

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: H.B. 230

DATE: April 2, 1997

STATUS: As Introduced

SPONSOR: Rep. Reid

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: Changes to the enhanced vehicle emissions testing program (E-Check)

State Fiscal Highlights

STATE FUND	FY 1997	FY 1998	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential significant increase	- 0 -
Environmental Protection Agency – Fund 602 - annual			
Revenues	- 0 -	Potential loss	Potential loss
Expenditures	- 0 -	Potential decrease	Potential decrease
Environmental Protection Agency (possibly GRF) - annual			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential decrease	Potential decrease

- If one or both of the ozone attainment areas in the state opt out of E-Check, an expenditure increase to the General Revenue Fund (GRF) could result due to the potential breaking or altering of the state's contract with the company performing the testing. If the eligible areas opt out of the program the expenditure increase would depend on a settlement, which may include all or part of the contracts totaling \$235 million minus money received by the contractor to date, plus any additional components of a settlement.
- If one or both of the ozone attainment areas in the state opt out of E-Check, OEPA's Fund 602, which receives a portion of the testing fee charged by Envirotest (an average of approximately \$1.73 out of the \$19.50), may incur a potential revenue loss and subsequent expenditure decrease of about the same amount. Additionally, a revenue loss would occur due to the provision that exempts all vehicles that are two years old and newer from the testing requirements.
- If one or both of the ozone attainment areas in the state opt out of E-Check, OEPA may be required to administer an alternative compliance strategy that is approved by the attainment area's advisory council. The bill does not contain a funding mechanism that details how OEPA would pay for administering one of the alternative compliance strategies.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1997	FY 1998	FUTURE YEARS
Certain counties, municipalities and townships			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase	Potential increase

- If one or both of the ozone attainment areas in the state fulfill the requirements of opting out of E-Check, local governments in the Cleveland and Dayton areas may be required to assist or completely fund the activities of the clean air advisory council in their area.

Detailed Fiscal Analysis

The bill makes several changes to the state of Ohio's enhanced vehicle testing program (E-Check) in the counties of Clark, Cuyahoga, Geauga, Greene, Lake, Lorain, Medina, Montgomery, Portage, and Summit.

Vehicle Testing Exemption

Under current law, cars that are two years old or newer are exempt from the testing requirements. However, when receiving the vehicle's initial title or if the legal title changes owners within the two-year time period, the vehicle must have an emissions test. Under this bill, the two-year exemption applies, regardless if the vehicle has gone through a change of ownership. Because this provision would decrease the number of vehicles tested, OEPA will experience a loss of revenue in Fund 602, which receives approximately \$1.73 per test (an average across the two attainment areas) to administer the E-Check program. It is also possible that this reduction in the number of vehicles tested will change the amount of revenue that Envirotest expects to receive. Because the state entered into a ten year contract with Envirotest which contained revenue estimates based on the rules of the program, Envirotest may attempt to recover the amount of money that is lost as a result of the exemption. Therefore, the state may incur a GRF expenditure increase if required to compensate Envirotest for the lost revenue.

Clean Air Advisory Councils

The bill creates the Northeast Clean Air Advisory Council and the West Clean Air Advisory Council. Each advisory council shall consist of seven members from each of the counties represented in the advisory council. To assist the advisory councils in performing their duties, OEPA, the Department of Development and the Department of Transportation shall provide technical assistance, including information on cost, feasibility and impacts of alternative compliance strategies. Additionally, applicable local air pollution control authorities and metropolitan planning organizations shall provide technical assistance to the advisory councils.

The relevant metropolitan planning organization shall consult with each political subdivision represented on the metropolitan planning organization to submit to the advisory council a confirmation or modification of the emissions growth projection, prepared by the metropolitan planning organization for state and federal law, which impacts the National Ambient Air Quality Standards under the Clean Air Act Amendments of 1990 (CAA). The advisory councils shall develop a final list of alternative compliance strategies for maintaining compliance with the National Ambient Air Quality Standards for ozone and carbon monoxide, in lieu of the operation of E-Check. The advisory councils shall evaluate any technical or other difficulties in implementing the strategy and shall quantify the economic cost and effect on air emissions, the creation and preservation of jobs, and public health in the attainment area. At this point, each advisory council shall hold at least one public meeting in the appropriate attainment area to receive public comments in the proposed compliance strategies. The advisory councils shall publish notice concerning the meeting in the newspaper of general circulation in the county, not less than two weeks prior to the meeting. Before finalizing this list, the advisory councils shall submit the list to the director of OEPA. The director shall certify those alternatives that will most likely be approved by the USEPA, and return the list to the advisory councils. The advisory council shall adopt a list of alternative compliance strategies certified by the director,

and deliver that list to the legislative authority in each county, municipal corporation and township, the executive officer in each municipal corporation, the appropriate metropolitan planning organization and local air pollution control agency, and OEPA.

The members of the advisory council that represent a particular county shall hold at least one public hearing for the purpose of receiving public comments on the alternative compliance strategies developed by the advisory council. The advisory councils shall publish notice concerning the meeting in the newspaper of general circulation in the county, not less than two weeks prior to the meeting. The legislative authority receiving a final list of alternative compliance strategies may adopt a resolution approving one of the alternative compliance strategies on the list, in lieu of continued operation of the E-Check program. If the legislative authority fails to adopt one of the alternatives, it is presumed that the continued operation of the E-Check program is the preferred strategy to maintain compliance with CAA.

Advisory Council Approval of Alternative Compliance Strategies

The advisory councils shall declare that an alternate compliance strategy has been approved, in lieu of the continued operation of the E-Check program, if all of the following have approved the same alternative compliance strategy: (1) the legislative authorities of a majority of the counties in the attainment area; (2) the legislative authorities of a combination of municipal corporations and townships with a combined population of at least fifty percent of the attainment area's total population; and (3) in a majority of the counties in the attainment area, the legislative authority of the municipal corporation having the largest population within the borders of the county. The advisory council shall notify OEPA, in writing, that an alternative compliance strategy, in lieu of continuation of the E-Check program, has been approved.

If one of the legislative authorities has approved a different alternative, the advisory council shall inform the legislative authorities of all counties, municipalities and townships in the attainment area that they may change their selected alternative by adopting a second resolution. The legislative authority may adopt a second resolution and send the resolution to the appropriate advisory council. If all legislative authorities have approved the same alternative, in lieu of the continuation of the E-Check program, the advisory council shall notify OEPA in writing and the director shall terminate the E-Check program in the attainment areas as quickly as practicable. If the director does not receive notice from council the E-Check program shall continue operation.

Fiscal Impact of the Opt-Out Provision

The fiscal impact of this bill is incurred if one or both of the ozone attainment areas opts out of the E-Check program. State fiscal impacts may occur in three ways: (1) potential expenditure increase to the state for breaking their contracts with Envirotec Corporation; (2) potential revenue loss and associated expenditure decrease, stemming from revenues deposited into and expended from EPA's Fund 602, which houses EPA's share of the testing fee charged by Envirotec; and (3) a potential expenditure increase to EPA, for administering the alternative compliance strategy in lieu of continuation of the E-Check program, without a dedicated revenue source to allay the expenditures. Local governments in the two attainment areas may incur fiscal impacts, if they are responsible for funding the activities of the two councils.

The Contract with Envirotest

On October 24, 1994, the State Controlling Board approved two contracts with Envirotest for implementation of the state's enhanced vehicle emissions testing program for Zone 1 (Geauga, Lake, Lorain, Medina, Portage, and Summit counties) and Zone 2 (Clark, Greene and Montgomery). Additionally, on April 25, 1995, Controlling Board approved a contract extension with Envirotest to implement an enhanced vehicle emissions testing program in Cuyahoga County (Envirotest was administering Cuyahoga County's basic vehicle emissions program). All three of these contracts encompassed a 10 year time period, in which Envirotest estimated the total value of the contract over the 10 year period, based upon a \$19.50 testing fee, to be the following:

County/Zone	Envirotest's Estimated Total Receipts over the Ten Year Period
Zone 1	\$ 92,145,464
Zone 2	\$ 60,065,975
Cuyahoga County	\$ 83,216,840
Total	\$ 235,428,279

Emissions Testing Contracts in Other States

To give an idea of what has occurred in other states when enhanced vehicle emissions test programs have been repealed, the following details the experiences of Maine and Pennsylvania.

Maine

Maine began their enhanced I&M program in July 1994. The state signed a seven-year contract with Systems Control to implement their program. The program was in full operation until September 1994, when it became a voluntary program with phased-in vehicle testing. Essentially, motorists could wait until the following March to get their vehicle tested. As the volunteer program continued, Systems Control's revenues steadily decreased, causing them to shut down testing centers. In May 1995, the program was repealed. According to the Section Chief for Mobile Sources in Maine's Department of Environmental Protection, the contract with Systems Control had been signed for approximately \$40 million, of which the company had already spent \$20 million. Systems Control sued the state. As of this writing, one judgment has been returned in favor of the state (Systems Control would get nothing). Apparently, a clause in the request for proposal stated that if the Legislature repealed the program, the state was not liable. However, this particular clause did not make its way into the contract. But in the ruling, the judge declared that Systems Control had adequate knowledge that this clause was in the RFP, therefore, the state was not financially liable for repealing the program

Pennsylvania

Pennsylvania signed a seven-year contract with Envirotest to perform the enhanced I&M program in 1995. The contract was subsequently repealed by the state legislature before the program started. Pennsylvania, up until that time, had been running a decentralized program. This decentralized program is still being run under a consent decree by the USEPA (i.e., USEPA

is forcing Pennsylvania to implement the program). Pennsylvania is under a different set of circumstances than Ohio, with the Philadelphia area being designated as a severe ozone attainment area, mandating an enhanced program under CAAA. According to a spokesperson from the Office of Chief Counsel in the Pennsylvania Department of Transportation, when the Legislature repealed the program, Envirotest sued in excess of \$350 million. This included not only the cost of the estimated receipts from the program, but also items such as loss of goodwill and damage to reputation. The suit never went to court. It was settled for \$142 million plus a possible additional amount of up to \$15 million related to the construction of testing facilities.

Fiscal Impact of Breaking the Contract

If one or both of the ozone attainment areas opts out of the E-Check program, then the contract between the state and Envirotest for the three areas above would be void, because the E-Check program would no longer be implemented. In all three of the contracts described above, language states that “in the event that the EPA fails to cure a default..., the EPA agrees to reimburse the contractor for any actual and direct losses incurred as determined by a court of competent jurisdiction.” According to spokespersons from the EPA and the Ohio Attorney General’s (AG) office, if all eligible attainment areas choose to opt out of the E-Check program, loss of these contracts may result in damages against the state totaling hundreds of millions of dollars. Presumably, this cost includes the \$235 million in total receipts minus the amount already received by Envirotest for implementing the first six months of this program, plus additional punitive damages that may ensue as a result of civil litigation. It is presumed that if the state was required to pay a settlement, the money would come from GRF. However, if a basic emission testing program were an option chosen by the attainment areas, the contracts with Envirotest would likely be changed to reflect this and could diminish or eliminate any potential financial loss to the state.

Impact on EPA’s Fund 602 - Motor Vehicle Inspection and Maintenance

Under current law, EPA’s Fund 602 - Motor Vehicle Inspection and Maintenance receives approximately \$1.73 (an average across the two attainment areas) of the \$19.50 testing fee to administer the E-Check program. If one or more of the attainment areas fulfills the requirements of opting out of the E-Check program, this fund will experience a loss in revenues as the number of motorists paying the testing fee decreases.

Impact on EPA Administering an Alternate Compliance Strategy

According to the EPA spokesperson, if one or more of the attainment areas fulfill the requirements of opting out of the E-Check program, it is possible that EPA will be responsible for administering whatever alternative compliance strategy is approved. If a dedicated revenue source is not provided (presumably, providing a revenue source would be accomplished through an act of the Legislature), it is unclear how EPA would pay for administering a program created to implement the alternative compliance strategy approved by the advisory councils. Therefore, EPA may incur a potential expenditure increase, without a corresponding revenue gain.

Local Governmental Fiscal Impacts

Local governments may potentially experience an expenditure increase, because it is unclear how the activities of the advisory councils are funded. The advisory councils are responsible for developing a final list of alternatives for maintaining compliance with the National Ambient Air Quality Standards for ozone and carbon monoxide, in lieu of the operation of E-Check. Their final product must evaluate any technical or other difficulties in implementing the strategy and quantify the economic cost and effect on air emissions, the creation and preservation of jobs, and public health in the attainment area. Even though EPA and the relevant local air pollution agencies and metropolitan planning organizations will provide technical assistance to the advisory councils, it is assumed that the councils will incur expenditures in providing the required information as well as through holding public meetings as required under the bill. The bill is silent as to how these councils will be funded. Therefore, LBO assumes the local governments that are included in the attainment areas, may take on the expenditures related to the activities of the advisory councils.

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