As Introduced

133rd General Assembly
Regular Session
2019-2020

Representatives Stephens, Baldridge

H. B. No. 795

A BILL

To amend sections 4511.11, 5501.31, 5501.42, 5521.01, and 5521.011; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5521.011 (5521.012); and to enact new section 5521.011 of the Revised Code to clarify and amend the laws related to the Director of Transportation's responsibilities for state highways located in villages and cities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4511.11, 5501.31, 5501.42, 5521.01, and 5521.011 be amended; section 5521.011 (5521.012) be amended for the purpose of adopting a new section number as indicated in parentheses; and new section 5521.011 of the Revised Code be enacted to read as follows:

Sec. 4511.11. (A) Except as provided in division (C) of this section, local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the department of transportation manual for a uniform system of traffic control devices, adopted under section...
4511.09 of the Revised Code, upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76 and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.

(B) The director of transportation may require to be removed any traffic control device that does not conform to the manual for a uniform system of traffic control devices on the extensions of the state highway system within municipal corporations.

(C) The director shall place and maintain any traffic control signal upon an extension of a state highway within a village. No village shall place or maintain any traffic control signal upon an extension of the state highway system within the village without first obtaining the permission of the director. The director may revoke the permission and may require to be removed any traffic control signal that has been erected without the director's permission on an extension of a state highway within a village, or that, if erected under a permit granted by the director, does not conform to the state manual, or that is not operated in accordance with the terms of the permit.

(D) All traffic control devices erected on any street, highway, alley, bikeway, or private road open to public travel shall conform to the state manual.

(E) No person, firm, or corporation shall sell or offer for sale to local authorities any traffic control device that does not conform to the state manual, except by permission of the director.

(F) No local authority shall purchase or manufacture any
traffic control device that does not conform to the state manual, except by permission of the director.

(G) Whoever violates division (E) of this section is guilty of a misdemeanor of the third degree.

Sec. 5501.31. (A) The director of transportation shall have general supervision of all roads comprising the state highway system. The director may do any of the following:

(1) Alter, widen, straighten, realign, relocate, establish, construct, reconstruct, improve, maintain, repair, and preserve any road or highway on the state highway system;

(2) In connection with the state highway system, relocate, alter, widen, deepen, clean out, or straighten the channel of any watercourse as the director considers necessary;

(3) Purchase or appropriate property for the disposal of surplus materials or borrow pits, and, where:

(4) Where an established road has been relocated, establish, construct, and maintain such connecting roads between the old and new location as will provide reasonable access thereto.

(B)(1) The director may purchase or appropriate property necessary for any of the following:

(a) The location or construction of any culvert, bridge, or viaduct, or the approaches thereto, including any property needed to;

(b) To extend, widen, or alter any feeder or outlet road, street, or way adjacent to or under the bridge or viaduct when
the extension, widening, or alteration of the feeder road, street, or way is necessary for the full utilization of the bridge or viaduct, or for any;  

(c) The location or construction of any other highway improvement. The  

(2) Incident to any highway improvement that the director is or may be authorized to locate or construct, the director may purchase or appropriate, for such length of time as is necessary and desirable, any additional property required for the construction and maintenance of slopes, detour roads, sewers, roadside parks, rest areas, recreational park areas, park and ride facilities, and park and carpool or vanpool facilities, scenic view areas, drainage systems, or land to replace wetlands, incident to any highway improvement, that the director is or may be authorized to locate or construct. Also incident  

(3) Incident to any authorized highway improvement, the director may purchase property from a willing seller as required for the either of the following:  

(a) The construction and maintenance of bikeways and bicycle paths or to;  

(b) To replace, preserve, or conserve any environmental resource if the replacement, preservation, or conservation is required by state or federal law.  

(C) Title to property purchased or appropriated by the director shall be taken in the name of the state either in fee simple or in any lesser estate or interest that the director considers necessary or proper. The title shall be in accordance with forms to be prescribed by the attorney general. The deed shall contain a description of the property and be
recorded in the county where the property is situated and, when recorded, the deed shall be kept on file in the department of transportation. The property may be described by metes and bounds or by the department of transportation parcel number as shown on a right of way plan recorded in the county where the property is located.

Provided that when property, other than property used by a railroad for operating purposes, is acquired in connection with improvements involving projects affecting railroads wherein the department is obligated to acquire property under grade separation statutes, or on other improvements wherein the department is obligated to acquire lands under agreements with railroads, or with a public utility, political subdivision, public corporation, or private corporation owning transportation facilities for the readjustment, relocation, or improvement of their facilities, (D)(1) The director may acquire a fee simple title or an easement in property by purchase or appropriation in the name of the railroad, public utility, political subdivision, public corporation, or private corporation in the discretion of the director for any of the following purposes:

(a) Improvements for projects affecting railroads when the department is obligated to acquire the property under grade separation statutes;

(b) Improvements when the department is obligated to acquire the property under agreements with railroads;

(c) The readjustment, relocation or improvement of transportation facilities owned by the railroad, public utility, political subdivision, public corporation, or private corporation.
(2) When the title to lands, which are required to adjust, relocate, or improve such facilities pursuant to agreements with the director, property is taken in the name of the state under division (D)(1) of this section, then, in the discretion of the director, the title to such lands property may be conveyed to the railroad, public utility, political subdivision, or public corporation for which it was acquired. The conveyance shall be prepared by the attorney general and executed by the governor and bear the great seal of the state of Ohio.

(3) Division (D) of this section does not apply to property used by a railroad for operating purposes.

(E) The director, in the maintenance or repair of state highways, is not limited to the use of the materials with which the highways, including the bridges and culverts thereon, were originally constructed, but may use any material that is proper or suitable. The director may aid any board of county commissioners in establishing, creating, and repairing suitable systems of drainage for all highways within the jurisdiction or control of the board and the county engineer as to the establishment, construction, improvement, maintenance, and repair of the highways.

(F) Chapters 4561., 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code do not prohibit the federal government, any government agency, or any individual or corporation, from contributing a portion of the cost of the establishment, construction, reconstruction, relocating, widening, resurfacing, maintenance, and repair of the highways or transportation facilities.
Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.49 of the Revised Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the culverts thereon, shall attach to or rest upon the director, but the director may construct, reconstruct, widen, resurface, maintain, and repair the same with or without the cooperation of any municipal corporation, or with or without the cooperation of boards of county commissioners upon each municipal corporation consenting thereto.

Sec. 5501.42. (A) The director of transportation shall have supervision and control of all trees and shrubs within the limits of a state highway. The department of agriculture or other proper department may, with the consent of the director of transportation, take charge of the care of such trees, and such department, in the event it takes charge of such trees, may, with the consent of the director of transportation, plant additional trees within the limits of a state highway. The cost and expense of caring for or planting such trees may be paid out of any funds available to the director or for the development of forestry of the state.

The (B)(1) Except as provided under division (B)(2) of this section, the director may cut, trim, or remove any grass, shrubs, trees, or weeds growing or being within the limits of a state highway.

(2) The director shall cut, trim, or remove any grass, shrubs, trees, or weeds growing or being within the limits of a
state highway located within the limits of a village.

(C) Except as required under division (B)(2) of this section, the powers conferred by this section upon the director shall be exercised only when made necessary by the construction or maintenance of the highway or for the safety of the traveling public.

Sec. 5521.01. (A) Except as provided in division (B) of this section, the director has no duty to construct, reconstruct, widen, resurface, maintain, or repair a state highway or a culvert thereon within a municipal corporation.

(B) The director of transportation, upon the request by and the approval of in consultation with the legislative authority of a village, shall maintain, repair, and apply do both of the following:

(1) Maintain and repair any section of a state highway within the limits of the village;

(2) Apply standard longitudinal pavement marking lines as the director considers appropriate, or on any section of a state highway within the limits of the village.

(C) The director, upon the request by and the approval of the legislative authority of a village, may establish, do both of the following:

(1) Establish, construct, reconstruct, improve, or widen any section of a state highway within the limits of the village. The director also may erect, including the elimination of railway grade crossings;

(2) Erect regulatory and warning signs, as defined in the manual adopted under section 4511.09 of the Revised Code, on any
section of a state highway within the limits of the village.

The director, upon the approval of the legislative authority of a city, may establish do either of the following:

(1) Establish, construct, reconstruct, improve, widen, maintain, or repair any section of state highway within the limits of the city, including the elimination of railway grade crossings, and:

(2) Erect regulatory and warning signs, as defined in the manual adopted under section 4511.09 of the Revised Code, on any section of a state highway within the limits of the city.

The director may pay the entire or any part of the cost and expense thereof incurred from any activity described in divisions (B) to (D) of this section from state funds, but in all cases the director first shall obtain the consent of the legislative authority of the municipal corporation, except that:

(F) Notwithstanding any other provision of this section to the contrary, the director need not obtain the consent of the municipal corporation if either of the following apply:

(1) The existing highway being changed or the location of an additional highway being established was not within the corporate limits of the municipal corporation at the time the director determines the establishment or change should be made, or if the;

(2) The director is acting pursuant to section 5501.49 of the Revised Code or any other provision that expressly gives the director such authority.
Except as provided in section 5501.49 of the Revised Code, when in the opinion of the director there is urgent need to establish a state highway, which is to be designated a federal aid highway, or a federal aid interstate highway within a municipal corporation or, in the opinion of the director, any federal aid highway or interstate federal aid highway is in urgent need of repair, reconstruction, widening, improvement, or relocation, so as to accommodate the traveling public, the director shall submit a written request to the legislative authority of the municipal corporation for its consent to the desired establishment or improvement. The legislative authority, within sixty days after the written request has been received from the director, either shall grant its consent to the establishment or improvement or refuse consent by filing in writing with the director a statement of its reasons for refusing consent and any alternate proposals it considers reasonable. If the legislative authority fails to act or refuses consent, the director, upon consideration of the reasons for rejection, may make a resolution declaring the necessity of the establishment or improvement, and then proceed in the same manner as if consent had been given. A certified copy of the resolution shall be served upon the municipal legislative authority, which, within twenty days from the date of service, may appeal to the court of common pleas of the county in which the municipal corporation is situated, upon the reasonableness and necessity of the action provided for in the resolution. In the hearing upon appeal, the director shall introduce the record of the director's proceedings, including the director's findings with respect to factors referred to in section 5521.011 of the Revised Code, and such other competent evidence as the director desires in support of the director's resolution, and the municipality likewise may introduce competent evidence opposing—
the resolution, and findings. The court may affirm or revoke the
resolution. The decision of the common pleas court may be
appealed to the court of appeals and the supreme court as in
other cases. If the court affirms the resolution, the director
may proceed with the establishment or improvement with or
without the cooperation of the municipal corporation. Any such
municipal corporation may cooperate with the director in the
work and pay such portion of the cost as is agreed upon between
the municipal corporation and the director. The legislative
authority of any municipal corporation desiring to cooperate, by
resolution, may propose such cooperation to the director, and a
copy of the resolution, which shall set forth the proportion of
the cost and expense to be contributed by the municipal
corporation, shall be filed with the director. The director
shall cause to be prepared the necessary surveys, plans,
profiles, cross sections, estimates, and specifications and
shall file copies of them with the legislative authority of the
municipal corporation. After the legislative authority has
approved the surveys, plans, profiles, cross sections,
estimates, and specifications, and after the municipal
corporation has provided the funds necessary to meet the portion
of the cost of the work assumed by it, the municipal corporation
shall enter into a contract with the state providing for payment
by the municipal corporation of the agreed portion of the cost.
The form of the contract shall be prescribed by the attorney
general, and such contracts shall be submitted to the director
and approved before the receipt of bids. Section 5705.41 of the
Revised Code applies to such contract to be made by the
municipal corporation, and a duplicate of the certificate of the
chief fiscal officer of the municipal corporation shall be filed
in the office of the director. That part of the cost of the work
assumed by the municipal corporation shall be paid from the—
proceeds of taxes or special assessments, or both, or from the
proceeds of notes or bonds issued and sold in anticipation of
the collection of the taxes and assessments. For the purpose of
providing funds for the payment of that part of the cost of the
work assumed by the municipal corporation, the municipal-
corporation has the same authority to make special assessments,
levy taxes, and issue bonds or notes, in anticipation of the
collection of the same, as it has with respect to improvements
constructed under the sole supervision and control of the
municipal corporation. All such assessments shall be made, taxes
levied, and bonds or notes issued and sold under such conditions
and restrictions as may be provided with respect to assessments,
taxes, bonds, or notes made, levied, issued, or sold in
connection with improvements of the same class and character
constructed under the sole supervision and control of the
municipal corporation. The improvement shall be constructed
under the sole supervision of the director. The proportion of
the cost and expense payable by the municipal corporation shall
be paid by the proper officers thereof, upon the requisition of
the director, and at times during the progress of the work as
may be determined by the director or as may be otherwise
provided by law.

Sec. 5521.011. (A)(1) Except as otherwise provided by law,
when there is an urgent need to accommodate the traveling
public, the director of transportation shall submit a written
request to the legislative authority of a municipal corporation
for its consent to either of the following:

(a) The establishment of a state highway within a
municipal corporation that will be designated a federal aid
highway or federal aid interstate highway;
(b) The repair, reconstruction, widening, improvement, or relocation of a federal aid highway or interstate federal aid highway.

(2) The legislative authority, within sixty days after receiving the written request from the director, shall do one of the following:

(a) Grant its consent to the request;

(b) Refuse its consent by filing, in writing with the director, a statement of its reasons for refusing consent and any alternate proposals it considers reasonable.

(B)(1) If the legislative authority refuses consent under division (A)(2) of this section, or fails to act, the director, upon consideration of any reasons for the refusal to consent, may adopt a resolution declaring the necessity of the actions specified in the request for consent. The director may then proceed in the same manner as if consent had been given. A certified copy of the resolution shall be served upon the legislative authority.

(2) Within twenty days from the date of service, the legislative authority may appeal to the court of common pleas of the county in which the municipal corporation is located. The legislative authority, in the appeal, shall address the reasonableness and necessity of the action provided for in the director's resolution.

(3) In the hearing upon appeal, the director shall introduce all of the following:

(a) The record of the director's proceedings;

(b) The director's findings with respect to factors
referred to in section 5521.012 of the Revised Code;

(c) Any other competent evidence in support of the
director's resolution.

(4) The legislative authority likewise may introduce
competent evidence opposing the resolution and the director's
findings.

(5) The court may affirm or revoke the resolution. The
decision of the common pleas court may be appealed to the court
of appeals and the supreme court as in other cases. If the court
affirms the resolution, the director may proceed with the
actions specified in the resolution with or without the
cooperation of the municipal corporation.

(C) A municipal corporation may cooperate with the
director in the work authorized by this section and pay such
portion of the cost as is agreed upon between the municipal
corporation and the director. The legislative authority of the
municipal corporation, by resolution, shall set forth the
proportion of the cost and expense to be contributed by the
municipal corporation, and shall file a copy of the resolution
with the director.

(D)(1) The director shall have the necessary surveys,
plans, profiles, cross sections, estimates, and specifications
prepared and shall file copies of them with the legislative
authority of the municipal corporation.

(2) The municipal corporation and the state shall enter
into a contract after both of the following occur:

(a) The legislative authority approves the surveys, plans,
profiles, cross sections, estimates, and specifications.
(b) The municipal corporation provides the funds necessary to meet its portion of the cost of the work assumed by it.

(3) The attorney general shall prescribe the form of the contract and the contract shall be submitted to the director and approved before the receipt of bids.

(4) Section 5705.41 of the Revised Code applies to all such contracts. A duplicate of the certificate of the chief fiscal officer of the municipal corporation shall be filed in the director's office.

(E)(1) The municipal corporation shall pay its portion of the costs from either of the following:

(a) The proceeds of taxes or special assessments, or both;

(b) The proceeds of notes or bonds issued and sold in anticipation of the collection of the taxes and assessments.

(2) For the purpose of providing funds for its share of the cost, the municipal corporation may make special assessments, levy taxes, and issue bonds or notes, in anticipation of the collection of the same, as it would for improvements constructed under the sole supervision and control of the municipal corporation. All such assessments shall be made, taxes levied, and bonds or notes issued and sold under such conditions and restrictions as though the improvements were of the same class and character and constructed under the sole supervision and control of the municipal corporation.

(F) The improvement shall be constructed under the sole supervision of the director. The proper officers of the municipal corporation shall pay the proportion of the municipal corporation's cost and expense upon the requisition of the director and at times during the progress of the work as the
director determines or as otherwise provided by law.

(G) Section 5521.01 of the Revised Code governs the responsibility for the ongoing maintenance or repair of any improvement constructed under this section.

Sec. 5521.011 5521.012. (A) In determining new highway locations the director shall consider the following factors, wherever applicable, and include such considerations in the record of the director's proceedings:

(1) National defense; economic
(2) Economic activity; employment
(3) Employment; open
(4) Open spaces; existing
(5) Existing park lands; recreation
(6) Recreation; fire
(7) Fire protection; esthetics
(8) Esthetics; public
(9) Public utilities; safety
(10) Safety; residential
(11) Residential character and location; religious
(12) Religious institutions and practices; rights
(13) Rights and freedoms of individuals; conduct
(14) Conduct and financing of government; conservation
(15) Conservation; property
(16) Property values; replacement
(17) Replacement housing; education

(18) Education and disruption of school district operations; specific

(19) Specific numbers of families and businesses displaced; engineering

(20) Engineering, right-of-way, and construction costs for proposed highway facilities and related transportation facilities; maintenance

(21) Maintenance of highway facilities and other transportation facilities; use

(22) Use of highways and other transportation facilities, and user costs; and operation

(23) Operation of highway facilities and other transportation facilities during construction and following completion.

(B) Documentation should cover the consideration given to each determinant, including a statement as to which were not considered significant as between alternatives.

Section 2. That existing sections 4511.11, 5501.31, 5501.42, 5521.01, and 5521.011 of the Revised Code are hereby repealed.