

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: H.B. 145

DATE: March 11, 1999

STATUS: As Introduced

SPONSOR: Rep. Williams

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: Repeals the enhanced motor vehicle inspection and maintenance program and makes changes to the basic motor vehicle inspection and maintenance program.

State Fiscal Highlights

STATE FUND	FY 1999	FY 2000	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	-0-	Potential increase	Potential increase
Ohio EPA Fund 602			
Revenues	-0-	Up to \$1.7 million loss, with \$17.5 million gain	Up to \$3.4 million loss, with \$35 million gain
Expenditures	- 0 -	\$17.5 million increase	\$35 million increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- Elimination of Testing Fee**

The bill stipulates that the E-Check testing fee will be removed no later than January 1, 2000. (Currently the fee for E-Check is \$19.50 per vehicle and EPA deposits approximately \$1.65 per vehicle in Fund 602 for its administrative costs.) This will result in a loss of approximately \$3.4 million per year into Fund 602. Additional GRF money may be needed to pay for activities that would be funded out of Fund 602.
- Contractual Changes from the Current Program**

Because this bill makes changes to the E-Check program, including the elimination of the enhanced test, which may be interpreted as breaking the existing contract with the current testing companies, the state may be sued. This may result in potential expenditures that may include an amount around \$300 million (the potential revenue expected for the testing companies for implementing E-Check through 2005, and the amount issued in revenue bonds for the purchase of land, construction of testing centers and purchase of equipment), plus potential additional punitive damages that may ensue as a result of civil litigation.



- Administration and Implementation of Other Air Pollution Control Programs**

Depending on what type of alternative air pollution control strategy is implemented in conjunction with the biennial basic program, there are potential GRF expenditures with regard to administration, especially with regard to administering a program that requires extensive agency oversight such as remote sensing. Examples of alternative pollution control technologies include remote sensing, gas cap pressurization, a lower RVP gasoline or reformulated gasoline (RFG) as additional compliance options.
- Statewide Excise Tax on Motor Vehicle Fuel; and Appropriation**

An excise tax will be 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. After payment of applicable refunds, the balance of receipts from the excise tax will be credited to the Motor Vehicle Inspection and Maintenance Fund 602. This is expected to generate approximately \$35 million each year. This bill then appropriates \$17.5 million from Fund 602 for FY2000 and and \$35 million for FY2001 to compensate the contractors for conducting E-Check inspections.
- Government and Fleet Vehicles**

Government owned vehicles and fleets with more than 25 vehicles are no longer exempt from E-Check. Because the E-Check test fee is eliminated, the only cost will be repairs to the vehicles if they fail the inspection.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties, Townships and Municipalities			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase	Potential increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- This bill creates Local Air Councils in the Cleveland, Akron, and Dayton areas and in Cincinnati if it is reclassified as attainment. The Councils consist of one county commissioner, one township trustee, one member of the legislative authority of the municipal corporation having the largest population in the county, and one chief executive officer of a municipal corporation. These Councils must meet and devise recommendations concerning additional compliance programs to be implemented in their areas. Considerable time may be required to devise these recommendations.
- Government owned vehicles and fleet vehicles are no longer exempt from E-Check. Because the E-Check test fee is eliminated, it will only cost local governments to repair the vehicles if they fail the inspection.
- County, township and/or municipal owned vehicles may experience a slight increase in annual gas costs, as a result of the 65/100 of one cent per gallon raise in the motor fuel tax. Exact increases will depend upon the amount of fuel consumed.
- This analysis assumes that the alternative compliance strategy that is implemented will be approved by the USEPA. However, if sanctions are levied on the state, if a new business

wanted to open or an existing business wants to modify its operations, it must find another source that would reduce its emissions by double the amount that the new or modified business would emit. In addition, highway dollars may be lost for local projects.

Detailed Fiscal Analysis

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

The emissions testing program is commonly referred to as E-Check in the counties in which it operates. Envirotest was selected as the contractor to operate an enhanced E-Check program for Zone 1 (Geauga, Lake, Lorain, Medina, Portage, and Summit counties) and Zone 2 (Clark, Greene and Montgomery counties). Additionally, on April 25, 1995, Controlling Board approved a contract extension with Envirotest to implement an enhanced E-Check 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 from January 1996 through December 2005, based upon a \$19.50 testing fee, to be \$235,428,279. On average, Envirotest receives \$17.85 per vehicle to perform the E-Check test. Specifically, Envirotest receives \$16.98 per vehicle in the Akron area, \$18.01 per vehicle in the Cleveland area, \$18.93 per vehicle in the Dayton area.

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. Presumably, Envirotest will continue to operate the basic E-Check test in the Cleveland, Akron and Dayton areas.

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. MARTA Technologies is the contractor performing E-Check inspections in the Cincinnati area. If Cincinnati 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 program in that area and implement a basic program and any additional compliance measures under the bill for the county to maintain compliance with the Federal Clean Air Act. Until Cincinnati is redesignated as attainment, MARTA Technologies will continue to operate the basic and enhanced E-Check test in the Cincinnati area.

Assumption

If the USEPA would not approve the revised State Implementation Plan that incorporates the elimination of the enhanced E-Check tests and the adoption of alternative pollution control strategies required by this bill, sanctions may be levied on the state. These sanctions involve: (1) the barring or approval of projects or awarding grants for transportation projects, unless they are for safety projects, mass transit, and certain other measures that would improve air quality and would not encourage single-occupancy vehicle capacity; and (2) the requirement for new industries or industry modifications in the area to obtain offsetting emissions reductions from

other pollution sources at a ration of at least 2-to-1. This means that if a new business wanted to open or an existing business wants to modify its operations, it must find another source that would reduce its emissions by double the amount that the new or modified business would emit.

For the purposes of this fiscal analysis, it is assumed that the revised State Implementation Plan that incorporates the alternative pollution control strategies required by this bill will be approved by the USEPA.

Renegotiations of contract

To convert from an enhanced to a basic E-Check program, this bill authorizes the Department of Administrative Services to negotiate with the contractor for the enhanced program without seeking proposals from other contractors to operate the basic program. It requires the Ohio EPA 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. If the Ohio EPA is unable to modify an existing contract or enter into a new contract, the Ohio EPA must execute a new contract to conduct motor vehicle emissions inspections as soon as practicable after the bill's effective date.

This bill makes changes to the E-Check program that may break certain contract agreements, and it requires renegotiations or even new contracts. These contractual changes may lead the testing company to construe that these provisions represent a breach of the current contract. Language in the current contract 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." Presumably, this cost could include an amount up to \$234 million, the potential revenue to be received by the testing companies if E-Check were to continue through 2005, plus additional punitive damages that may ensue as a result of civil litigation. Additionally, revenue bonds in the amount of \$64,380,000 were issued by the Ohio Air Quality Development Authority for the purchase of land, construction of testing centers and purchase of equipment. These bonds, issued at 8.1 percent with a final maturity at 2005, have no direct, legal link to the State and it is not liable for the debt. It is unclear, though, how the revenue bonds would be paid back by the testing companies if E-Check is terminated. It may be assumed that the testing companies would seek to recover the cost of paying back the bonds through the terms of a lawsuit.

If it is determined that the state should pay off the contract and the revenue bonds, this could potentially involve an amount around \$300 million. It is presumed that if the state were required to pay a settlement, the money would come from GRF.

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

The current fee for the enhanced E-Check inspection in the state is \$19.50. On average, Ohio EPA currently receives \$1.65 per vehicle tested. Specifically, Ohio EPA receives \$2.52 per vehicle in the Akron area, \$1.49 per vehicle in the Cleveland area, \$.57 per vehicle in the Dayton area, and \$.51 per vehicle in the Cincinnati area. Similarly, the E-Check testing companies currently receive \$17.85 per vehicle on average. Specifically, Envirotest receives \$16.98 per

vehicle in the Akron area, \$18.01 per vehicle in the Cleveland area, \$18.93 per vehicle in the Dayton area, and MARTA Technologies receives \$18.99 per vehicle in the Cincinnati area.

The bill eliminates the authority for an inspection fee and replaces it with a statewide per gallon excise tax on motor fuel. 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. After payment of applicable refunds, the balance of receipts from the excise tax will be credited to the Motor Vehicle Inspection and Maintenance Fund 602 (see below).

The bill appropriates \$17.5 million in fiscal year 2000 (after January 1, 2000), and \$35 million for fiscal year 2001 to compensate contractors for conducting inspections. This appropriation will come from the motor fuel tax revenues deposited into Fund 602.

Motor Vehicle Inspection and Maintenance Fund 602

Current law creates the Motor Vehicle Inspection and Maintenance Fund 602 that is used by OEPA solely for administration, supervision, and enforcement of the motor vehicle inspection and maintenance program. The bill retains Fund 602, 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. Because the E-Check program will still be operating as a basic testing program in Cleveland, Akron and Dayton areas, and enhanced testing program in the Cincinnati area, Ohio EPA administration, supervision and enforcement activities will still be necessary whether or not it is funded through Fund 602. It is possible that the Ohio EPA will pursue GRF to make up the difference.

Motor vehicle inspection procedures

One-year waiver requirements

If, after emissions-related repairs costing at least the waiver limit of \$300 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. 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 emission inspection. Because the E-Check inspection fee has been eliminated under this bill, this provision has no fiscal impact on the State.

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 bill specifies that only a contractor may conduct a reinspection of a failed motor vehicle under the basic or enhanced program. 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.

New Vehicle Exemption

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. Because the inspection fee will be removed under this bill, this provision has no fiscal impact on the State.

Fleet Vehicles

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. Although this bill removes the inspection fee, so it will not cost anything to have these fleet or government vehicles inspected under E-Check, it may increase the repair costs if the E-Check inspections find emissions problems. Therefore, this provision could potentially cost the vehicle owners up to the waiver limit of \$300 per year, per vehicle.

Alternative Fuels

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%." This is not expected to have a fiscal impact on the State, as this bill removes the E-Check inspection fee.

Falsification of inspection results

The bill requires the Ohio EPA'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. It stipulates that anyone who knowingly falsifies information concerning the results of an inspection or knowingly falsifies information that is 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. This is not expected to have a fiscal impact on the State.

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. It instead requires the Ohio EPA 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 Ohio EPA and the USEPA. The Ohio EPA must provide to the committees any data, reports, and other information and materials that they request. This may increase expenditures to Ohio EPA to coordinate the annual reporting requirements.

Other compliance programs

The bill provides that if, in addition to a basic inspection program, 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 Ohio EPA 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 Ohio EPA must consider the recommendations submitted by the appropriate local air council established under the bill. However, failure to do so is not grounds for termination of a program. The bill requires the Ohio EPA to adopt any necessary rules for these purposes.

The bill specifies that additional air pollution control programs be implemented in the areas of the state in which a biennial basic program is operating. The bill allows, but does not require, programs such as alternative fuels or gas cap pressurization to be utilized as additional pollution control programs. Because no specific programs are required under the bill, it is difficult to estimate any potential cost to the state. Reformulated gasoline (RFG) and the utilization of lower RVP gasoline are two fairly common options that have been used in other states. Therefore, this analysis assumes that one or both could be implemented. If so, there is potential cost to the state for administration of these programs, specifically some state oversight activities. However, it appears that most of the cost associated with a lower RVP and RFG program is absorbed by entities other than the state (i.e. the petroleum industry, gasoline consumers, etc.).

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. 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. "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.

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.

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.

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.

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.

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.

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.

The bill requires the EPA to evaluate the feasibility, utility, and cost-effectiveness of implementing a remote-sensing program, and may implement a remote sensing pilot program. Remote sensing consists of an infrared beam that is projected across a road, at tailpipe level, into a detection device that is normally monitored with a van or other roadside vehicle. The detector converts the infrared energy into an electric signal. The greater the energy detected the higher the electric signal and the lower the emission reading. Higher polluting cars absorb more of the infrared energy, creating a lower electric signal. A high-speed camera snaps a photograph of the vehicle's license plate, and if the vehicle is detected as a "gross polluter," a notice is mailed to the owner to take their car to a testing facility for further emissions tests. The annual costs to implement a remote-sensing program ranges from \$200,000 to \$915,000 per year.

□ *LBO staff Erica Thomas, Budget/Policy Analyst*

\\Budget_office\isis_vol1.lbo\FN123\HB0145in.doc