority and social service matching funds**

(R.C. 306.051)

Under the act, if a board of county commissioners appropriates and expends funds for social services (defined as services for senior citizens, persons with developmental disabilities, etc.), those funds may be used as a local match for state and federal funds to be used for the

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<sup>26</sup> Public Works Commission, "Emergency Program" available at: <http://www.pwc.state.oh.us/Emergency.html>.

county's transit system. The funds may be used to match in this manner only if doing so does not jeopardize the state or county's eligibility to receive federal funds generally. And, the county transit system must enter into an agreement with the government department, agency, board, or commission responsible for administering those funds to establish the terms and conditions of their use.

Additionally, funds raised by a county tax levy may be used for the local-matching purpose described above only if that usage is consistent with the purpose for which the tax was levied.

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## NOTE ON EFFECTIVE DATES

(Sections 812.10 and 812.20)

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum under the Ohio Constitution and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

Article II, Section 1d of the Ohio Constitution states that "appropriations for the current expenses of state government and state institutions" and "[l]aws providing for tax levies" go into immediate effect and are not subject to the referendum. The act includes a statement that an appropriation of money under the act is not subject to the referendum if a contemplated expenditure is wholly to meet a current expense within the meaning of the Ohio Constitution and R.C. 1.471. However, the appropriation is subject to the referendum if a contemplated expenditure wholly or partly does not meet a current expense within the meaning of those provisions.

The act states that the motor fuel tax rate increases and the extension of those taxes to compressed natural gas are exempt from the referendum, and therefore take immediate effect. Although these parts of the act go into immediate effect, they do not apply until July 1, 2019. (R.C. 5735.05(E) and (F) and Section 812.30.)

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## HISTORY

Action	Date
Introduced	02-12-19
Reported, H. Finance	03-07-19
Passed House (71 – 27)	03-07-19
Reported, S. Transportation, Commerce, & Workforce	03-21-19
Passed Senate (24-6)	03-21-19
House refused to concur in Senate amendments (0-98)	03-27-19
Senate requested conference committee	03-27-19
House acceded to request for conference committee	03-27-19
House agreed to conference committee report (70-27)	04-02-19
Senate agreed to conference committee report (22-10)	04-02-19

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