(122nd General Assembly)
(Amended Substitute Senate Bill Number 229)

AN ACT

To amend sections 124.34, 124.57, 4117.01, 5501.31, 5513.02, 5515.02, 5516.02, 5516.06, 5521.01, and 5525.19, to enact sections 4981.091, 5501.20, 5516.05, and 5533.48, and to repeal section 5501.19 of the Revised Code and to amend Section 7.04 of Am. Sub. H.B. 210 of the 122nd General Assembly, as amended by Am. Sub. S.B. 230 of the 122nd General Assembly, to make changes in certain laws governing the Department of Transportation in the areas of appropriation of property for political subdivisions for transportation purposes and the purchase of certain supplies by the Department, to create a pilot program establishing the career professional service within the classified civil service of the Department of Transportation and authorizing the Department to appoint persons to positions within the career professional service until June 30, 2003, to eliminate the right of certain unclassified employees of the Department to return to classified positions they previously held, to create a scenic byway program in the Department, to create the Federal Rail Fund, to allow an employee of the Ohio Cooperative Extension Service whose position is transferred from the unclassified to the classified civil service and who holds the office of president of a city legislative authority to complete the existing term of office as president, to permit outdoor advertising devices to be erected on the premises of a professional sports facility if the devices conform to rules adopted by the Director of Transportation, and to

designate a portion of United States Route Number Two Hundred Twenty-Four as the "Cliff Skeen Memorial Highway."

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 124.34, 124.57, 4117.01, 5501.31, 5513.02, 5515.02, 5516.02, 5516.06, 5521.01, and 5525.19 be amended and sections 4981.091, 5501.20, 5516.05, and 5533.48 of the Revised Code be enacted to read as follows:

Sec. 124.34. The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts thereof, holding a position under this chapter of the Revised Code, shall be during good behavior and efficient service, and no such officer or employee shall be reduced in pay or position, fined in excess of five days' pay, suspended, or removed, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of administrative services or the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office. A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint under section 102.06 of the Revised Code constitute a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by section 102.02 of the Revised Code may also constitute grounds for dismissal. The tenure of an employee in the career professional service of the department of transportation is subject to section 5501.20 of the Revised Code.

In any case of a fine, reduction, suspension of more than three working days, or removal, the appointing authority shall furnish such employee with a copy of the order of reduction, suspension, or removal, which order shall state the reasons therefor. Such order shall be filed with the director of administrative services and state personnel board of review, or the commission, as may be appropriate.

Within ten days following the filing of such order or, in the case of an employee in the career professional service of the department of transportation, within ten days following the filing of a removal order, the

employee may file an appeal, in writing, with the state personnel board of review or the commission. In the event such an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the board or commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission to the court of common pleas of the county in which the employee resides in accordance with the procedure provided by section 119.12 of the Revised Code.

In the case of the suspension for any period of time, or a fine, demotion, or removal of a chief of police or a chief of a fire department or any member of the police or fire department of a city or civil service township, the appointing authority shall furnish such chief or member of a department with a copy of the order of suspension, demotion, or removal, which order shall state the reasons therefor. Such order shall be filed with the municipal or civil service township civil service commission. Within ten days following the filing of such order such chief or member of a department may file an appeal, in writing, with the municipal or civil service township civil service commission. In the event such an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority. An appeal on questions of law and fact may be had from the decision of the municipal or civil service township civil service commission to the court of common pleas in the county in which such city or civil service township is situated. Such appeal shall be taken within thirty days from the finding of the commission.

A violation of division (A)(7) of section 2907.03 of the Revised Code is grounds for termination of employment of a nonteaching employee under this section.

Sec. 124.57. (A) No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such

assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof, or civil service townships; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, be an officer in any political organization or take part in politics other than to vote as ~~he~~ the officer or employee pleases and to express freely ~~his~~ political opinions.

(B)(1) Nothing in division (A) of this section prohibits an officer or employee described in that division from serving as a precinct election official under section 3501.22 of the Revised Code. An officer or employee who serves as a precinct election official may use vacation leave to so serve.

(2) Nothing in division (A) of this section prohibits an employee of the Ohio cooperative extension service whose position is transferred from the unclassified civil service to the classified civil service and who also holds the office of president of a city legislative authority from completing the existing term of office as president.

Sec. 4117.01. As used in this chapter:

(A) "Person," in addition to those included in division (C) of section 1.59 of the Revised Code, includes employee organizations, public employees, and public employers.

(B) "Public employer" means the state or any political subdivision of the state located entirely within the state, including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census; county; township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census; school district; governing authority of a community school established under Chapter 3314. of the Revised Code; state institution of higher learning; public or special district; state agency, authority, commission, or board; or other branch of public employment.

(C) "Public employee" means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer, except:

(1) Persons holding elective office;

(2) Employees of the general assembly and employees of any other legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;

(3) Employees on the staff of the governor or the chief executive of the public employer whose principal duties are directly related to the performance of the executive functions of the governor or the chief executive;

(4) Persons who are members of the Ohio organized militia, while training or performing duty under section 5919.29 or 5923.12 of the Revised Code;

(5) Employees of the state employment relations board;

(6) Confidential employees;

(7) Management level employees;

(8) Employees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function;

(9) Employees of a public official who act in a fiduciary capacity, appointed pursuant to section 124.11 of the Revised Code;

(10) Supervisors;

(11) Students whose primary purpose is educational training, including graduate assistants or associates, residents, interns, or other students working as part-time public employees less than fifty per cent of the normal year in the employee's bargaining unit;

(12) Employees of county boards of election;

(13) Seasonal and casual employees as determined by the state employment relations board;

(14) Part-time faculty members of an institution of higher education;

(15) Employees of the state personnel board of review;

(16) Employees of the board of directors of the Ohio low-level radioactive waste facility development authority created in section 3747.05 of the Revised Code;

(17) Participants in a work activity, developmental activity, or alternative work activity under sections 5107.40 to 5107.69 of the Revised Code who perform a service for a public employer that the public employer needs but is not performed by an employee of the public employer if the participant is not engaged in paid employment or subsidized employment ~~purusant~~ pursuant to the activity;

(18) Employees included in the career professional service of the department of transportation under section 5501.20 of the Revised Code.

(D) "Employee organization" means any labor or bona fide organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.

(E) "Exclusive representative" means the employee organization certified or recognized as an exclusive representative under section 4117.05 of the Revised Code.

(F) "Supervisor" means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment, provided that:

(1) Employees of school districts who are department chairpersons or consulting teachers shall not be deemed supervisors;

(2) With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. Where prior to June 1, 1982, a public employer pursuant to a judicial decision, rendered in litigation to which the public employer was a party, has declined to engage in collective bargaining with members of a police or fire department on the basis that those members are supervisors, those members of a police or fire department do not have the rights specified in this chapter for the purposes of future collective bargaining. The state employment relations board shall decide all disputes concerning the application of division (F)(2) of this section.

(3) With respect to faculty members of a state institution of higher education, heads of departments or divisions are supervisors; however, no other faculty member or group of faculty members is a supervisor solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, or other matters of academic policy;

(4) No teacher as defined in section 3319.09 of the Revised Code shall be designated as a supervisor or a management level employee unless the teacher is employed under a contract governed by section 3319.01, 3319.011, or 3319.02 of the Revised Code and is assigned to a position for which a license deemed to be for administrators under state board rules is required pursuant to section 3319.22 of the Revised Code.

(G) "To bargain collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the

continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

(H) "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Strike" does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment.

(I) "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Unauthorized strike" includes any such action, absence, stoppage, slowdown, or abstinence when done partially or intermittently, whether during or after the expiration of the term or extended term of a collective bargaining agreement or during or after the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code.

(J) "Professional employee" means any employee engaged in work that is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship; or an employee who has completed the courses of specialized intellectual instruction and is performing related work under the supervision of a professional person to become qualified as a professional employee.

(K) "Confidential employee" means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who

works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

(L) "Management level employee" means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. Assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code are management level employees. With respect to members of a faculty of a state institution of higher education, no person is a management level employee because of the person's involvement in the formulation or implementation of academic or institution policy.

(M) "Wages" means hourly rates of pay, salaries, or other forms of compensation for services rendered.

(N) "Member of a police department" means a person who is in the employ of a police department of a municipal corporation as a full-time regular police officer as the result of an appointment from a duly established civil service eligibility list or under section 737.15 or 737.16 of the Revised Code, a full-time deputy sheriff appointed under section 311.04 of the Revised Code, a township constable appointed under section 509.01 of the Revised Code, or a member of a township police district police department appointed under section 505.49 of the Revised Code.

(O) "Members of the state highway patrol" means highway patrol troopers and radio operators appointed under section 5503.01 of the Revised Code.

(P) "Member of a fire department" means a person who is in the employ of a fire department of a municipal corporation or a township as a fire cadet, full-time regular fire fighter, or promoted rank as the result of an appointment from a duly established civil service eligibility list or under section 505.38, 709.012, or 737.22 of the Revised Code.

(Q) "Day" means calendar day.

Sec. 4981.091. <u>There is hereby created in the state treasury the federal rail fund. The fund shall consist of money received pursuant to section 4981.08 Of the Revised Code and such other money as may be provided by law. The fund shall be used to acquire, rehabilitate, or develop rail property or service; to participate in the acquisition of rail property with the federal government, municipal corporations, townships, counties, or other governmental agencies; and to promote, plan, design, construct, operate, and</u>

maintain passenger and freight rail transportation systems. The fund also may be used to pay the administrative costs of the Ohio rail development commission associated with conducting any authorized rail program, and for any purpose authorized by sections 4981.03 and 5501.56 Of the Revised Code. The fund shall not be used to provide loan guarantees. Investment earnings on moneys credited to the fund shall be retained by the fund.

In acquiring rail property, the Ohio rail development commission may obtain acquisition loans from the federal government or from any other source.

Sec. 5501.20. (A) As used in this section:

(1) "Career professional service" means that part of the competitive classified service that consists of employees of the department of transportation who, regardless of job classification, meet both of the following qualifications:

(a) They are supervisors, professional employees who are not in a collective bargaining unit, confidential employees, or management level employees, all as defined in section 4117.01 of the Revised Code.

(b) They exercise authority that is not merely routine or clerical in nature and report only to a higher level unclassified employee or employee in the career professional service.

(2) "Demoted" means that an employee is placed in a position where the employee's wage rate equals, or is not more than twenty per cent less than, the employee's wage rate immediately prior to demotion or where the employee's job responsibilities are reduced, or both.

(3) "Employee in the career professional service with restoration rights" means an employee in the career professional service who has been in the classified civil service for at least two years and who has a cumulative total of at least ten years of continuous service with the department of transportation.

(B) Not later than the first day of July of each odd-numbered year, the director of transportation shall adopt a rule in accordance with section 111.15 of the Revised Code that establishes a business plan for the department of transportation that states the department's mission, business objectives, and strategies and that establishes a procedure by which employees in the career professional service will be held accountable for their performance. The director shall adopt a rule that establishes a business plan for the department only once in each two years. Within sixty days after the effective date of a rule that establishes a business plan for the department, the director shall adopt a rule in accordance with section 111.15 of the Revised Code that identifies specific positions within the department

of transportation that are included in the career professional service. The director may amend the rule that identifies the specific positions included in the career professional service only within sixty days after the director adopts a rule that establishes a business plan for the department. Any rule adopted under this division is subject to review and invalidation by the joint committee on agency rule review as provided in division (D) of section 111.15 of the Revised Code. The director shall provide a copy of any rule adopted under this division to the director of budget and management.

Except as otherwise provided in this section, an employee in the career professional service is subject to the provisions of Chapter 124. of the Revised Code that govern employees in the classified civil service.

(C) After an employee is appointed to a position in the career professional service, the employee's direct supervisor shall provide the employee appointed to that position with a written performance action plan that describes the department's expectations for that employee in fulfilling the mission, business objectives, and strategies stated in the department's business plan. No sooner than four months after being appointed to a position in the career professional service, an employee appointed to that position shall receive a written performance review based on the employee's fulfillment of the mission, business objectives, and strategies stated in the department's business plan. After the initial performance review, the employee shall receive a written performance review at least once each year or as often as the director considers necessary. The department shall give an employee whose performance is unsatisfactory an opportunity to improve performance for a period of at least six months, by means of a written corrective action plan, before the department takes any disciplinary action under this section or section 124.34 of the Revised Code. The department shall base its performance review forms on its business plan.

(D) An employee in the career professional service may be suspended, demoted, or removed because of performance that hinders or restricts the fulfillment of the department's business plan or for disciplinary reasons under section 124.34 or 124.57 of the Revised Code. An employee in the career professional service may appeal only the employee's removal to the state personnel board of review. An employee in the career professional service may appeal a demotion or a suspension of more than three days pursuant to rules the director adopts in accordance with section 111.15 of the Revised Code.

(E) An employee in the career professional service with restoration rights has restoration rights if demoted because of performance that hinders or restricts fulfillment of the mission, business objectives, or strategies

stated in the department's business plan, but not if involuntarily demoted or removed for any of the reasons described in section 124.34 or for a violation of 124.57 of the Revised Code. The director shall demote an employee who has restoration rights of that nature to a position in the classified service that in the director's judgment is similar in nature to the position the employee held immediately prior to being appointed to the position in the career professional service. The director shall assign to an employee who is demoted to a position in the classified service as provided in this division a wage rate that equals, or that is not more than twenty per cent less than, the wage rate assigned to the employee in the career professional service immediately prior to the employee's demotion.

(F) This section establishes a pilot program for employees in the career professional service of the department of transportation. At the end of each fiscal biennium that this program is in effect, the director of transportation shall prepare a report describing and evaluating the operation of the program and forward a copy of the report to the governor, director of administrative services, speaker of the house of representatives, and president of the senate.

(G) No person shall be appointed to a position in the career professional service of the Department of Transportation after June 30, 2003, including for the purpose of filling a vacancy within the career professional service that occurs for any reason.

Sec. 5501.31. The director of transportation shall have general supervision of all roads comprising the state highway system. ~~He~~ The director may alter, widen, straighten, realign, relocate, establish, construct, reconstruct, improve, maintain, repair, and preserve any road or highway on the state highway system, and, in connection therewith, relocate, alter, widen, deepen, clean out, or straighten the channel of any watercourse as ~~he~~ the director considers necessary, and purchase or appropriate property for the disposal of surplus materials or borrow pits, and, 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.

The director may purchase or appropriate property necessary for the location or construction of any culvert, bridge, or viaduct, or the approaches thereto, including any property needed 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 other highway improvement. The director also 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, scenic view areas, drainage systems, or land to replace wetlands incident to any highway improvement, that ~~he~~ the director is or may be authorized to locate or construct. 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, 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, shall be kept on file in the department of transportation.

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 ~~of transportation~~ 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 ~~similar~~ transportation facilities for the readjustment ~~or,~~ relocation, or improvement of their facilities, a fee simple title or an easement may be acquired 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. When the title to lands, which are required to adjust, relocate, or improve such facilities pursuant to agreements with the director, is taken in the name of the state, the lands ~~may,~~ in the discretion of the director, may be conveyed in fee simple or the right acquired to the railroad, public utility, political subdivision, or public corporation for which they were 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.

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 ~~which~~ that is proper or suitable. The director may aid ~~the~~ 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 advise with it as to the establishment, construction, improvement, maintenance, and repair of the highways.

Chapters 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, or any individual or

ion, from contributing a portion of the cost of the establishment, construction, reconstruction, relocating, widening, resurfacing, maintenance, and repair of the highways.

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 bridges and culverts thereon, shall attach to or rest upon the director, but ~~he~~ 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. 5513.02. (A) Specifications describing the character of the articles ~~which it~~ that the department of transportation is ~~proposed~~ proposing to purchase, and the conditions governing shipment and delivery, shall be kept on file at the department ~~of transportation~~ and open to public inspection throughout the time during which ~~it is required that~~ an invitation to bidders is required to be posted. The director of transportation may require bids to be accompanied by a certified check payable to ~~him~~ the director in an amount fixed by ~~him~~ the director and stated in the invitation to bidders. Persons, firms, or corporations desiring to bid on more than one invitation shall be relieved from furnishing certified checks with their bids provided they first furnish a bond payable to the state, in an amount and with surety approved by the director, conditioned for the faithful performances of all contracts ~~which~~ that may be awarded to them, and otherwise conditioned as the director requires. All bids shall be publicly opened and read at the time and place mentioned in the notice. All purchases shall be made by the director from the lowest responsive and responsible bidder for each item in accordance with section 9.312 of the Revised Code, except where the director has established in the bidding documents a provision for multiple awards for the purchase of items such as asphalt, aggregates, machinery parts, and others as the director determines necessary, and except that in the purchase of machinery, equipment, or supplies for which fixed and definite specifications cannot be prepared, the director may purchase the ~~article~~ articles meeting the general specifications prescribed and which ~~he~~ the director finds are most suitable for the uses intended. Sections 5513.01 to 5513.04 of the Revised Code shall apply to the exchange of machinery and equipment and in force account operations where the director desires to

combine in one order the furnishing, hauling, and placing of material. The director may purchase or authorize the purchase without notice, or upon such notice as ~~he~~ the director prescribes, of materials ~~which~~ that in ~~his~~ the director's judgment may be required for the immediate repair of roads or bridges destroyed or damaged by flood, landslide, or other casualty. No person shall place separate orders for the purpose of defeating such sections, and contracts of purchase shall not be valid unless made in conformity with this section.

(B) Division (B) of section 125.11 of the Revised Code applies to the purchase of products by the director pursuant to sections 5513.01 to 5513.04 of the Revised Code.

Sec. 5515.02. All individuals, firms, and corporations using or occupying any part of a road or highway on the state highway system, or the bridges or culverts thereon, with telegraph or telephone lines, steam, electrical, or industrial railways, oil, gas, water, or other pipes, mains, conduits, or any object or structure, other than by virtue of a franchise or permit granted and in force, shall remove from the bounds of ~~such~~ the road, highway, bridge, or culvert, their poles and wires connected therewith, and any tracks, switches, spurs, or oil, gas, water, or other pipes, mains, conduits, or other objects or structures, when in the opinion of the director of transportation they constitute obstructions in ~~such~~ the roads, highways, bridges, or culverts, or interfere or may interfere with the contemplated construction, reconstruction, improvement, maintenance, or repair of ~~such~~ the roads, highways, bridges, or culverts ~~thereon,~~ or ~~interfere or may interfere~~ with ~~the~~ their use ~~of such roads, highways, bridges, or culverts thereon,~~ by the traveling public.

All individuals, firms, or corporations so occupying any road or highway on the state highway system, or the bridges or culverts thereon, under and by virtue of a franchise or permit granted and in force, shall relocate their properties and all parts thereof within the bounds of ~~such~~ the road, highway, bridge, or culvert when in the opinion of the director they constitute obstructions in ~~any such~~ the road, highway, bridge, or culvert, or interfere with or may interfere with the contemplated construction, reconstruction, improvement, maintenance, or repair of ~~such~~ the road, highway, bridge, or culvert~~,~~ or ~~interfere with or may interfere~~ with ~~the~~ its use ~~of such road, highway, bridge, or culvert, which~~. The relocation within the bounds of ~~such~~ the road, highway, bridge, or culvert shall be in the manner and to the extent prescribed by the director.

If, in the opinion of the director, such individuals, firms, or corporations have obstructed any road or highway on the state highway system, or the

dges or culverts thereon, or if any of their properties, in ~~his~~ the director's opinion, are so located that they do or may interfere with the contemplated construction, reconstruction, improvement, maintenance, or repair of ~~such~~ the road, highway, bridge, or culvert, or ~~if, in his opinion, they interfere with or may interfere~~ with the use of ~~such~~ the road, highway, bridge, or culvert by the traveling public, ~~said~~ the director shall notify such individual, firm, or corporation directing the removal of ~~such~~ the obstruction or properties, or the relocation of ~~such~~ the properties, and, if such individual, firm, or corporation does not within five days from the service of ~~such~~ the notice proceed to remove or relocate the ~~same~~ obstruction or properties and complete the removal or relocation within a reasonable time, the director may remove or relocate the same by employing the necessary labor, tools, and equipment. The costs and expenses shall~~, in the first instance,~~ be paid by the director out of any appropriation of the department of transportation available for the establishment, construction, reconstruction, improvement, maintenance, or repair of highways, and the amount thereof shall be certified to the attorney general for collection by civil action. ~~Said notice~~ Notice of the action shall be ~~served by the sheriff in the manner as summons in civil actions~~ made by personal service or by certified mail.

Sec. 5516.02. No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right-of-way of a highway on the interstate system except the following:

(A) Directional and official signs and notices that conform to rules adopted by the director of transportation;

(B) Signs advertising the sale or lease of the property upon which they are located;

(C) Advertising devices indicating the name of the business or profession conducted on such property or that identify the goods produced, sold, or services rendered on such property, and that conform to rules adopted by the director;

(D) Advertising devices that are located in commercial or industrial zones traversed by segments of the interstate system within the boundaries of a municipal corporation as such boundaries existed on September 21, 1959, and that conform to rules adopted by the director;

(E) Advertising devices that are located on the premises of a professional sports facility and that conform to rules adopted by the director.

Sec. 5516.05. The director of transportation may designate any portion of the interstate system, national highway system, or primary system as a scenic byway. The director shall exclude from designation as a scenic byway any segment of a highway in a zoned or unzoned commercial or

industrial area that is determined by the director to be inconsistent with the designation of a scenic byway.

No advertising device may be erected upon a designated scenic byway, except in accordance with division (A), (B), or (C) of section 5516.02 Of the Revised Code, division (A), (B), (C), (D), (E), or (G) of section 5516.06 Of the Revised Code, or division (A), (B), (C), or (D) of section 5516.061 Of the Revised Code. Any advertising device lawfully in existence prior to the designation of a scenic byway, upon such designation, is a nonconforming advertising device under section 5516.07 Of the Revised Code.

Sec. 5516.06. No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right-of-way of a highway on the primary system except the following:

(A) Directional and other official signs and notices that conform to rules adopted by the director of transportation;

(B) Signs advertising the sale or lease of the property upon which they are located;

(C) Advertising devices indicating the name of the business, activities, or profession conducted on such property or that identify the goods produced, sold, or services rendered on such property and that conform to rules adopted by the director;

(D) Precautionary signs relating to the premises;

(E) Signs, displays, or devices which locate, identify, mark, or warn of the presence of pipe lines, utility lines, or rail lines, and appurtenances thereof, including, but not limited to, markers used in the maintenance, operation, observation, and safety of said lines;

(F) Advertising devices located in zoned or unzoned industrial or commercial areas adjacent to highways on the primary system that conform to rules adopted by the director;

(G) Signs lawfully in existence on October 22, 1965, that the director, subject to the approval of the secretary of the United States department of transportation, has determined to be landmark signs, including signs on farm structures or natural surfaces, which are of historic or artistic significance;

(H) Advertising devices that are located on the premises of a professional sports facility and that conform to rules adopted by the director.

Sec. 5521.01. The director of transportation, upon the request by and the approval of the legislative authority of a village, shall maintain, repair, and apply standard longitudinal pavement marking lines as the director considers appropriate, or may establish, construct, reconstruct, improve, or widen any section of a state highway within the limits of a village. The director also may 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 a village. The director may establish, construct, reconstruct, improve, widen, maintain, or repair any section of state highway within the limits of a city, including the elimination of railway grade crossings, and pay the entire or any part of the cost and expense thereof from state funds, but in all cases the director first shall obtain the consent of the legislative authority of the municipal corporation, except that the director need not obtain the consent of the municipal corporation if 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 director is acting pursuant to section 5501.49 of the Revised Code.

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 ~~such~~ the written request has been received from the director, ~~shall~~ 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 ~~all~~ such contracts shall be submitted to the ~~attorney general~~ director and approved ~~by the attorney general~~ before ~~the director advertises~~ advertising for 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 ~~such~~ 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. 5525.19. Payment for the cost of the establishment, construction, reconstruction, improvement, maintenance, and repair of a highway under Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code shall be made at intervals of not ~~more~~ less than ~~one~~ once a month as the work progresses, upon estimates made by the district deputy director of transportation in charge of ~~such~~ the improvement and upon approval of the director of transportation. ~~Except as provided in this section, no payment by the state on account of a contract for any improvement under such chapters shall, before the completion of the contract, exceed ninety-two per cent of the value of the work performed to the date of such payment, and eight per cent of the value of work performed shall be held until the final completion of the contract in accordance with the plans and specifications. In addition to the above payments on account of work performed, the director may allow and pay to a contractor a sum not exceeding ninety-two per cent of the value of material delivered on the site of the work, or in the vicinity thereof, but not yet incorporated therein, provided such material has been inspected and found to meet the specifications.~~ When an estimate is allowed on account of material delivered on the site of the work or in the vicinity thereof, but not yet incorporated therein, ~~such~~ the material shall become the property of the state, but if ~~such~~ the material is stolen, destroyed, or damaged by casualty before being used, or for any reason becomes unfit for use, the contractor shall replace the material at ~~his~~ the contractor's own expense. ~~When the retained percentage, plus the difference between the contract price and the estimates allowed, exceeds by more than eight per cent the estimated cost of completing the work, as determined by the director, he may pay the contractor all or any part of the excess sum, retaining not less than the estimated cost of completing the work, as determined by the director, plus eight per cent. When a portion of a highway covered by a contract is completed and opened to traffic, all retained percentages held in connection with such highway shall be released and paid to the contractor.~~

In addition to the estimates provided for by law, the director ~~may~~, under such conditions as ~~he~~ the director prescribes, may allow and pay to a contractor a sum not exceeding ~~ninety-two per cent of~~ the value of the material delivered by ~~such~~ the contractor and safely stored at ~~a railroad~~

~~tion, or siding, or other point in the vicinity of the work~~ an approved site. When such estimate is allowed, the material on which it is allowed shall become the property of the state, but in case ~~such~~ the material is stolen, destroyed, or damaged by casualty before being used, or for any reason becomes unfit for use, the contractor shall replace the material at ~~his~~ the contractor's expense. A contractor may insure against loss or damage by fire or otherwise all materials on which estimates have been allowed.

Sec. 5533.48. That portion of the highway known as United States route number two hundred twenty-four, running in a westerly to easterly direction, commencing at the junction with state route two hundred forty-one in Summit county and extending to state route ninety-one shall be known as the "Cliff Skeen Memorial Highway."

The director of transportation may erect suitable markers upon the highways indicating its name.

SECTION 2. That existing sections 124.34, 124.57, 4117.01, 5501.31, 5513.02, 5515.02, 5516.02, 5516.06, 5521.01, and 5525.19 and section 5501.19 of the Revised Code are hereby repealed.

SECTION 3. That Section 7.04 of Am. Sub. H.B. 210 of the 122nd General Assembly, as amended by Am. Sub. S.B. 230 of the 122nd General Assembly, be amended to read as follows:

SECTION 7.04 OF AM. SUB. H.B. 210/122nd GA
AS AMENDED BY AM. SUB. S.B. 230/122nd GA

"Sec. 7.04. Transfer of Appropriations - Planning and Research, Highway Construction, Maintenance and Administration

The Director of Budget and Management may approve requests from the Department of Transportation, for transfer of funds among the appropriations for highway planning and research (line items 771-411 and 771-412), highway construction (line items 772-421, 772-422, and 772-424), highway maintenance (line item 773-431), and highway administration (line item 779-491). Transfers between appropriation items shall be made upon the written request of the Director of Transportation with the approval of the Director of Budget and Management. Such transfers shall be reported to the Controlling Board at the next regularly scheduled meeting of the board.

This transfer language is intended to provide for emergency situations and flexibility to meet unforeseen conditions that could arise during the budget period. This will also allow the Department to optimize the use of

available resources, and adjust to circumstances affecting the obligation and expenditure of federal funds.

Transfer of Appropriations - State Infrastructure Bank

The Director of Budget and Management may approve requests from the Department of Transportation for transfer of ~~funds among the~~ appropriations and cash of the Infrastructure Bank funds created in section 5531.09 of the Revised Code, including transfers between fiscal years 1998 and 1999. Such transfers shall be reported to the Controlling Board at the next regularly scheduled meeting of the board. However, the Director may not make transfers out of debt service and lease payment line items unless the Director determines that the appropriated amounts exceed the actual and projected debt, rental, or lease payments.

The Director of Budget and Management may approve requests from the Department of Transportation for transfer of ~~funds from~~ appropriations and cash of the Highway Operating Fund (Fund 002) to appropriations of the Infrastructure Bank funds created in section 5531.09 of the Revised Code. The Director of Budget and Management may transfer from the Infrastructure Bank funds to the Highway Operating Fund up to the amounts originally transferred to the Infrastructure Bank funds under this section. Such transfers shall be reported to the Controlling Board at the next regularly scheduled meeting of the board. However, the Director may not make transfers between modes and transfers between different funding sources.

Cash Transfer Between Funds - Aviation Infrastructure Bank - State

The Director of Budget and Management shall transfer, from Fund 212 to Fund 213 within the Highway Operating Fund Group, $204,584 that was received from the proceeds of the sale of the Fiala Center in Portage County.

Of the foregoing appropriation item 777-477, Aviation Infrastructure Bank - State, $204,584 shall be distributed by the Department of Transportation to the Zanesville Municipal Airport and the Akron-Fulton International Airport in accordance with Section 115 of Am. Sub. H.B. 215 of the 122nd General Assembly, as amended by ~~this act~~ Am. Sub. S.B. 230 of the 122nd General Assembly.

Of the $204,584 in proceeds from the sale of the Fiala Center within appropriation item 777-477, Aviation Infrastructure Bank - State, any unencumbered and unallotted fiscal year 1998 amounts shall be transferred by the Director of Budget and Management to appropriation item 777-477, Aviation Infrastructure Bank - State, in fiscal year 1999. Those amounts so transferred from fiscal year 1998 to fiscal year 1999 are hereby appropriated.

Transfer of Appropriations - Public Transportation

The Director of Budget and Management may approve requests from the Department of Transportation for transfer of funds between appropriation item 775-451, Public Transportation - State, and 775-456, Public Transportation - Discretionary Capital.

Increase Appropriation Authority - State Funds

In the event that revenues or unexpended balances, credited to the Highway Operating Fund, exceed the estimates upon which the appropriations have been made in Am. Sub. H.B. 210 of the 122nd General Assembly, the Director of Transportation may submit a request to the Controlling Board for increased appropriation authority in the same manner as prescribed in section 131.35 of the Revised Code. Such additional revenues or unexpended balances are hereby appropriated to the Department of Transportation when authorized by the Controlling Board.

Increase Appropriation Authority - Federal and Local Funds

In the event that receipts or unexpended balances credited to the Highway Operating Fund, or apportionments or allocations made available from the federal and local government exceed the estimates upon which the appropriations have been made in Am. Sub. H.B. 210 of the 122nd General Assembly, such excess is hereby appropriated and may be added to the appropriate item or items when requested by the Director of Transportation and approved by the Director of Budget and Management and the Controlling Board.

Reappropriations

All appropriations of the Highway Operating Fund (Fund 002) ~~and~~, the Highway Capital Improvement Fund (Fund 042), and the Infrastructure Bank funds created in section 5531.09 Of the Revised Code remaining unencumbered on June 30, 1997, and the unexpended balance of prior years' appropriations that subsequently become unencumbered after June 30, 1997, subject to the availability of revenue as determined by the Director of Transportation, are hereby reappropriated for the same purpose in fiscal year 1998 upon the request of the Director of Transportation with the approval of the Director of Budget and Management. Such reappropriations shall be reported to the Controlling Board at the next regularly scheduled meeting of the board.

All appropriations of the Highway Operating Fund (Fund 002) ~~and~~, the Highway Capital Improvement Fund (Fund 042), and the Infrastructure Bank funds created in section 5531.09 Of the Revised Code in Am. Sub. H.B. 210 of the 122nd General Assembly remaining unencumbered as of June 30, 1998, are reappropriated for use during fiscal year 1999 for the

same purpose. The department shall report all such reappropriations to the Controlling Board."

SECTION 4. That existing Section 7.04 of Am. Sub. H.B. 210 of the 122nd General Assembly, as amended by Am. Sub. S.B. 230 of the 122nd General Assembly, is hereby repealed.

SECTION 5. Notwithstanding the limitation in division (B) of section 5501.20 of the Revised Code that the Director of Transportation adopt a rule establishing a business plan for the Department of Transportation only once in each two years, at the earliest time permitted by law after the effective date of this act, the Director shall adopt the rules specified in division (B) of section 5501.20 of the Revised Code. The rules adopted under this section shall be in effect until succeeding rules are adopted under section 5501.20 of the Revised Code.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____