

# AN ACT

To amend sections 129.42, 5501.20, 5501.31, 5501.32, 5501.34, 5501.45, 5501.50, 5511.01, 5511.07, 5515.02, 5515.04, 5521.01, and 5525.14, to enact section 5525.23, and to repeal sections 4582.07, 4582.08, 4582.09, 4582.32, 4582.33, 4582.34, and 5501.37 of the Revised Code to revise the law governing Department of Transportation construction contracts, to revise the sale and acquisition of property by the Department of Transportation, to make other changes in the law governing the Department of Transportation, and to repeal requirements for a port authority to have a plan for future development.

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

SECTION 1. That sections 129.42, 5501.20, 5501.31, 5501.32, 5501.34, 5501.45, 5501.50, 5511.01, 5511.07, 5515.02, 5515.04, 5521.01, and 5525.14 be amended and section 5525.23 of the Revised Code be enacted to read as follows:

Sec. 129.42. All moneys received from the sale of any certificates of obligation issued pursuant to section 129.41 of the Revised Code, and all moneys required by the terms of agreements under section 5501.36 of the Revised Code to be paid by the director of transportation to the commissioners of the sinking fund shall be paid into a special fund hereby designated as "special highway acquisition fund ....." (designation to be provided) and said special fund shall be applied solely to the payment of the cost of acquiring real property as provided in section 5501.36 of the Revised Code or to the payment of principal and interest of said certificates of obligation. There shall be a separate such special fund for each issue of certificates of obligation. There is hereby created a lien upon each such fund and such real property in favor of holders of such certificates of obligation. Moneys in any such special fund may be invested in direct obligations of the

United States government prior to the anticipated need for such moneys and the commissioners shall be guided in the investment of such moneys by the instructions of the director.

The clerk of the commissioners of the sinking fund shall be paid from the several respective special highway acquisition funds, suitable compensation in addition to that prescribed by section 129.01 of the Revised Code. All the other expenses of the commissioners of the sinking fund in connection with this section and sections 129.41, 5501.36, ~~5501.37~~, and 5501.38 of the Revised Code, not otherwise provided for, shall be paid from the appropriate special highway acquisition fund.

Out of the proceeds of sale of an issue of certificates of obligation issued pursuant to section 129.41 of the Revised Code, or from the additional consideration running from the director to the commissioners of the sinking fund under an agreement contemplated by section 5501.36 of the Revised Code, or from both, there shall be set aside into a certificate of obligation redemption account in the said special fund the sum required to pay interest coming due during the life of said certificates of obligation in the then current biennium, which amount shall be used only for that purpose. In the event an issue of certificates of obligation is renewed for a biennium beyond the biennium of original issue, the agreement securing said renewal issue shall provide in like manner for the setting aside of the sum to pay interest coming due in the then current biennium to the extent that such amounts are not otherwise provided for in said account. As provided in section 5501.36 of the Revised Code, direct obligations of the United States government may be substituted in whole or in part for the sum or sums otherwise required under this section. Such agreements under section 5501.36 of the Revised Code shall define the circumstances under which moneys to be paid by the director to the commissioners of the sinking fund as purchase price must be paid into the appropriate special fund, with restrictions on its use to acquire additional real property thereunder, so as to avoid any possibility of default in the payment of interest on certificates of obligation or in the payment of principal thereof at maturity or prior redemption.

In a single biennium, more than one issue of certificates of obligation may be authorized and secured by a single agreement and supplements thereto under section 5501.36 of the Revised Code notwithstanding that such certificates of obligation may be issued, sold, and delivered at different times, with different dates and bearing different rates of interest.

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~~ whenever the director ~~adopts a rule that establishes a business plan for the department~~ determines necessary. 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

mediately 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. 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 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, 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. 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 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, 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 then~~, in the discretion of the director, the title to such lands 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 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 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 corporation, 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 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. 5501.32. The director of transportation may purchase property in fee simple in the name of the state by warranty deed, and all or any part of a tract of land when the acquisition of a part of the land needed for highway purposes will result in substantial damages to the residue by severance, controlled access, or isolation. The warranty deed shall contain a description of the property suitable for platting on tax maps. Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section 5301.012 of the Revised Code.

~~The director, in the name of the state, may sell all the right, title, and interest of the state in any part of land not required for highway purposes, provided the director shall have the parcel of land appraised by a department prequalified appraiser.~~

~~Except as otherwise provided in this section, the director shall advertise the sale of land not required for highway purposes in a newspaper of general circulation in the county in which the land is situated for at least two consecutive weeks prior to the date set for the sale. The land may be sold at public auction to the highest bidder for not less than two-thirds of its appraised value, but the director may reject all bids that are less than the full appraised value of the land.~~

~~If, however, land not required for highway purposes is appraised as having a current fair market value of five thousand dollars or less, the director may sell the land to the sole abutting owner through a private sale at a price not less than its appraised value. If there is more than one abutting owner, the director may invite all of the abutting owners to submit sealed bids and may sell the land to the highest bidder at not less than its appraised value.~~

~~All expense incurred in the sale of each parcel of land shall be paid out of the proceeds of the sale and the balance shall be deposited in the highway fund from which the purchase was made.~~

~~The deed to the purchaser of land under this section shall be prepared by the auditor of state, executed by the governor, countersigned by the secretary of state, and shall bear the great seal of the state.~~

Sec. 5501.34. (A) In the event that circumstances alter the highway requirements after the director of transportation has purchased and acquired property from the administrator of workers' compensation or retirement board, or otherwise, so that the real property, or part thereof, is no longer

required for highway purposes, the director, in the name of the state, may sell all the right, title, and interest of the state in any of the real property. ~~As soon as reasonably practical after~~ After determining that ~~any a parcel of the~~ real property is no longer required for highway purposes, the director shall have the parcel ~~of land~~ appraised by a department prequalified appraiser.

(B) Except as otherwise provided in this section, the director shall advertise the sale of real property that is no longer required for highway purposes in a newspaper of general circulation in the county in which the ~~land~~ real property is situated for at least two consecutive weeks prior to the date set for the sale. The ~~land~~ real property may be sold at public auction to the highest bidder for not less than two-thirds of its appraised value, but the director may reject all bids that are less than the full appraised value of the ~~land~~ real property. However, if no sale has been effected after an effort to sell under this ~~paragraph~~ division, the director may set aside the ~~appraisement~~ appraisal, order a new ~~appraisement~~ appraisal, and, except as otherwise provided in this section, readvertise the property for sale.

(C) If ~~land not~~ real property no longer required for highway purposes is appraised or reappraised as having a current fair market value of ~~five~~ twenty thousand dollars or less, the director may sell the ~~land~~ real property to the sole abutting owner through a private sale at a price not less than the appraised value. If there is more than one abutting owner, the director may invite all of the abutting owners to submit sealed bids and may sell the ~~land~~ real property to the highest bidder at not less than its appraised value.

(D) If ~~such land~~ real property no longer required for highway purposes is ~~appraised or~~ reappraised as having a fair market value of ~~one~~ TWO thousand dollars or less, and no sale has been effected after an effort to sell to the abutting owner or owners, the director may ~~readvertise and~~ advertise the sale of such real property in accordance with division (B) of this section. The director may sell the land at public auction to the highest bidder without regard to its appraised value, but the director may reject all bids that are less than the full appraised value of the real property.

(E) The department shall pay all expenses incurred in the sale of a parcel of real property out of the proceeds of the sale and shall deposit the balance of the proceeds in the highway fund used to acquire that parcel of real property.

(F) Upon a determination that real property previously acquired within a highway improvement project corridor no longer is needed for highway purposes, the director may offer the unneeded property to another landowner located within that project's corridor as full or partial consideration for other real property to be acquired from the landowner. If the landowner accepts

the offer, the director shall convey the unneeded property directly to the landowner at the full fair market value determined by the department by appraisal. The director shall credit the value of the unneeded property against the acquisition price of the property being acquired by the department, and the landowner shall pay the department the difference if the value of the unneeded property exceeds the acquisition price of the property being acquired.

(G) Conveyances of ~~the lands~~ real property under this section shall be by deed executed by the governor, shall bear the great seal of the state of Ohio, and shall be in the form as prescribed by the attorney general. Section 5301.13 of the Revised Code, relating to the sale of public lands, shall not apply to conveyances made pursuant to this section. The director shall keep a record of all such conveyances. This section applies to all real property acquired by the department, regardless of how or from whom the property was acquired.

Sec. 5501.45. (A) The director of transportation may convey or transfer the fee simple estate or any lesser estate or interest in, or permit the use of, for such period as the director shall determine, any lands owned by the state and acquired or used for the state highway system or for highways or in connection with highways or as incidental to the acquisition of land for highways, provided that the director determines, after consulting with the director of natural resources, that the property or interest conveyed or made subject to a permit to use is not needed by the state for highway or recreation purposes. Such conveyance, transfer, or permit to use may be to the grantee or permittee or to the grantee or permittee and the grantee's or its successors and assigns and shall be of such portion of such lands as the director shall determine, which shall be described in the deed, transfer, or other instrument or conveyance and in any permit to use, and may include or be limited to areas or space on, above, or below the surface, and also may include the grant of easements or other interests in any such lands for use by the grantee for buildings or structures or for other uses and purposes, and for the support of buildings or structures constructed or to be constructed on or in the lands or areas or space conveyed or made subject to a permit to use.

(B) Whenever pursuant to this section separate units of property are created in any lands, each unit shall for all purposes constitute real property and shall be deemed real estate within the meaning of all provisions of the Revised Code, shall be deemed to be a separate parcel for all purposes of taxation and assessment of real property, and no other unit or other part of such lands shall be charged with the payment of such taxes and assessments.

(C) With respect to any portion of the state highway system not owned

in fee simple by the state, the director may permit the use of any portion thereof in perpetuity or for such period of time as the director shall specify, including areas or space on, above, or beneath the surface, together with rights for the support of buildings or structures constructed or to be constructed thereon or therein, provided that the director determines that the portion made subject to a right to use is not needed by the state for highway purposes.

(D) The director shall require, as either a condition precedent or a condition subsequent to any conveyance, transfer, or grant or permit to use, that the plans and specifications for all such buildings or structures and the contemplated use thereof, be approved by the director as not interfering with the use of the state highway system and not unduly endangering the public. The director may require such indemnity agreements in favor of the director and the public as shall be lawful and as shall be deemed necessary by the director. The director shall not unreasonably withhold approval of such plans, specifications, and contemplated use.

(E)(1) All such conveyances, transfers, grants, or permits to use that are made to state institutions, agencies, commissions, instrumentalities, political subdivisions, or taxing districts of the state, and institutions receiving financial assistance from the state, shall be upon such consideration as shall be determined by the director to be fair and reasonable, without competitive bidding, and sections 5301.13 and 5515.01 of the Revised Code, relating to the sale or use of public lands shall not apply to conveyances, grants, transfers, or permits to use made pursuant to this ~~section~~ division. An institution receiving financial assistance from the state shall provide the director with acceptable documentary evidence of the state loan, grant, or other state financial assistance ~~All such~~

(2) As used in this division, "institution receiving financial assistance from the state" includes any public or private organization, especially one of a charitable, civic, or educational character, in receipt of a state loan, grant, or other type of state financial assistance.

(F) Except as provided in division (E) of this section, all conveyances, grants, or permits to use that are made to private persons, firms, or corporations shall be to the highest bidder at public auction conducted in accordance with the procedure set forth in section ~~5501.32~~ 5501.311 or 5501.34 of the Revised Code, as applicable.

(G) In any case where the director has acquired or acquires, for the state highway system, easements in or permits to use areas or space on, above, or below the surface, the director may extinguish them in whole or in part or subordinate them to uses by others, provided that the director determines

that the easements or permit to use so extinguished or subordinated are not needed by the state for highway purposes. The director shall make any extinguishments to the current underlying fee owner of record at no cost.

(H) No conveyance, transfer, easement, lease, permit, or other instrument executed pursuant to the authorization given by this section shall prejudice any right, title, or interest in any lands affected thereby which at the date thereof existed in any person, firm, or corporation, other than the state and other than members of the general public having no specific rights in said lands, unless the right, title, or interest was expressly subject to the right of the state to make such conveyance or transfer, grant such right, or execute such instrument, and unless the state by such instrument expressly exercises such right, nor shall any public utility be required to move or relocate any of its facilities that may be located in or on the areas described in any such conveyance, transfer, easement, lease, permit, or other instrument.

Sec. 5501.50. (A) As used in this section, "agricultural purposes" means commercial animal or poultry husbandry, or the production for a commercial purpose of field crops, tobacco, fruits, or vegetables.

(B) Whenever the director of transportation acquires real property as provided in section 5501.32 of the Revised Code or otherwise acquires real property in fee simple in the name of the state for highway purposes and subsequently finds the property is not needed for such purposes, or will not be needed for such purposes for a period of two years or more following the date of acquisition of the property, and the property is adjacent to or in the near vicinity of property used for agricultural purposes, the director may, at ~~his~~ the director's discretion, offer to lease the property for agricultural purposes for one year at a price consistent with rentals of adjacent agricultural lands in the manner provided in divisions (C), (D), (E), (F), (G), (H), and (I) of this section before conveying or transferring the fee simple estate or any lesser estate or interest in the property, or permitting its use by another.

(C) Real property shall be offered for lease by mailing a notice, in writing, to each person who owns or leases property being used for agricultural purposes that adjoins or is in the near vicinity of the property. The notice shall include a general description of the property offered for lease, the cost of the lease, the manner in which the lease will be made, the requirements of this section, a statement that the person shall notify the director in writing within no more than four weeks following mailing of the notice if the person is interested in leasing the property, and such other information as the director considers necessary.

(D) If the director receives information in writing from two or more persons who are interested in leasing the real property, one of whom is the owner of real property that adjoins the property offered for lease, the director may lease the property to that person. If the director receives such information from two or more persons, two or more of whom are owners of real property that adjoins the property offered for lease, the director shall lease the property to the person whose information is contained in the envelope bearing the earliest postmark.

(E) Any lease made under this section shall be conditioned upon the lessee's written agreement to maintain weed control on the property. If the director has reasonable cause to believe that such an agreement is violated, the director, or any of ~~his~~ the director's authorized agents, may, at ~~his~~ the director's or authorized agent's discretion, do either of the following:

(1) Provide necessary weed control. The expense of providing weed control shall be paid by the director out of any appropriation to the department of transportation available for the establishment, use, maintenance, or repair of highways and the amount thereof shall be reimbursed by the lessee to the department and if not reimbursed the amount thereof shall be certified to the attorney general for collection by civil action against the lessee of the property.

(2) File a complaint by petition in the court of common pleas of the county in which the property is located. Upon a finding by the court that a violation of the agreement exists as alleged in the petition, the court shall enter an order of abatement against the lessee of the property.

(F) If real property offered for lease as provided in this section is located near a highway where the use of the property for crops such as corn and wheat will obstruct the view of any part of the highway from a person operating a vehicle on the highway or on an intersecting highway or private road, or near an airport where such use of the property may interfere with airport safety, any lease made shall be conditioned upon the lessee's written agreement to use the property for only crops that will not create such an obstruction of the view of the highway or interference with airport safety. If the director has reasonable cause to believe that such an agreement is violated, the director, or any of ~~his~~ the director's authorized agents, may, at ~~his~~ the director's or authorized agent's discretion, do either of the following:

(1) Remove the crop or such part thereof as may be necessary to ensure that the view of the highway will not be obstructed, or that airport safety will not be reduced. The expense of the removal shall be paid by the director out of any appropriation to the department of transportation available for the establishment, use, maintenance, or repair of highways and the amount

thereof shall be reimbursed by the lessee to the department and if not reimbursed the amount thereof shall be certified to the attorney general for collection by civil action against the lessee of the property.

(2) File a complaint by petition in the court of common pleas of the county in which the property is located. Upon a finding by the court that a violation of the agreement exists as alleged in the petition, the court shall enter an order of abatement against the lessee of the property.

(G) The director may offer to renew annually any lease of real property made under this section to the current lessee or may offer the opportunity to lease to others in the manner and subject to the requirements and limitations as provided for in this section.

(H) The requirements of sections 5501.32, 5501.34, ~~5501.37~~, and 5501.45 of the Revised Code relating to the appraisal, advertisement, manner of sale, and minimum sale price of property not needed for highway purposes and the requirements of sections 5501.34, ~~5501.37~~, and 5501.45 of the Revised Code relating to the use of property not needed for highway purposes for recreation purposes, do not apply to a lease or renewal of a lease of real property made in accordance with this section.

(I) Except as provided in divisions (E)(1) and (F)(1) of this section, all expense incurred in the lease of real property under this section shall be paid out of the proceeds of the lease and the balance shall be deposited in the highway fund from which the purchase of the real property giving rise to the proceeds was made.

(J) Nothing in this section shall be construed to permit the director to acquire real property by appropriation for the purpose of leasing it for agricultural purposes.

Sec. 5511.01. All state highways established by law shall continue to be known as state highways, and the state highway system established by law shall continue to be known as the state highway system.

Before establishing any additional highways as part of the state highway system, or making any significant changes in existing highways comprising the system, the director of transportation shall ~~give notice, by publication in one newspaper of general circulation~~ notify the general community of the project and offer an opportunity for appropriate public involvement in the project process.

communications, radio announcements, mail notification, and other activities considered appropriate for the exchange of information. The director or the director's designee shall provide the public involvement activities in each of the counties in which the highway proposed to be established is to be located or in which it is proposed to make such changes; ~~once each week for two successive weeks. The notice shall state the time and place of the hearing which shall be held in the county, or one of the counties, in which the proposed highway or some part thereof is to be situated, or in which it is proposed to make such changes. The notice shall state the route of the proposed highway or the change proposed to be made in an existing highway of the system. The hearing shall be open to the public and the director or a deputy designated by him shall attend and hear any proof offered on the matter. Any.~~

Any changes made in existing highways by the director or any additional highways established by ~~him~~ the director following the ~~hearing~~ public involvement activities shall be certified to the following authorities interested therein: the legislative authority of municipalities, board of county commissioners, board of township trustees, municipal, county, and regional planning commissions, and the municipal, township, or county officer authorized to issue land use or building permits. Before any zoning change or subdivision plat is approved and before any permit for land use or the erection, alteration, or moving of a building is granted affecting any land within three hundred feet of the center line of a proposed new highway or highway for which changes are proposed, as described in the certification by the director, or within a radius of five hundred feet from the point of intersection of that center line with any public road or highway, the authority authorized to approve the zoning change or subdivision plat or the authority authorized to grant the permit for land use or the erection, alteration, or moving of the building shall give notice, by certified mail, to the director, and shall not approve a zoning change or subdivision plat or grant a permit for land use or the erection, alteration, or moving of a building for one hundred twenty days from date notice is received by the director. During the one hundred twenty day period and any extension of it as may be agreed to between the director and any property owner, notice of which has been given to the authority to which the application has been made, the director shall proceed to acquire any land needed by purchase or gift, or by initiating proceedings to appropriate, or make a finding that acquisition at such time is not in the public interest. Upon purchase, initiation of appropriation proceedings, or a finding that acquisition is not in the public interest, the director shall notify the authority from which notice

was received of that action. Upon being notified that the director has purchased or initiated proceedings to appropriate the land that authority shall refuse to rezone land or to approve any subdivision plat that includes the land which the director has purchased or has initiated proceedings to appropriate, and that authority shall refuse to grant a permit for land use or the erection, alteration, or moving of a building on the land which the director has purchased or initiated proceedings to appropriate. Upon notification that the director has found acquisition at that time not to be in the public interest, or upon the expiration of the one hundred twenty day period or any extension thereof, if no notice has been received from the director, that authority shall proceed in accordance with law.

A report of the change or addition shall be filed in the office of the director, and the report of the director making the change or establishing the highway shall be placed on file in the office of the department of transportation.

In no event shall the total mileage of the state highway system be increased under this section to exceed two hundred miles in one year.

The director, upon petition of the boards of the counties traversed thereby or of citizens of such counties, may officially assign to a highway of the state highway system a distinctive name, commemorative of a historical event or personage, or officially assign thereto a commonly accepted and appropriate name by which the highway is known. ~~The~~

The director may, upon giving appropriate notice and ~~holding a hearing offering the opportunity for public involvement and comment~~, abandon a highway on the state highway system or part thereof which ~~he~~ the director determines is of minor importance or which traverses territory adequately served by another state highway, and the abandoned highway shall revert to a county or township road or municipal street. A report covering such action shall be filed in the office of the director, and the director shall certify ~~his~~ the action to the board of the county in which the highway or portion thereof so abandoned is situated.

The director shall make a map showing thereon, by appropriate numbering or other designation, all the state highways. The map shall be kept on file in ~~his~~ the director's office and ~~he~~ the director shall cause the same to be corrected and revised to show all changes and additions to the date of such correction. A copy of the map, certified by the director as a correct copy of the map on file in ~~his~~ the director's office, shall be admissible as evidence in any court to prove the existence and location of the several highways and roads of the state highway system.

The state highway routes into or through municipal corporations, as

designated or indicated by state highway route markers erected thereon, are state highways and a part of the state highway system. The director may erect state highway route markers and such other signs directing traffic as ~~he~~ the director thinks proper upon those portions of the state highway system lying within municipal corporations, and the consent of the municipal corporations to such erection and marking shall not be necessary. However, the director may erect traffic signs in villages in accordance with section 5521.01 of the Revised Code. No change in the route of any highway through a municipal corporation shall be made except after ~~notice and hearing~~ providing public involvement activities.

Except as provided in sections 5501.49 and 5517.04 of the Revised Code, no duty of constructing, reconstructing, maintaining, and repairing such state highways within municipal corporations shall attach to or rest upon the director. The director may enter upon such state highways within any municipal corporation and construct, reconstruct, widen, improve, maintain, and repair them, provided the municipal corporation first consents thereto by resolution of its legislative authority, except that ~~he~~ 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 such establishment or change ~~was journalized~~ is approved by the director, or if the director is acting pursuant to section 5501.49 of the Revised Code.

The director shall place in the files of the department a record of the routes of all such state highways within municipal corporations, and shall cause them to be corrected and revised to show all changes and additions to the date of the correction. A copy of the record or any pertinent part thereof, certified by the director to be a true and correct copy, shall be admissible in evidence in any court of the state for the purpose of proving the existence and location of any state highway within a municipal corporation.

When the director proposes to change an existing state highway and there exists upon the highway a separated railroad crossing, the director shall mail to the interested railroad company a copy of the notice which shall be mailed by first-class mail, postage prepaid, and certified with return receipt requested, at least two weeks before the time fixed for ~~hearing~~ any public involvement activity. When the director proposes to change an existing state highway within a municipal corporation ~~he~~, the director shall mail to the mayor or other chief executive officer of the municipal corporation a copy of the notice which shall be mailed by first-class mail, postage prepaid, and certified with return receipt requested, at least two

weeks before the time fixed for ~~hearing~~ any public involvement activity.

Nothing in this section shall be construed to require ~~notice and hearing~~ providing public involvement activities before the construction, reconstruction, maintenance, improvement, or widening of an existing highway where no relocation is involved.

With the exception of the authority conferred upon the director by this section, to erect state highway route markers and signs directing traffic, and by section 5501.49 of the Revised Code, Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code, shall not in any way modify, limit, or restrict the authority conferred by section 723.01 of the Revised Code upon municipal corporations to regulate the use of streets and to have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporations and to keep them, subject to division (B)(3) of section 2744.02 of the Revised Code, open, in repair, and free from nuisance.

Sec. 5511.07. In pursuance of section 5501.31 of the Revised Code, the director of transportation, in vacating any highway or portion thereof on the state highway system that the director finds is no longer necessary for the purposes of a public highway, shall issue such a finding, which shall contain a description of the highway or part thereof to be vacated. Notice of such finding shall be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county in which the highway, or part thereof, to be vacated lies, and a copy of the notice shall be served as in civil cases, or by registered first class mail, return receipt requested, upon each owner of property abutting on the portion of the highway to be vacated, and upon the director of natural resources. Any owner whose place of residence is unknown, or who is a nonresident of the state, shall be specifically named in the notice of publication and shall be directed in the finding to take due notice of the contents thereof. The director shall make any vacation of a highway or portion of a highway to an abutting landowner or current underlying fee owner of record at no cost.

The notice shall fix a date, not less than twenty days after the date of the final publication of the notice, and shall contain a determination that on or before that date claims for compensation and damage, or either, by reason of the vacation proceedings, must be filed in writing, in duplicate, with the district deputy director of transportation in whose district lies any portion of the highway to be vacated. Failure to file claims in that manner is a waiver of any claim for damage by reason of the vacation.

After considering any claims filed, the director shall make awards as the director considers just and equitable, and if, within ten days, the amount so awarded has not been accepted and waivers therefor signed, that amount shall be deposited in the probate court or court of common pleas of the county in which the vacation lies, wholly or in part, and the procedure to adjudicate such claims shall be that provided under section 5519.01 of the Revised Code.

No final determination shall be made by the director in vacating such highway or portion thereof until all awards are accepted, or deposit therefor made, in the probate court or court of common pleas.

No public utility shall be required to move or relocate any of its facilities that may be located in or on any highway or portion thereof being vacated. Any deed, transfer, or other instrument or conveyance made by reason of the vacation shall indicate the right of any public utility to continue its use or occupation of the highway or portion of the highway being vacated.

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 the road, or 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 the roads, highways, bridges, or culverts,~~ or they interfere or may interfere with the contemplated construction, reconstruction, improvement, maintenance, ~~or~~ repair, or use by the traveling public of the roads; or highways, ~~bridges, or culverts~~ or with their use 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 the road; or highway, ~~bridge, or culvert~~ when in the opinion of the director they constitute obstructions ~~in the road, highway, bridge, or culvert,~~ or they interfere with or may interfere with the contemplated construction, reconstruction, improvement, maintenance, ~~or~~ repair, or use of the road; or highway, ~~bridge, or culvert~~ or with its use. The relocation within the bounds of the road; or 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 bridges or culverts thereon~~, or if any of their properties, ~~in the director's opinion~~, are so located that they do or may interfere with the contemplated construction, reconstruction, improvement, maintenance, ~~or repair, or use of the road, or highway, bridge, or culvert, or with the use of the road, highway, bridge, or culvert by the traveling public~~, the director shall notify such individual, firm, or corporation directing the removal of the obstruction or properties, or the relocation of the properties, ~~and, if such~~. If the individual, firm, or corporation does not within five days from the service of the notice proceed to remove or relocate the 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~~ Any notice required under this section shall be made by personal service, certified mail, or express mail.

If, in the director's opinion, the obstruction or properties present an immediate and serious threat to the safety of the traveling public, the director may remove or relocate the obstruction or properties without prior notice.

When the director performs a removal or relocation under this section, the costs and expenses shall 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. ~~Notice of the action shall be made by personal service or by certified mail.~~

As used in this section, "road" or "highway" has the same meaning as in section 5501.01 of the Revised Code and also includes any part of the right of way.

Sec. 5515.04. ~~Telegraph and telephone~~ Utility poles along the public highway may be used for the purpose of attaching thereto or placing thereon, signposts, guideposts, warning signs, or other signs when prescribed by the director of transportation or county engineer.

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 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 ~~advertising for~~ 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. 5525.14. (A) Notwithstanding sections 125.01 to 125.11 of the Revised Code, the director of transportation, by written instruction to the contractor, may increase the quantities of any item specified or not specified in a competitively bid construction contract but, except as provided in division (B) of this section, the additional cost incurred by the increase shall not exceed the lesser of one hundred thousand dollars or five per cent of the total contract price. Any such provision for increased quantities or extra work shall be made in the form of a written change to the original contract and does not require competitive bidding.

(B) The one hundred thousand dollar or five per cent restriction in division (A) of this section does not apply to change orders or extra work contracts when the total dollar amount of the increase is twenty-five thousand dollars or less or to change orders or extra work contracts resulting from any of the following:

(1) An increase in the plan quantity that is determined during the final measurement of an item of work.

(2) Federally mandated requirements that did not exist at the time of the original contract award.

(3) Circumstances that would create a life-, safety-, or health-threatening situation or would unduly delay the completion of a project and increase its costs, but only if the director makes a finding of such fact, declares an emergency, and issues the finding. Extra work that the director contracts for in these circumstances may include not only construction needed to complete a project, but also adjustments needed to meet changed conditions, alterations in original plans, unforeseen contingencies, or payments necessitated by contract terminations or suspensions.

All change orders or extra work contracts set forth in division (B) of this section shall be reported to the controlling board quarterly in writing.

(C) The director, by written instruction to the contractor, may decrease or cancel the quantity of any item specified in a contract or portion of a contract and authorize payment to the contractor for reasonable costs incurred to date.

Sec. 5525.23. The director of transportation may include in any construction contract a provision authorizing arbitration of any controversy subsequently arising out of the contract. The provision shall provide that if

all parties in a controversy arising out of a construction contract agree to proceed to arbitration, the director shall determine the method and form of arbitration. Notwithstanding sections 2711.11 and 2711.13 of the Revised Code, the decision of an arbitrator under this section is not subject to a motion to modify or correct an award. No appeal from the decision of an arbitrator lies to any court except that the court of common pleas of Franklin county may make an order vacating the award upon the application of any party to the arbitration if division (A), (B), or (C) of section 2711.10 of the Revised Code applies.

SECTION 2. That existing sections 129.42, 5501.20, 5501.31, 5501.32, 5501.34, 5501.45, 5501.50, 5511.01, 5511.07, 5515.02, 5515.04, 5521.01, and 5525.14 and sections 4582.07, 4582.08, 4582.09, 4582.32, 4582.33, 4582.34, and 5501.37 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

Sub. S. B. No. 295

24

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*Governor.*

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

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*Director, Legislative Service Commission.*

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

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_