



**H.B. 145**

123rd General Assembly  
(As Introduced)

**Reps. Williams, Young, Callender, Pringle, Clancy, Sullivan**

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**BILL SUMMARY**

- Requires the Director of Environmental Protection to replace the enhanced motor vehicle inspection and maintenance program with a biennial basic program in the Cleveland-Akron and Dayton areas on January 1, 2000, and requires the Director to continue the enhanced program in the Cincinnati area, but authorizes the Director to change the program to a biennial basic program under specified circumstances.
- Replaces the emissions inspection fee with a statewide per gallon excise tax on motor fuel of sixty-five one hundredths of one cent, requires the proceeds to be deposited in the Motor Vehicle Inspection and Maintenance Fund, and specifies that moneys in the fund be used solely to compensate the contractors hired to conduct motor vehicle emissions inspections.
- Makes an appropriation for the purpose of compensating contractors hired to conduct motor vehicle emissions inspections.
- Authorizes the Director of Administrative Services, when an enhanced program is converted to a basic program, to negotiate with the contractor for the enhanced program without seeking proposals from other contractors to operate the basic program; requires the Director of Environmental Protection, pursuant to a release and permit and effective immediately, to modify the existing contract; and requires the Director of Environmental Protection, pursuant to a release and permit, to execute a new contract if the existing contract cannot be modified.
- Revises the requirement that a contract contain a liquidated damages provision for future contracts, requires a contractor to enter into a lease for the provision of real property only if so required by the contract, and

- requires a contract to be reviewed by the Attorney General before being awarded or renewed.
- Changes the waiver limit for all motor vehicles to \$300 and specifies that a waiver is valid for one year and one registration period.
  - Specifies that motor vehicles that are unable to pass an emissions inspection by the subsequent registration period after receiving a one-year waiver cannot be registered in Ohio.
  - Stipulates that a basic program, as well as an enhanced program, is to be operated solely by a contractor, eliminates all provisions authorizing licensed inspection stations to conduct reinspections under a basic program, and eliminates the authority for owners of fleets and governmental entities to self-inspect their vehicles.
  - Specifies that a new motor vehicle is exempt from the motor vehicle inspection and maintenance program for a period of five years regardless of whether there is a change in ownership of the vehicle.
  - Specifies that anyone who knowingly falsifies information concerning the results of a motor vehicle inspection or falsifies an inspection certificate is guilty of falsification, and precludes a contractor from hiring such a person for a basic or enhanced program.
  - Abolishes the Motor Vehicle Inspection and Maintenance Program Legislative Oversight Committee, requires the Director of Environmental Protection to submit annual written reports concerning the motor vehicle inspection and maintenance program to the chairpersons and ranking minority members of the House of Representatives and Senate committees that deal with environmental issues, and requires those committees to review the program annually.
  - Requires the Director to implement and supervise other programs needed in the Cleveland-Akron and Dayton areas, and possibly in the Cincinnati area, for those areas to maintain compliance with the carbon monoxide and ozone standards.
  - Establishes a local air council in the Cleveland-Akron area and the Dayton area, and in the Cincinnati area if it is reclassified as an attainment area, provides for the appointment of members, and requires

each council to submit recommendations to the Director concerning additional compliance programs to be implemented in the appropriate area.

- Requires the Director to evaluate the location of monitors for carbon monoxide and ozone to determine if they provide the state with the most scientifically accurate sampling of air quality.
- Authorizes the Director to request invalidation of air quality monitoring data for a county that has exceeded the standards if the exceedence occurred during a period of abnormal weather conditions or abnormal traffic congestion caused by highway construction.
- Requires the Director to evaluate a motor vehicle emissions remote sensing program and authorizes the Director to conduct a remote sensing pilot project.

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## CONTENT AND OPERATION

### Introduction

The bill contains a number of substantive changes to the statutes governing the motor vehicle inspection and maintenance program. It also recodifies those statutes. While the recodified sections of the bill appear in upper case type, much of the language from the existing statutes is retained and only is in upper case type for recodification purposes. The analysis will discuss only the substantive changes made to the motor vehicle inspection and maintenance statutes.

### Conversion to basic motor vehicle inspection and maintenance program in certain areas; termination of authority for future programs

The bill requires the Director of Environmental Protection, not later than January 1, 2000, to terminate the enhanced motor vehicle inspection and maintenance program, and implement a basic program, in any county that is located in an area classified under the Clean Air Act Amendments as attainment for carbon monoxide and ozone on July 1, 1996, and in which the enhanced program was in operation on that date.<sup>1</sup> Those counties are located in the Cleveland-Akron and Dayton areas. (Sec. 3704.21(A).) It revises the generally unchanged definition of "basic program" to specify that such a program is a biennial inspection program rather than an annual program as in current law (sec. 3704.20(A)) and requires owners of motor vehicles to have their vehicles inspected biennially rather than annually under a basic program (sec. 3704.26(A)(1)). The bill specifies that the commencement date of the biennial basic program must be not later than January 1, 2000 (sec. 3704.23).

The bill then requires the Director to continue to implement the enhanced program in any county that is located in an area classified as nonattainment for carbon monoxide or ozone on July 1, 1996, and in which the enhanced program was in operation on that date, that is, the Cincinnati area. However, it also provides that if such an area is redesignated as attainment for carbon monoxide and ozone and the enhanced program is not necessary for the area to maintain compliance with federal requirements, the Director must terminate the enhanced

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<sup>1</sup> The enhanced program is commonly referred to as E-Check in the counties in which it operates.

program in that area and implement a basic program and any additional compliance measures implemented by the Director under the bill for the county to maintain compliance (see below, "Other compliance programs"). (Sec. 3704.21(B).)

An "opt-in" provision in current law for the establishment of an enhanced program in lieu of a basic program was available to local governments only if specified steps were taken beginning 30 days after the effective date of Am. Sub. S.B. 18 of the 120th General Assembly and completed not later than 127 days after that date. Thus, the window of opportunity to opt into an enhanced program has closed. The bill repeals the statute that established this provision. (Sec. 3704.142, repealed.)

Current law requires the Director to operate a motor vehicle inspection and maintenance program in an area of the state classified as moderate, serious, severe, or extreme nonattainment for carbon monoxide or ozone and to operate a basic or enhanced program included in an air quality maintenance plan or contingency plan in a request for redesignation. The bill repeals this requirement and instead specifically prohibits the Director from implementing an inspection and maintenance program in any area of the state other than the Cleveland-Akron, Dayton, and Cincinnati areas (see **COMMENT 1**). (Secs. 3704.14(B), repealed, and 3704.21(C).)

**Elimination of the inspection fee, imposition of a motor fuel excise tax, and appropriation**

Under current law, the Director of Environmental Protection is required to establish inspection and reinspection fees to be paid by owners of motor vehicles subject to the motor vehicle inspection and maintenance program. The inspection fees are required to be sufficient to provide the compensation required to be paid to a contractor hired to conduct inspections plus the costs of the Environmental Protection Agency (OEPA) in implementing and administering the motor vehicle inspection and maintenance program. The fees may not exceed \$10.50 for a basic program and \$25 for an enhanced program. (Sec. 3704.14(D)(7), repealed.) The current fee for the enhanced program that is operating in 14 counties in the state is \$19.50.

The bill eliminates the authority for an inspection fee and replaces it with a statewide per gallon excise tax on motor fuel (see **COMMENT 2**). Persons required to have their vehicles inspected will no longer be required to pay a fee for the inspection. The bill specifies that the excise tax is established for the purpose of compensating each contractor that has entered into a contract to conduct motor vehicle emissions inspections. The motor fuel excise tax is imposed on all motor

fuel dealers on their receipt of motor fuel within the state at the rate of 65/100 of one cent on each gallon of motor fuel so received. The motor fuel excise tax must be reported, computed, paid, collected, administered, enforced, refunded, and subject to the same exemptions and penalties other motor fuel excise taxes are subject to under the motor fuel tax law. After payment of applicable refunds, the balance of receipts from the excise tax must be credited to the Motor Vehicle Inspection and Maintenance Fund (see below). (Sec. 5735.36.)

The bill appropriates \$17.5 million for fiscal year 2000 and \$35 million for fiscal year 2001 to compensate contractors for conducting inspections. (Section 4.)

### **Motor Vehicle Inspection and Maintenance Fund**

Current law creates the Motor Vehicle Inspection and Maintenance Fund. The moneys in the fund must be used by OEPA solely for administration, supervision, and enforcement of the motor vehicle inspection and maintenance program (sec. 3704.14(I), repealed). The bill retains the fund, but specifies instead that the moneys in it are to be used solely to provide compensation to any contractor that has been hired to conduct motor vehicle emissions inspections. The bill does not provide funding for the OEPA for administration, supervision, and enforcement of the program. (Sec. 3704.30.)

### **Requirements governing contractors**

#### **Renegotiation of contract**

The bill authorizes the Director of Administrative Services, in converting from an enhanced to a basic program, to negotiate with the contractor for the enhanced program without seeking proposals from other contractors to operate the basic program (sec. 3704.24(A)). It requires the Director of Environmental Protection, not later than 60 days after the effective date of the bill and pursuant to a release and permit issued by the Department of Administrative Services, to modify each existing contract with each contractor conducting motor vehicle inspections prior to the effective date of the bill or, if necessary, enter into a new contract with such a contractor so that the contract to conduct motor vehicle emissions inspections conforms to the requirements of the bill and rules adopted by it. (Section 3.) If the Director is unable to modify an existing contract or enter into a new contract, the Director must execute a new contract to conduct motor vehicle emissions inspections as soon as practicable after the bill's effective date. The Director must execute the new contract in accordance with the bill's provisions (see **COMMENT 3**). (Section 3.)

### **Contract provisions regarding liquidated damages**

Law generally unchanged by the bill requires that a contract for an inspection program include a provision allowing reasonable compensation, as determined by the Director, as liquidated damages to the contractor if the program is terminated by law or its operation is discontinued during the term of a contract or renewal, including at least reasonable compensation for the unamortized costs of the buildings, improvements, equipment, parts, tools, services, supplies, and materials used by the contractor in operating the program and the value of the remaining term of the contract to the contractor. Any dispute as to the amount of compensation must be submitted to the Court of Claims. The contractor must remit any compensation received for the unamortized costs of the buildings and improvements to the person with whom the contractor has entered into a lease regarding real property (see below, "**Leases for real property**").

The bill applies this requirement for a liquidated damages provision only to a contract executed prior to the bill's effective date. With regard to a contract executed on or after that date, it authorizes a contract to include a liquidated damages provision, provided that, concerning the remaining term of the contract, the provision may allow reasonable compensation for all or a portion of the value of the remaining term of the contract to the contractor. The bill stipulates that if required by the contract, a contractor must remit any compensation received for unamortized costs of the buildings and improvements to any persons with whom the contractor has entered into a lease regarding real property in proportion to the financial obligations the contractor has under the lease (see below, "**Leases for real property**"). (Sec. 3704.24(F)(2).)

### **Leases for real property**

Under existing law, a potential contractor must include in its proposal specific information concerning the person from whom the potential contractor proposes to lease real property necessary for the operation of the program and a proposed schedule for leasing inspection sites (sec. 3704.14(D)(2)(f) and (g), repealed). A contract that is awarded must include a requirement that the contractor enter into a lease with that person (sec. 3704.14(D)(6)(a), repealed). Current law also contains an affirmative requirement that a contractor enter into one or more assignable and renewable leases with another person for the rental and use of real property in order to fulfill the requirements of state and federal law (sec. 3704.14(E)(2), repealed). It precludes owners, officers, and employees of a contractor submitting a proposal or awarded a contract from having a principal interest in the person identified as a lessor or in any licensed reinspection station (see below, "**Reinspection stations**") (sec. 3704.14(D)(14), repealed).

The bill removes the requirement that a contract require a contractor to enter into a lease for real property and instead stipulates that a contract require a contractor to arrange for the provision of real property (sec. 3704.24(F)(1)). It then provides that a contractor must enter into a lease for real property only if so required under a contract (sec. 3704.25(B)). Correspondingly, the proposal of a potential contractor must contain specified information about any person, rather than the person, from whom the potential contractor proposes to lease real property as well as the potential contractor's proposed schedule for acquiring or leasing inspection sites (sec. 3704.24(B)(6) and (7)). The bill also removes the prohibition against owners, officers, or employees of a contractor having a principal interest in a lessor (sec. 3704.14(D)(14), repealed).

Currently, a contractor must assume, or in accordance with a lease required as discussed above provide for the assumption of, all initial capital investment costs of the inspection program with regard to the initial inspections and reinspections required to be conducted by the contractor and must amortize or in accordance with such a lease provide for the amortization of those costs over the period of the initial contract. The bill instead requires a contractor, if required under the contract, to assume, or in accordance with a lease provide for the assumption of, initial, not *all* initial, capital investment costs of the program with regard to inspections and reinspections required to be conducted by the contractor. The contractor also must amortize those costs or provide for their amortization in accordance with such a lease. (Sec. 3704.24(A).)

### **Other requirements**

Law unchanged by the bill requires the Director of DAS to award an initial contract for a period of operation of not more than ten years. The bill provides that when an enhanced program is converted to a basic program in accordance with the bill's requirements (see above, "**Conversion to basic motor vehicle inspection and maintenance program in certain areas**"), the contract to conduct the basic program must be for a term not to exceed the term remaining on the contract to conduct the enhanced program. Under existing law, the awarding of a contract is subject to Controlling Board approval. The bill also subjects the renewal of a contract to Controlling Board approval and requires a contract to be reviewed in its entirety by the Attorney General before being awarded or renewed. (Sec. 3704.24(E).)

Under law unchanged by the bill, DAS is required to issue and award contracts for inspection programs, but may issue a release and permit to the OEPA. The latter agency, pursuant to the release and permit, may issue and award contracts for those programs. The bill instead provides that the OEPA may award and renew contracts under a release and permit from DAS. (Sec. 3704.24(I).)

### **Motor vehicle inspection procedures**

Current law establishes procedures for the inspection of motor vehicles by contractors hired to conduct inspections. The bill streamlines many of these procedures and alters others (see below, "**One-year waiver requirements**"). The bill's inspection procedures are as follows.

The bill specifies that the owner or operator of a motor vehicle the district of registration of which is or is located in a county that is subject to a basic or enhanced motor vehicle inspection and maintenance program must have the vehicle inspected biennially within 365 days prior to the registration deadline established pursuant to rules adopted by the Registrar of Motor Vehicles. The inspection must be conducted by a contractor in accordance with rules adopted by the Director of Environmental Protection. The owner of the motor vehicle must have it inspected and, if necessary, reinspected only in a county that is subject to the basic or enhanced program, as applicable. A motor vehicle that fails the inspection must be reinspected. (Sec. 3704.26(A)(1).)

If a vehicle required to be inspected passes the inspection, the contractor must give the owner an inspection certificate for the vehicle. Proof that an inspection certificate was issued for a motor vehicle during the previous 12 months must be provided before the Registrar of Motor Vehicles may register the vehicle. (Sec. 3704.26(D).) As in current law, the bill provides for inspections of motor vehicles for which multi-year registration is in effect (sec. 3704.26(A)(2)). It also continues the provision stipulating that inspection is not required upon transfer of ownership or possession and the provision under which the owner of a motor vehicle that is leased to another person may require the lessee to have the vehicle inspected and obtain the inspection certificate on behalf of the owner (sec. 3704.26(B) and (C)).

Under the bill, the contractor must include as part of each inspection a visual anti-tampering inspection that meets the requirements established by the Director in rules. If the visual anti-tampering inspection indicates that any emission control device has been removed, modified, or impaired, the owner must have performed on the vehicle whatever repairs are necessary to pass the visual anti-tampering inspection and to restore the vehicle to its proper condition, including the restoration of any emission control device that was removed, modified, or impaired. The owner then must take the vehicle to a contractor. If the contractor determines that the vehicle has been restored to its proper condition and the vehicle then passes the emissions inspection, the contractor must give the owner an inspection certificate for the vehicle. (Sec. 3704.26(E).)

If a vehicle passes the contractor's visual anti-tampering inspection either with or without repairs and the vehicle then fails the emissions inspection, the owner of the vehicle must have the cost of emissions-related repairs necessary to pass the emissions inspection estimated by a repair facility (see below, "**Emissions-related repairs**"). If the estimated cost of emissions-related repairs does not exceed the waiver limit, which is set at \$300 under the bill, the owner must have the repairs performed on the vehicle. (Secs. 3704.20(H) and 3704.26(F)(1).) If the estimated cost of emissions-related repairs exceeds the waiver limit, the owner must have repairs performed on the vehicle the cost of which must equal at least the waiver limit. The owner then must have the vehicle reinspected by a contractor. (Sec. 3704.26(F)(1).)

If the vehicle passes the reinspection, the contractor must give the owner an inspection certificate for the vehicle (sec. 3704.26(F)(2)). If the vehicle fails the reinspection, and the cost of emissions-related repairs already performed on the vehicle is less than the waiver limit, the owner must have additional repairs costing up to the waiver limit performed on the vehicle in order to enable it to pass another reinspection (sec. 3704.26(F)(3)).

#### **One-year waiver requirements**

If, after emissions-related repairs costing at least the waiver limit have been performed on the vehicle, the vehicle fails the reinspection, the contractor must give the owner an inspection certificate that includes a one-year waiver indicating that the vehicle did not pass the required inspection, but that the owner had emissions-related repairs costing at least the waiver limit performed on the vehicle (sec. 3704.26(F)(4)). The waiver is only valid for one year and authorizes the owner of the motor vehicle to register the vehicle for the current registration period. That waiver cannot be used for the purposes of registering a motor vehicle more than once. Notwithstanding the requirement that a motor vehicle only be inspected biennially, if a motor vehicle that failed to pass an emissions inspection and received a one-year waiver does not pass an emissions inspection prior to the subsequent registration period, the motor vehicle is not permitted to be registered in this state. The motor vehicle remains ineligible for registration until the vehicle passes an emissions inspection. (Sec. 3704.26(F)(5).)

#### **Emissions-related repairs**

Current law stipulates that if a vehicle fails an inspection or fails a reinspection conducted after anti-tampering repairs are performed, the owner must obtain an estimate of the cost of repairs that are necessary for the vehicle to pass another reinspection, including the cost of an engine tune-up. If the cost exceeds the applicable waiver limit, the owner must have an engine tune-up performed on

the vehicle that meets the standards established by the Director by rule as well as any other necessary repairs, the total cost of which equals at least the applicable waiver limit (sec. 3704.14(F)(1), repealed). The bill replaces all references to an engine tune-up with requirements that emissions-related repairs be performed on a vehicle that fails an emissions test and requires the Director's rules to establish standards for those repairs. (Secs. 3704.22(C) and 3704.26(F).)

"Emissions-related repairs" is defined to mean adjustments to, repairs of, or replacement of parts or systems that will restore a vehicle to proper working order or specifications. With regard to a pre-computer controlled vehicle, those parts and systems may include such things as the positive crankcase ventilation system, vacuum hoses, fuel delivery system, and evaporative emissions system. With regard to a vehicle with a computerized engine management system with a high energy ignition system, the examples of parts and systems include instead the air injection reaction system, exhaust gas recirculation system, on-board diagnostic system, and evaporative emissions system. (Sec. 3704.20(E).)

### **Other provisions**

As in existing law, the bill authorizes an owner to perform any required emissions-related repairs on the owner's vehicle. The owner must keep a detailed record of the costs incurred (sec. 3704.26(G)). Similarly, the bill retains a provision stipulating that if a motor vehicle that is required to be inspected is covered by a valid and unexpired emission performance warranty as provided under federal law, the owner must have any repairs necessary for the vehicle to pass the inspection performed under the warranty. Such a vehicle is not eligible for a waiver. (Sec. 3704.26(H).)

### **Reinspection stations**

Under existing law, a motor vehicle that is subject to a basic program must be inspected initially by a contractor. If the motor vehicle fails the inspection, it must be repaired in accordance with specified expenditure limits and then be reinspected. Under current law, the reinspection may be conducted by the contractor or by a licensed reinspection station. The Director is required to issue licenses for reinspection stations for that purpose under the basic program. Current law establishes requirements and procedures governing that licensing as well as enforcement mechanisms governing violations by licensees.

The bill specifies that only a contractor may conduct a reinspection of a failed motor vehicle under the basic or enhanced program (secs. 3704.22(N) and 3704.24(A)). It removes all of the statutory language establishing requirements, procedures, and enforcement mechanisms governing licensed inspection stations

as well as any references to them in the statutes governing the motor vehicle inspection and maintenance program (secs. 3704.14 and 3704.17, repealed).

### **Miscellaneous program provisions**

Current law exempts new motor vehicles from inspection for one year under a basic program and two years under an enhanced program. The bill exempts new motor vehicles from inspection for five years under either program. It then specifies that a new motor vehicle remains exempt during that five-year period regardless of whether the legal title to it is transferred to a different person. At the end of the five-year period, the motor vehicle is subject to inspection regardless of who holds title to it. (Sec. 3704.27(A).)

Law generally unchanged by the bill requires the Director's rules to include a requirement that beginning with the 1994 model year, motor vehicle emissions inspections utilize the on-board diagnostic computer links mandated by the Clean Air Act Amendments. The bill changes this to the 1996 model year. (Sec. 3704.22(C).)

Under current law, the owners of fleets of 25 or more vehicles and governmental entities have the option of self-inspecting their vehicles instead of taking them to a contractor for inspection. The bill removes this self-inspection option. (Sec. 3704.14(G) and (H), repealed.)

Included in the existing list of vehicles that are exempt from inspections are electrically powered and alternatively fueled vehicles, including those equipped to be operated using primarily 100% propane, butane, hydrogen, alcohol, or natural gas as fuel. The bill changes "primarily 100%" to "at least 85%." (Sec. 3704.27(J).)

### **Falsification of inspection results**

The bill requires the Director's rules to include a requirement that procedures be implemented to limit erroneous or fraudulent certification of a motor vehicle as having passed a motor vehicle inspection (sec. 3704.22(P)). It stipulates that anyone who knowingly falsifies information concerning the results of an inspection or knowingly falsifies information required to be contained in an inspection certificate is guilty of falsification. Under the bill, a contractor for a motor vehicle emissions inspection program cannot employ an individual for work or other services related to inspections who has been convicted of or pleaded guilty to such falsification. (Sec. 3704.34.)

### Legislative oversight

Current law creates the Motor Vehicle Inspection and Maintenance Program Legislative Oversight Committee, provides for the appointment of members of the General Assembly to it by the Speaker of the House of Representatives and the President of the Senate, and requires it to monitor the motor vehicle inspection and maintenance program. If at any time the program is terminated, the Committee ceases to exist. The bill abolishes the Committee. (Sec. 3704.14(L), repealed.) It instead requires the Director to submit an annual written report on the administration and operation of the program to the chairpersons and ranking minority members of the committees of the House of Representatives and the Senate that generally deal with environmental issues. It also requires those committees to review the program annually and in doing so to work with the OEPA and the United States Environmental Protection Agency (USEPA). The OEPA must provide to the committees any data, reports, and other information and materials that they request. (Sec. 3704.35.)

### Other compliance programs

The bill provides that if, in addition to a basic inspection program (see above, "Conversion to basic motor vehicle inspection and maintenance program in certain areas"), other programs are needed in the counties in the Cleveland-Akron and Dayton areas, and in the Cincinnati area if it converts to a basic program, in order for the counties to maintain compliance with the national ambient air quality standards for carbon monoxide and ozone, the Director must implement and supervise those programs. They may include at least a program requiring the use of fuel other than conventional gasoline and a gas cap pressurization testing program. Prior to selecting a program or programs for an area, the Director must consider the recommendations submitted by the appropriate local air council established under the bill (see below, "Local air councils"). However, failure to do so is not grounds for termination of a program. The bill requires the Director to adopt any necessary rules for these purposes. (Sec. 3704.36.)

### Local air councils

The bill establishes in each attainment area in Ohio a local air council to submit to the Director recommendations concerning additional compliance programs to be implemented in the area (see above, "Other compliance programs") (sec. 3704.37(B) and (D)). It defines "attainment area" as an area classified as attainment for carbon monoxide and ozone before, on, or after the bill's effective date and in which an enhanced motor vehicle inspection and maintenance program was in operation on July 1, 1996, that is, the Cleveland-

Akron and Dayton areas and, if it is reclassified as attainment, the Cincinnati area (sec. 3704.37(A)(3)). "Additional compliance program" is defined as a program that, together with a basic motor vehicle inspection and maintenance program, will assist counties that are located in an attainment area in maintaining compliance with the national ambient air quality standards for carbon monoxide and ozone (sec. 3704.37(A)(1)).

Each council is to consist of the following representatives from each county in the applicable attainment area as identified by the Director: (1) one county commissioner appointed by the board of county commissioners; if the board fails to appoint a member by the applicable appointment date, the president of the board must serve, (2) one township trustee appointed by a majority of the township trustees of all of the townships in the county; if they fail to make an appointment by the applicable appointment date, the president of the board of township trustees of the township having the largest population in the county must serve, (3) one member of the legislative authority of the municipal corporation having the largest population in the county, appointed by a majority of the legislative authority; if the legislative authority fails to appoint a member by the applicable appointment date, the chief executive officer of the municipal corporation must serve, and (4) one chief executive officer of a municipal corporation other than that of the municipal corporation having the largest population in the county, appointed by a majority of the chief executive officers of all municipal corporations in the county other than that of the largest; if they fail to make an appointment by the applicable appointment date, the chief executive officer of the municipal corporation having the second largest population in the county must serve (sec. 3704.37(B)).

The bill defines "appointment date" for these purposes to mean, with regard to a local air council in the Cleveland-Akron and Dayton areas, not later than 30 days after the bill's effective date and, with regard to the Cincinnati area, not later than 30 days after the area is designated as attainment and the Director determines that the enhanced program is not necessary for the area to maintain compliance with the Clean Air Act Amendments (sec. 3704.37(A)(2)).

Vacancies must be filled in the same manner as original appointments. Serving as a member of a council does not constitute holding a public office or position of employment under Ohio law and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. (Sec. 3704.37(B).)

Under the bill, an appointing authority immediately must submit the name of the appointee to the president of the board of county commissioners of the county having the largest population in the attainment area. The board's president must convene the first meeting of the council not later than 45 days after the bill's

effective date in the case of the Cleveland-Akron and Dayton areas or, in the case of the Cincinnati area, not later than 45 days after the area is designated as attainment and the Director determines that an enhanced program is not necessary for the area to maintain compliance. At the first meeting, the members must select a chairperson, may select other officers and committees, and may take other action needed to organize the council and conduct its business in a thorough and efficient manner.

The bill requires a council to meet as needed to fulfill its duties. It specifies that a majority of the members constitute a quorum. An affirmative vote of a majority of all members is required for the council to act. A council is subject to the open meetings statute. Under the bill, the OEPA and the Departments of Development and Transportation must provide technical assistance to a council, including information on the cost, feasibility, and impacts of additional compliance programs. The local air pollution control authority in an attainment area and each metropolitan planning organization having jurisdiction in all or part of an attainment area also must provide technical assistance to the council in that attainment area. (Sec. 3704.37(C).)

Not later than March 1, 2000, in the Cleveland-Akron and Dayton areas or, in the Cincinnati area, not later than five months after the area is designated as attainment and the Director determines that the enhanced program is not necessary for the area to maintain compliance, a council must submit its recommendations to the Director. Prior to doing so, it must hold one public meeting in each county in its attainment area to receive public comments on the proposed recommendations.

Not less than two weeks before holding a public meeting in a county, the appropriate council must publish at least one public notice of the meeting in at least one newspaper of general circulation in the county and deliver written notice of the meeting to the president of the board of county commissioners, the legislative authority and chief executive officer of each municipal corporation, and the clerk of each township. The county, township, or municipal corporation represented by the chairperson of the council must pay the costs of publishing the public notice and delivering the written notice and may request reimbursement of those costs from the Director who must reimburse them upon receipt of such a request and documentation of the costs.

Following the close of all of the required public meetings, a council may revise its recommendations. A council must submit its final recommendations to the Director by the deadline specified above. (Sec. 3704.37(D).)

### **Air quality monitoring**

The bill requires ambient air quality monitors to be located in a manner that gives a fair and accurate sampling of air quality within any attainment or nonattainment area in Ohio in which air quality monitoring is required to be conducted under the Clean Air Act Amendments (sec. 3704.38(B)). The Director, in conjunction with the appropriate local air pollution control authorities and metropolitan planning organizations, must evaluate the location of such monitors for carbon monoxide and ozone in each area of the state in which they are present to determine if the location of each monitor provides the state with the most scientifically accurate sampling of the air quality within the applicable attainment or nonattainment area. If the Director determines that the location of an individual monitor results in unscientific sampling of air quality within a given area, the Director must take appropriate steps to move the monitor to a location that would be more conducive to the most scientifically accurate evaluation of air quality in that area. (Sec. 3704.38(C).)

The bill authorizes the Director to request the USEPA to invalidate air quality monitoring data for a county that has exceeded national ambient air quality standards for a pollutant if the episode in which the standards were exceeded occurred during a period of an abnormally high level of traffic congestion caused by highway construction or during abnormal weather conditions such as a prolonged drought or excessively high temperatures. The Director must make such a request if requested to do so by that county's board of county commissioners. (Sec. 3704.40(A).)

### **Remote sensing program**

Under the bill, the Director must evaluate the feasibility, utility, and cost effectiveness of implementing a motor vehicle emissions remote sensing program in Ohio. In order to facilitate the evaluation, the Director may implement and supervise a pilot program in an area of the state in which a basic or an enhanced motor vehicle inspection and maintenance program is in operation. Not later than 18 months after the bill's effective date, the Director must submit to the Governor, President of the Senate, and Speaker of the House of Representatives a report discussing the Director's findings and conclusions. (Sec. 3704.39.)

### **Emissions reductions credits**

The bill requires the Director to petition the USEPA for air emissions reductions credits for any pollution prevention program or any state or local emissions reductions program targeted at mobile or stationary sources that is implemented in Ohio (sec. 3704.40(B)).

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## COMMENT

### Potential constitutional conflicts

#### 1. Uniform operation of laws

Because the bill restricts the ability of the Ohio Environmental Protection Agency to expand the motor vehicle inspection and maintenance program beyond the 14 counties where it currently operates, it may be seen as violating the uniformity requirements of Article II, § 26 of the Ohio Constitution. Article II, § 1 provides, "The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives\*\*\*." The legislative power that is granted authorizes the General Assembly to enact statutes having any scope, from general to special or local. Article II, § 26 broadly and comprehensively limits this authority, however. *Hixson v. Burson* (1896), 54 Ohio St. 470, 479-480. It provides, "All laws, of a general nature, shall have uniform operation throughout the state\*\*\*." The uniform operation requirement of Article II, § 26 intends "to restrict local and special legislation to such subjects as are in their nature not general, so as to compel as near as possible, uniformity of laws throughout the state." *Hixson, supra* at 482.

"The constitutionality of an act, under \* \* \* [the uniform operation requirement of Article II, § 26], is determined by the *nature of its subject matter*, its operation and effect, and *not by its form only*." *Id.*, at 479 (emphasis added). "[E]very subject of legislation is either of a general nature on the one hand, or local or special on the other. It can not be in its nature both general and special, because the two are inconsistent." *Id.*, at 481. A suggested test by which a general subject is to be distinguished from a special or local subject is: "[I]f the subject does or may exist in, and affect the people of every county, in the state, it is of a general nature. On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special. A subject matter of such general nature can be regulated and legislated upon by general laws having a uniform operation throughout the state, and a subject matter which cannot exist in, or affect the people of every county, can not be regulated by general laws having a uniform operation throughout the state, because a law can not operate where there can be no subject matter to be operated upon." *Id.* The "best evidence that a subject matter can be covered and provided for by a general law having uniform operation, is the fact that \* \* \* [a] general law [previously] has been passed upon that subject-matter." *State, ex rel. Wirsch, v. Spellmire* (1902), 67 Ohio St. 77, 83.

If the subject matter of a law "is of a general nature, the constitution requires that *all* laws--not *some* laws--on that subject shall have a uniform

operation throughout the state." *Hixson, supra* (emphasis in original). "As a subject-matter which is general can and must be legislated upon by general laws having a uniform operation throughout the state, it follows \* \* \* that every subject-matter which can reasonably be covered and provided for by a general law, can have no special or local legislation as to it, or any of its parts." *Spellmire, supra* at 82. There is "no exception" to this principle. *Hixson, supra* at 482.

## 2. *Use of moneys derived from a motor fuel excise tax*

Any excise tax on motor vehicle fuel is subject to Article XII, § 5a of the Ohio Constitution. In order to be constitutional, the excise tax established by the bill must satisfy the terms of Article XII, § 5a, which provides:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

The purpose of the excise tax established by the bill is to compensate contractors hired to conduct motor vehicle inspections. It is not certain whether this purpose adequately satisfies Article XII, § 5a.

## 3. *Impairment of contracts*

Article II, § 28 of the Ohio Constitution prohibits the General Assembly from enacting laws that impair the obligations of contracts. Under the contracts clause, a law cannot be applied to contracts entered into before the enactment of the law if it changes the contract by eliminating or reducing the obligations of the contract. The bill requires the Director of Environmental Protection to modify existing contracts between the Ohio Environmental Protection Agency and emissions testing companies or enter into new contracts. Further, the bill alters the law under which the modified or new contracts must be negotiated, in effect resulting in the changing of the obligations of those existing contracts. Thus, the bill may violate Article II, § 28.

In determining whether a law impairs a contract, Ohio courts apply a three-step balancing test. The first step is to determine whether the law substantially impairs the contractual relationship. If a substantial impairment is found, the second step is to determine whether the state has a significant and legitimate public purpose for the legislation. And if the state has a significant and legitimate public purpose, the last step is to determine whether adjustments of the rights and responsibilities of the contracting parties is of a character appropriate to the public purpose justifying the legislation's adoption. *Smith v. Denihan* (1990), 63 Ohio App.3d 559, 571. A law substantially impairing an obligation of a contract may be constitutional if it is reasonable and necessary to serve an important public purpose. *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 79.

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## HISTORY

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Introduced	02-08-99	p. 169

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