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# COUNTY ADVISORY BULLETIN

**CAB**

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**Bulletin 2021-3**

**April, 2021**

## **FY 2022-2023 STATE TRANSPORTATION BUDGET**

**APPLICABLE LEGISLATION:** Amended Substitute HB 74 (134th General Assembly)

Revised Code Sections: The state transportation budget amends over 100 of sections of law. Individual sections relevant to counties will be noted below under the appropriate heading. HB 74 also enacts new sections 4505.032, 4505.22, 4507.061, 5512.11, 5529.02, 5577.045, and 5709.481; and, repeals sections 4503.511, 4503.512, 4503.77, 4503.772, 4503.79, and 4505.032.

**LEAD SPONSOR:** Representative Scott Oelslager

**HOUSE COSPONSORS:** Baldrige, Callender, Carfagna, Carruthers, Cross, Crossman, Cupp, Frazier, Galonski, Ghanbari, Ginter, Hall, Hillyer, Householder, Jarrells, John, Johnson, Miller, O'Brien, Patton, Plummer, Richardson, Riedel, Roemer, Schmidt, Seitz, Smith, Sobecki, Stein, Stewart, Troy, West, White, Young

**SENATE COSPONSORS:** Antonio, Blessing, Cirino, Craig, Dolan, Fedor, Gavarone, Hackett, Hoagland, Hottinger, Huffman, Johnson, Kunze, Maharath, Manning, O'Brien, Peterson, Reineke, Roegner, Rulli, Schaffer, Schuring, Sykes, Thomas, Williams, Wilson, Yuko

**EFFECTIVE DATE:** June 30, 2021; appropriations effective March 31; certain provisions effective immediately or on other specified dates; There are no line item vetoes.

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## **APPROPRIATIONS**

### **Motor Fuel Tax**

Under continuing law, unchanged by the Act, county governments receive equal distributions of revenue from the motor fuel tax. The motor fuel tax rate remains unchanged. The Ohio Legislative Budget Office estimates that \$2.44 billion will be distributed from the motor fuel tax in

state fiscal year (FY) 2022 to state agencies and local governments. This amount is down slightly from the \$2.48 billion distributed the prior year. In FY 2022, ODOT will receive \$1.45 billion (59.4%), local governments \$866 million (35.5%), and the remainder to the Ohio Public Works Commission and other state agencies (2.8%). The estimated annual distribution to each county government is approximately \$3.6 million. As the economy recovers from the pandemic, motor fuel sales are expected to increase by 2.2% in the second fiscal year of the biennium. Motor fuel tax revenue is distributed to local governments through the Gasoline Excise Tax Fund, an appropriation line item (110-960) in the main operating budget.

### **Public Transportation**

Temporary Law Sections: 203.10, 203.15, 203.43, 203.47

Public transportation receives a General Revenue Fund appropriation of \$37 million per year in the ODOT budget. Temporary law specifies that if additional federal funding designated for public transportation is allocated to public transit agencies in Ohio and the additional federal funds are not required to be used exclusively for COVID-19-related expenses, the Director of Transportation may submit a request to the Controlling Board to reduce this appropriation amount by up to \$29,637,222 in each fiscal year.

In addition, the Act earmarks \$33 million each fiscal year from federal highway operating funds to support public transportation statewide through the Federal Highway Administration (FHWA) flexible funding program. ODOT will also pass through federal funding for public transportation programs amounting to \$40.2 million in FY 2022 and \$41.2 million in FY 2023 to local transit agencies. In FY 2022, \$5,000 is earmarked for the Ohio Domestic Violence Network for the purchase public transportation vouchers, ridesharing credits, or gas cards for eligible clients.

### **Transportation Improvement Districts**

Temporary Law Section: 203.40

The Act earmarks \$4.5 million in state highway funds each fiscal year for distribution by ODOT to Transportation Improvement Districts (TIDs) that have facilitated funding for the cost of a project or projects in conjunction with other governmental agencies. A TID must apply to ODOT for funding and the department must notify the applicant of its decision within 90 days after receiving the request. In order to apply, a TID must be registered with ODOT. State funding may only be used for project costs and not for administrative costs or staffing, and may not be used to pay the entire project cost. Funding may not exceed \$500,000 for any TID per fiscal year, but TIDs that are co-sponsoring a project may apply individually.

Funding may be used for preliminary engineering, detailed design, right-of-way acquisition, and construction of the specific project and such other project costs approved by the Director of Transportation. ODOT payments will be made upon receipt of a copy of an invoice for work performed on the specific project.

The Act specifies that in order to register with ODOT, a TID must meet one of the following criteria:

- The district has designated, by resolution(s), a project or program of projects and facilitated, including in conjunction with and through other governmental agencies, funding for costs of a project or program of projects in an aggregate amount of not less than \$15 million from the commencement date of the project or program of projects.

- The district has designated, by resolution(s), a project or program of projects that has estimated aggregate costs in excess of \$10 million and the county engineer of the county in which the district is located has attested by a sworn affidavit that the costs of the project or program of projects exceeds that amount and that the district is facilitating a portion of funding for that project or program of projects.

### **Regional Transportation Planning**

Temporary Law Section: 203.45

The Act earmarks \$2.6 million each fiscal year from federal highway construction funds to be used by Regional Transportation Planning Organizations (RTPOs) to conduct rural transportation planning grant programs.

### **Ohio Department of Development**

Temporary Law Sections: 207.10, 207.20

House Bill 74 appropriates \$15.2 million for the Roadwork Development program in the Ohio Department of Development. These funds are used for road improvements associated with economic development opportunities that will retain or attract businesses in Ohio, including the construction, reconstruction, maintenance, or repair of public roads that provide access to a public airport or are located within a public airport. The appropriation may be used in conjunction with any other state funds appropriated for infrastructure improvements.

ODOT must provide these funds under the Direction of the Department of Development and the guidelines established for other Department of Development programs, including Controlling Board review and approval, as well as the requirements for usage of motor vehicle fuel tax revenue prescribed in Section 5a of Article XII, Ohio Constitution. If the Department of Development requires the assistance of ODOT to complete a project, the Department of Transportation must use its authority under Title 55 of the Revised Code to provide such assistance and may enter into contracts on behalf of the Department of Development.

### **Ohio Public Works Commission**

Temporary Law Sections: 209.10, 209.20, 209.50

House Bill 74 appropriates motor fuel tax revenue for the Ohio Public Works Commission's Local Transportation Improvement Program. The appropriation is \$57.3 million in FY 2022 and \$59.3 million in FY 2023. OPWC also receives a \$2 million appropriation for its Local Public Infrastructure Program. These funds are to be used to provide grants to local communities to assist with road-slip emergency projects on locally-maintained roads. The road slip funds are to be accounted for under the FY 2021-2022 appropriations authority of S.B. 310 of the 133<sup>rd</sup> General Assembly, and are subject to the provisions of that legislation.

## **Ohio Environmental Protection Agency**

Temporary Law Section: 209.30

OEPA receives an appropriation of \$8 million in FY 2022 from the Volkswagen Clean Air Settlement Plan and State Beneficiary Trust Agreement. The agency must create a program for DC fast chargers or fast charging stations for electric vehicles. Any remaining unexpended funds may be reappropriated for FY 2023 and used for Level 2 chargers or Level 2 charging stations.

## **FORCE ACCOUNT INFLATION INDEX**

Revised Code Sections: 723.52, 723.53, 5543.19, 5575.01

Current law allows a county engineer to perform road and bridge construction and maintenance without using competitive bidding if the estimated cost of the work is below thresholds defined by law. For roads, the cost estimate must be below \$30,000 per mile. For bridges and culverts, the total cost of the project must be below \$100,000.

The new law indexes force account limits to construction inflation. On July 1 of every odd-numbered year beginning in 2021, the ODOT must adjust the limits by the lesser of three percent, or the percentage amount of any increase in the department's construction cost index as annualized and totaled for the prior two calendar years. The department is required notify each county engineer of the increased amount.

The same adjustment applies to force account limits for townships and municipalities.

## **JOINT COMMITTEE ON FORCE ACCOUNTS**

Temporary Law Law Sections: 755.90 and 812.15

The Act creates a Joint Committee on Force Accounts and specifies that this provision goes into immediate effect. The committee will study, take testimony regarding, and discuss the issue of force accounts as applied to unchartered municipal corporations (R.C. 723.52 and 723.53); counties (R.C. 5543.19), and townships (R.C. 5575.01).

The committee is composed of the following members:

- Three members of the Senate appointed by the President of the Senate, two of whom are members of the majority party and one who is a member of the minority party;
- Three members of the House of Representatives appointed by the Speaker of the House of Representatives, two of whom are members of the majority party and one who is a member of the minority party;
- One industry representative appointed jointly by the President and the Speaker of the House of Representatives;
- One member appointed by the Ohio County Engineer's Association;
- One member appointed by the Ohio Township Association;

- One member appointed by the Ohio Municipal League;
- One member appointed by the County Commissioners Association of Ohio.

Organizations with appointments to the committee must notify the Senate President and House Speaker of their appointee in writing by April 2, 2021. As part of the study, the committee also must examine the following issues related to force accounts:

- What highway projects a local political subdivision is capable of completing under the current limits;
- What highway projects a local political subdivision would be capable of completing if the limits were increased;
- The impact on the cost of construction materials resulting from the current limits.

The Committee must submit an informational report with its findings and a summary of the testimony provided to the Committee no later than May 15, 2021. The report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and House of Representatives. The committee dissolves after the submission of the report.

## **BRIDGE INSPECTION**

Revised Code Section: 5543.20

Previous law required bridges to be inspected every year. HB 74 changes this requirement to once every two years, and requires ODOT to develop an inspection schedule. This plan will allow ODOT to align the frequency of inspection with the condition of the bridge. Continuing law allows the board of county commissioners to specify a more frequent schedule if needed.

## **TRANSPORTATION IMPROVEMENT DISTRICTS: MEMBERSHIP**

Revised Code Section: 5540.02

Current law allows a board of county commissioners to create a transportation improvement district (TID). The board, by resolution, determines the structure of the board of trustees of the TID by selecting the standard board structure or an alternative board structure. The standard board structure has 11 voting members and provides appointment authority for county boards of commissioners, the county engineer, municipalities, and townships. Under prior law, the standard board structure included members of the general assembly in whose legislative districts any part of the transportation improvement district is located. These legislative members served in an ex officio capacity as nonvoting members of the board. The Act removes these ex officio legislative appointees from the board.

The alternative board structure has five voting members, all of whom are appointed by the board of county commissioners. Prior law required the Speaker of the House and the President of the Senate each to appoint one nonvoting member. The Act removes the members appointed by the General Assembly.

The Act also provides that the TID board will meet at the time and place designated by the member who has served the most years on the county board of commissioners that created the district.

## **REGIONAL TRANSPORTATION IMPROVEMENT DISTRICTS**

Revised Code Sections: 5595.04, 5709.48, 5709.481, 5709.50

Continuing law allows the governing board of a regional transportation improvement project that was undertaken before March 23, 2018, to create a transportation financing district and declare improvements to parcels within the district to be a public purpose and exempt from taxation. House Bill 74 creates an alternative funding method by allowing the governing board of a RTIP to negotiate and enter into a voluntary agreement with a property owner in a transportation financing district to levy an assessment on the parcel and use the proceeds for the project. The agreement must specify the amount and duration of the assessment. The assessment may not be collected after the dissolution of the transportation project. A board may enter into as many agreements as are necessary or useful for the project. The agreement with the property owner may be amended with the approval of both parties.

The governing board is responsible for certifying the amount of the assessment annually to the property owner and to the county auditor. The county auditor must certify the amount to the county treasurer. The assessment must be collected in the same manner as real property taxes and is subject to the state's lien for unpaid taxes.

An agreement is deemed to be a covenant running with the parcel and is enforceable by the board against subsequent property owners, even if the purchase agreement does not make reference to the assessment.

The new law also provides a formula for the distribution of the proceeds of the regional transportation improvement project fund in the event of the dissolution of the project.

## **COMMERCIAL TRAILER REGISTRATION – ALTERNATE FEES**

Revised Code Sections: 4503.042, 4503.103; Temporary Law Section 755.20

The Act creates a new option for the registration of commercial trailers with the Ohio Department of Public Safety. Beginning January 1, 2022, a trailer that has not been previously registered in Ohio may pay a one-time \$50 state registration fee and receive permanent registration. The registrant must continue to pay local taxes each subsequent year.

The law does not change the current law annual fee of \$25, and it continues the option of permanent registration by paying eight times the annual fee.

The Act requires the Registrar to collect the following information in calendar year 2022:

1. The number of new annual trailer and semitrailer registrations under the new registration tax;
2. The number of new multi-year and permanent trailer and semitrailer registrations under the new registration tax;

3. The number of new trailer and semitrailer registrations that are registered by a person or entity that is located or based in Ohio;
4. The number of new trailer and semitrailer registrations when the trailer or semitrailer was previously registered in another state or is a new registration by a person or entity that is otherwise located or was previously located in another state; and
5. The total number of commercial trailers and semitrailers registered in Ohio.

The Registrar must provide a report with this information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Legislative Service Commission by March 15, 2023.

### **REGIONAL TRANSIT AUTHORITY: EXPANSION OF TERRITORY AND REPEAL OF PROPERTY TAX**

Revised Code Section: 306.322

The Act amends an existing law that establishes procedures for the addition of municipalities or townships to a regional transit authority that levies a property tax in a county with a population of at least 400,000. This process remained in the Revised Code although prior law specified that it could not be used after November 5, 2013. Currently, only the Toledo Area Regional Transportation Authority (TARTA) meets this population threshold and levies a property tax. The process allows a municipal corporation or township to adopt a resolution or ordinance requesting that its territory be added to the regional transit authority and its property tax. A majority of the existing political subdivisions of the transit authority must approve the request by ordinance or resolution in order for the issue to be placed on the ballot of the proposed new territory. The ballot question may propose that the new territory be added for a period of three years or without time limit.

House Bill 74 also creates a new procedure to allow conversion of a property tax financing mechanism to a sales tax when new territory is added to the regional transit authority. The procedure may be used until December 31, 2022. The new territory may be a municipality, township, or county. If a majority of the legislative authorities of the political subdivisions within the existing territory of the transit authority approve by resolution the proposed addition of new territory without a time limit, then the board of trustees of the regional transit authority may adopt a resolution to submit a ballot question to all of the electors in the existing and proposed territory of the transit authority. Voters would be asked to (1) approve the enlargement of the territory of the transit authority, (2) repeal the property tax, and (3) begin a sales tax at the rate specified in the ballot language. The property tax may continue after the sales tax becomes effective only for such time as is necessary to pay principal and interest on outstanding debt of the transit authority. The ballot question must be submitted to voters in the existing boundaries of the transit authority and in the proposed new territory. The proposal must be placed on the ballot at a general election or at a primary election.

## **TRAC FUNDING FOR PASSENGER RAIL**

Revised Code Section: 5512.11

House Bill 74 enacts a new section of the Revised Code that applies to a “qualified county” with a population between 1,100,000 and 1,300,000 in the most recent decennial federal census, and has an existing public passenger commuter rail service operating in the county as of the effective date of the section. Only Cuyahoga County meets these criteria. Under this new law, ODOT must allow applications for the purchase and replacement of rail lines used for public passenger commuter rail service in its Transportation Review Advisory Council (TRAC) process. The language declares that such purchases are to be considered “other statutory highway purposes” under Section 5a of Article XII of the Ohio Constitution, which restricts the use of fees and excise taxes derived from motor vehicles or motor fuel.

## **FIRE ENGINE WEIGHT LIMIT PERMITS**

Revised Code Sections: 5577.02, 5577.045

Prior law exempted fire engines from vehicle weight limits prescribed by ODOT. Under the Act, fire engines or trucks belonging to a municipal, township, or volunteer fire department may operate a two-axle fire engine without a permit on all roadways if it has a front axle maximum weight of 24,000 pounds and a rear axle maximum weight of 33,500 and a minimum wheelbase of fifteen feet. The Act allows the operation of a fire engine with a maximum gross vehicle weight of 86,000 pounds on the interstate highway system and within one road mile of an interstate highway system entrance or exit ramp.

If a fire engine requires a permit, the ODOT or the local authority must issue a five-year permit at no cost to the municipal, township, or volunteer fire department.

## **CATASTROPHIC SNOWFALL PROGRAM**

Temporary Law Section: 755.40.

The Act requires ODOT to establish a Catastrophic Snowfall Program in FY 2022-2023. The purpose of the program is to provide supplemental snow removal aid to counties, municipal corporations, or townships that receive sixteen or more inches of snow in a twenty-four hour period and that request aid under the program. The department must provide snow removal aid to any qualified applicant. The department must establish procedures to administer and implement the program, including:

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