

AN ACT

To amend sections 5501.44, 5501.70, 5501.71, 5501.73, 5501.78, 5531.11, 5531.12, 5531.13, 5531.14, 5531.15, 5531.16, and 5739.02 and to enact sections 5531.141, 5531.142, 5531.143, 5531.144, 5531.145, 5531.146, 5531.147, 5531.148, and 5531.149 of the Revised Code to provide that a toll project may include the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location that carries two interstate highways over the Ohio River to another state, to amend the law governing public-private agreements relative to transportation facilities, and to provide for the collection of user fees on toll projects by toll project operators.

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

SECTION 1. That sections 5501.44, 5501.70, 5501.71, 5501.73, 5501.78, 5531.11, 5531.12, 5531.13, 5531.14, 5531.15, 5531.16, and 5739.02 be amended and sections 5531.141, 5531.142, 5531.143, 5531.144, 5531.145, 5531.146, 5531.147, 5531.148, and 5531.149 of the Revised Code be enacted to read as follows:

Sec. 5501.44. (A)(1) Notwithstanding section 5735.27 of the Revised Code, the director of transportation, when the director determines it in the interest of the welfare and safety of the citizens of Ohio, may enter into agreements with other states or subdivisions thereof or the United States relative to the cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of this state, and may expend state highway funds for said purpose.

~~(1)~~ No Except as provided in division (A)(3) of this section, no such agreement shall be made that obligates this state to expend more than the cost of the construction of such portion of said bridge as is located within the state, and not more than fifty per cent of the cost of maintenance of any

such bridge, and no such agreement shall be made that obligates the state in excess of three hundred thousand dollars in any one year for maintenance.

(2) Notwithstanding division (A)(1) of this section, the director may expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches for the bridge that were transferred from the Ohio bridge commission to the control of the state of Ohio, department of transportation, as provided in Section 4 of Amended Substitute House Bill No. 98 of the 114th general assembly. Following the replacement of that bridge, the director may expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches.

(3) Notwithstanding division (A)(1) of this section, the director may enter into an agreement with another state for the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location that carries two interstate highways over the Ohio river to another state, and the replacement, improvement, rehabilitation, operation, and maintenance of roadways providing for ingress to and egress from that bridge or system of bridges. However, no such agreement shall obligate this state to expend more than fifty per cent of the total project costs.

(4) Any ~~such agreements~~ agreement that is entered into under this section shall be approved by the governor and attorney general of the state before ~~they become~~ it becomes effective.

~~(4)(5)~~ Each agreement entered into shall designate responsibility for inspection, provide for annual inspection, and require that a report of each inspection be filed with the department of transportation. The director, with regard to all existing bridges or other bridges on a stream that forms a boundary line of this state, shall take all reasonable measures to obtain and to secure the filing of a copy of each inspection report for each bridge with the department of transportation.

~~(5)(6)~~ The department, upon hearing that a bridge across the Ohio river is scheduled to be closed by a contiguous state, shall make all reasonable efforts to notify the Ohio residents likely to be adversely affected by that closing. The department also shall cooperate and communicate with contiguous states in trying to resolve bridge closing problems.

(B)(1) The director, when the director considers it in the interest of the welfare and safety of the citizens of Ohio, may enter into agreements with other states, subdivisions thereof, metropolitan planning organizations, or the United States, relative to the design, construction, operation, maintenance, and repair of a regional traffic management system, and may

expend state and federal highway funds for such purposes, notwithstanding any other provision of the Revised Code.

(2) No such agreement shall be made that obligates this state to expend more than the cost of construction of such portion of a regional traffic management system as is located within the state, and not more than a proportional amount, based upon the system presence in this state, for costs of design, operation, maintenance, and repair.

(3) Any such agreements shall be approved by the governor and attorney general of the state before they become effective.

(4) As used in division (B) of this section, "regional traffic management system" means an integrated, high-technology system to provide remote control center surveillance and monitoring of the regional freeways and main arterial routes in order to reduce and eliminate major backups and delays to motorists in the area.

Sec. 5501.70. As used in sections 5501.70 to 5501.83 of the Revised Code:

(A) "Affected jurisdiction" means any unit of government within the state in which all or part of a transportation facility is located or any other public entity directly affected by the transportation facility.

(B) "Force majeure" means an uncontrollable force or natural disaster not within the power of the operator or the state.

(C) "Maintenance" includes routine maintenance, major maintenance, and any other categories of maintenance that may be designated by the department of transportation.

(D) "Material default" means any failure of an operator to perform any duties under a public-private agreement that jeopardizes delivery of adequate service to the public and remains unsatisfied after a reasonable period of time and after the operator has received written notice from the department of the failure.

(E) "Operate" means any action to maintain, repair, improve, equip, or modify a transportation facility.

(F) "Operator" means a private entity that has entered into a public-private agreement under sections 5501.71 to 5501.83 of the Revised Code.

(G) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(H) "Public-private agreement" means the agreement between a private entity and the department that relates to the development, financing,

maintenance, or operation of a transportation facility subject to sections 5501.70 to 5501.83 of the Revised Code.

(I) "Public-private initiative" means an arrangement between the department and one or more private entities, the terms of which are stated in a public-private agreement, that provides for all of the following:

(1) Acceptance of a private contribution, including a money payment, for a project or service for a transportation facility;

(2) Sharing of resources and the means of providing a project or service for a transportation facility;

(3) Cooperation in researching, developing, and implementing projects or services for a transportation facility.

(J) "Transportation facility" has the same meaning as in section 5501.01 of the Revised Code and also includes a tunnel, ferry, port facility on navigable waters that are used for commerce, intermodal facility, or similar facility open to the public and used for the transportation of persons or goods, and any building, structure, parking area, or other appurtenances or property needed to operate a transportation facility that is subject to a public-private agreement.

(K) "User fee" means a rate, toll, fee, or other charge established under section 5531.14 of the Revised Code and imposed by an operator for use of all or part of a transportation facility in accordance with that section.

(L) "Utility" means a privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, alternative or renewable energy sources such as wind or solar, or any other similar commodity, including a fire or police signal system or street lighting system that directly or indirectly serves the public.

Sec. 5501.71. (A) The department of transportation may solicit, receive, consider, evaluate, and accept a proposal for a public-private initiative.

(B) In soliciting and selecting a private entity with which to enter into a public-private initiative, the department shall use one or both of the following:

(1) Sealed bidding;

(2) Selection of proposals, with or without negotiations, based on qualifications, best value, or both.

(C) The department shall consider the following factors in evaluating and selecting a bid or proposal to enter into a public-private initiative:

(1) The ability of the transportation facility to improve safety, reduce congestion, increase capacity, and promote economic growth;

(2) The extent that the private entity's proposal addresses the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, or enhancing economic efficiency and the private entity's proposal is on the transportation improvement program for the affected metropolitan planning organization or the state transportation improvement program;

(3) The proposed cost of and financial plan for the transportation facility;

(4) The general reputation, qualifications, industry experience, and financial capacity of the private entity;

(5) The proposed design, operation, and feasibility of the transportation facility;

(6) Comments from local citizens and affected jurisdictions;

(7) Benefits to the public and the affected transportation facility;

(8) The safety record of the private entity;

(9) The inclusion of a teaming agreement in the bid or proposal that identifies the primary designer of record or design firm representing not less than thirty per cent of the estimated design fee, the primary construction contractor representing not less than thirty per cent of the estimated construction dollar value amount, and the primary financier representing not less than fifty per cent of the total project cost.

(10) Any other criteria that the department considers appropriate.

(D) The department may select multiple private entities with which to enter a public-private agreement for a transportation facility if it is in the public interest to do so.

(E) The department shall select a private entity or entities for a public-private initiative on a competitive basis.

(F) Any materials or data submitted to, made available to, or received by the director of transportation, to the extent that the material or data consist of trade secrets, as defined in section 1333.61 of the Revised Code, are confidential and are not public records for the purposes of section 149.43 of the Revised Code. Financial information received by the director that is related to a proposal is confidential and not a public record for purposes of section 149.43 of the Revised Code until such time as a proposal is selected. Prior to submission of a solicited proposal, a private entity may request a review by the department of information that the private entity has identified as confidential, to determine whether such information would be subject to disclosure under section 149.43 of the Revised Code.

(G)(1) The department may reimburse one or more private entities for a portion of the actual costs each entity incurred in submitting a proposal for a

public-private initiative that was solicited by the department under this section. When considering the reimbursement of such costs, the director shall describe in the request for proposals for a specific public-private initiative the specific terms and conditions for reimbursing one or more private entities. The director may include in the terms and conditions a requirement that each private entity execute an agreement to transfer to the department the rights to the use of the work product contained in the proposal in exchange for receiving the reimbursement.

(2) The director shall make all decisions related to the reimbursement of a specific private entity and related to the maximum amount of the reimbursement. However, the department shall not reimburse a private entity if that entity enters into the public-private agreement that is the subject of the solicited proposal, except as set forth in the request for proposals or in the public-private agreement. The reimbursement of costs under division (G) of this section is exempt from the requirements of Chapter 125. of the Revised Code and sections 127.16 and 127.162 of the Revised Code.

(3) If the department, pursuant to division (G)(1) of this section, includes a reimbursement provision in a request for proposals and the department subsequently terminates the solicitation prior to the solicitation expiration date, the department shall prorate the amount of the reimbursement that is to be paid to each private entity participating in the solicitation on the date the department terminates the solicitation. The department shall calculate the proration percentage by determining the number of days from the date the solicitation first was offered until the date the department terminated the solicitation and dividing that number by the number of days of the original solicitation period.

(4) Except as otherwise provided in writing by the department, if, pursuant to division (G)(1) of this section, the department includes a reimbursement provision in a request for proposals and subsequently enters into negotiations based on the selection of a desired proposal and the department elects to terminate those negotiations for the convenience of the department and through no fault of the proposer, the proposer is entitled to the full reimbursement amount.

Sec. 5501.73. (A) After selecting a solicited or unsolicited proposal for a public-private initiative, the department of transportation shall enter into a public-private agreement for a transportation facility with the selected private entity or any configuration of private entities. An affected jurisdiction may be a party to a public-private agreement entered into by the department and a selected private entity or combination of private entities.

(B) A public-private agreement under this section shall provide for all of the following:

(1) Planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of a transportation facility;

(2) Term of the public-private agreement;

(3) Type of property interest, if any, the private entity will have in the transportation facility;

(4) A specific plan to ensure proper maintenance of the transportation facility throughout the term of the agreement and a return of the facility to the department, if applicable, in good condition and repair;

(5) Whether user fees, administrative fees, or other charges will be collected ~~on~~ for use of the transportation facility in accordance with sections 5531.11 to 5531.18 of the Revised Code and the basis by which such user fees, administrative fees, or other charges shall be determined and modified;

(6) Compliance with applicable federal, state, and local laws;

(7) Grounds for termination of the public-private agreement by the department or operator;

(8) Disposition of the facility upon completion of the agreement;

(9) Procedures for amendment of the agreement-;

(10) A contract performance bond in an amount specified by the director of transportation, conditioned upon the private entity performing the work in accordance with the agreed upon terms, within the time prescribed, and in conformance with any other such terms and conditions as are specified by the director;

(11) A payment bond in an amount specified by the director, conditioned upon the payment for all labor, work performed, and materials furnished in connection with the agreement and any other such terms and conditions as are specified by the director.

(C) A public-private agreement under this section may provide for any of the following:

(1) Review and approval by the department of the operator's plans for the development and operation of the transportation facility;

(2) Inspection by the department of construction of or improvements to the transportation facility;

(3) Maintenance by the operator of a policy of liability insurance or self-insurance;

(4) Filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the department;

(5) Filing by the operator, on a periodic basis, of traffic reports in a form

acceptable to the department;

(6) Financing obligations of the operator and the department;

(7) Apportionment of expenses between the operator and the department;

(8) Rights and duties of the operator, the department, and other state and local governmental entities with respect to use of the transportation facility;

(9) Rights and remedies available in the event of default or delay;

(10) Terms and conditions of indemnification of the operator by the department;

(11) Assignment, subcontracting, or other delegation of responsibilities of the operator or the department under the agreement to third parties, including other private entities and other state agencies;

(12) Sale or lease to the operator of private property related to the transportation facility;

(13) Traffic enforcement and other policing issues, including any reimbursement by the private entity for such services.

(D)(1) The director of transportation may include in any public-private agreement under sections 5501.70 to 5501.83 of the Revised Code a provision authorizing a binding dispute resolution method for any controversy subsequently arising out of the contract. The binding dispute resolution method may proceed only upon agreement of all parties to the controversy. If all parties do not agree to proceed to a binding dispute resolution, a party having a claim against the department shall exhaust its administrative remedies specified in the public-private agreement prior to filing any action against the department in the court of claims.

No appeal from the determination of a technical expert lies to any court, except that the court of common pleas of Franklin County may issue an order vacating such a determination upon the application of any party to the binding dispute resolution if any of the following applies:

(a) The determination was procured by corruption, fraud, or undue means.

(b) There was evidence of partiality or corruption on the part of the technical expert.

(c) The technical expert was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

(2) As used in this division, "binding dispute resolution" means a binding determination after review by a technical expert of all relevant items, which may include documents, and by interviewing appropriate

personnel and visiting the project site involved in the controversy. "Binding dispute resolution" does not involve representation by legal counsel or advocacy by any person on behalf of any party to the controversy.

(E) No public-private agreement entered into under this section shall be construed to transfer to a private entity the director's authority to appropriate property under Chapters 163., 5501., and 5519. of the Revised Code.

(F) Money collected by the department pursuant to an agreement entered into under this section shall be deposited into the state treasury to the credit of the highway operating fund unless the agreement is related to a toll project under sections 5531.11 to 5531.18 of the Revised Code, in which case the money shall be deposited as specified in the agreement.

(G) Chapter 5525. of the Revised Code does not apply to public-private agreements under sections 5501.70 to 5501.83 of the Revised Code.

Sec. 5501.78. A transportation facility and any tangible personal property used exclusively with a transportation facility that is owned by the department of transportation and leased, licensed, financed, or otherwise conveyed to an operator, or that is acquired, constructed, or otherwise provided by an operator on behalf of the department, is exempt from all ad valorem property taxes and special assessments levied against property by the state or any political subdivision of the state. Building and construction materials that will be incorporated into a transportation facility pursuant to a public-private agreement are exempt from the taxes imposed under Chapters 5739. and 5741. of the Revised Code.

Sec. 5531.11. As used in sections 5531.11 to 5531.18 of the Revised Code:

(A) "Administrative fee" means a fee imposed by a toll project operator for toll collection, processing, and related activities.

(B) "Cost" means all costs of constructing, improving, repairing, maintaining, administering, financing, and operating the Ohio transportation system, including all costs payable with respect to permanent improvements as described in division (B) of section 133.15 of the Revised Code.

(C) "Electronic-monitoring system" means any form of electronic or other vehicle sensor or identifying device that automatically produces one or more photographs, one or more microphotographs, a videotape, recorded images, or other form of identifying data of each vehicle at the time it is used or operated on a toll project.

(D) "Governmental agency" means any state agency, federal agency, political subdivision, or other local, interstate, or regional governmental agency, and any combination of those agencies.

(E) "Highway project" means any project intended for the highway

purpose of supporting the state highway system. A highway project, whether publicly or privately owned, is a state infrastructure project as defined in section 5531.10 of the Revised Code for all purposes of that section and section 5531.09 of the Revised Code and also is a transportation facility as defined in section 5501.01 of the Revised Code.

~~"State highway system" or "system" means all existing and future transportation projects constructed, operated, repaired, maintained, administered, and operated under the jurisdiction of the department of transportation, including toll projects and highway projects.~~

(F) "Motor vehicle certificate of registration issuance prevention order" means, relative to the registered owner of a motor vehicle, an order that prohibits the registrar of motor vehicles and any deputy registrar from doing both of the following:

(1) Accepting any application for a new or renewal motor vehicle certificate of registration in the name of the registered owner;

(2) Issuing or renewing any motor vehicle certificate of registration for a motor vehicle that utilized a toll project for which the required user fee or associated administrative fee was not paid by the registered owner of that motor vehicle.

(G) "Public roads" means all public highways, roads, and streets in the state, whether maintained by a state agency or any other governmental agency.

(H) "Public utility facilities" means tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of any public utility.

(I) "Registered owner" means all of the following:

(1) Any person or entity identified by the bureau of motor vehicles or any other state motor vehicle bureau, department, or office as the owner of a motor vehicle;

(2) The lessee of a motor vehicle pursuant to a lease of six months or longer;

(3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.

(J) "Revenues" means all nontax revenues coming into the possession of or under the control of the department by virtue of sections 5531.11 to 5531.18 of the Revised Code. "Revenues" does not include proceeds from the sale of obligations but does include tolls user fees, service revenues, investment income on the Ohio toll fund established in section 5531.14 of the Revised Code, rentals, gifts, and grants.

(K) "Service facilities" means service stations, restaurants, and other

facilities for food service, roadside parks and rest areas, parking, camping, tenting, rest, and sleeping facilities, hotels or motels, and all similar and other facilities providing services to the traveling public in connection with the use of a toll project and owned, leased, licensed, or operated by the department of transportation.

(L) "Service revenues" means those revenues of the department derived from its ownership, leasing, licensing, or operation of service facilities.

(M) "State highway system" or "system" means all existing and future transportation projects constructed, operated, repaired, maintained, administered, and operated under the jurisdiction of the department of transportation, including toll projects and highway projects.

(N) "Toll project" means ~~any~~ all of the following:

(1) Any project for which user fees are charged that adds new capacity, including construction on existing highways, bridges, or tunnels where construction increases the total number of lanes, including toll and nontoll lanes, and does not decrease the total number of nontoll lanes at each mile-
~~"Toll project" also includes new;~~

(2) New interchanges constructed for economic development purposes connecting an interstate highway or a multi-lane, ~~fully controlled-access~~ highway that was not connected previously with other interstates, state highways and local roads, and any new high occupancy lane or new highways connecting an intermodal facility established, constructed, reconstructed, maintained, repaired, administered, operated, or improved, under the jurisdiction of the department ~~of transportation and pursuant;~~

(3) Pursuant to sections 5531.11 to 5531.18 of the Revised Code, at a location or locations determined by the director of transportation, ~~including~~ all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, and those portions of connecting public roads that serve interchanges and are determined by the director to be necessary for the safe merging of traffic between the toll project and those nontolled public roads, toll booths, service facilities, and administration, storage, and other buildings, property, and facilities that the department considers necessary for the operation or policing of the toll project, together with all property and rights that may be acquired by the department for the construction, maintenance, repair, administration, improvement, or operation of the toll project, ~~and includes any sections or extensions of a toll project designated by the department as such for the particular purpose. Nothing in this section shall be construed to permit tolls to be charged on existing nontoll highways;~~

(4) Notwithstanding division (N)(1) of this section, the replacement,

improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location that carries two interstate highways over the Ohio river to another state, and the replacement, improvement, rehabilitation, operation, and maintenance of the roadways that provide ingress to and egress from such a bridge or system of bridges, generally following the route of those interstate highways.

(O) "Toll project operator" means the department or any agency, political subdivision, authority, or other entity that operates a toll project, including a private entity that operates a toll project pursuant to a public-private agreement authorized by sections 5501.70 to 5501.83 of the Revised Code.

(P) "~~Tolls~~ User fee" means ~~tolls a rate, special fees or permit fees toll, fee, or other charges by the department to the owners, lessors, lessees, operators of motor vehicles, or other users of~~ charge imposed by a toll project for the operation or use of or the right to operate on operator for use of all or part of a transportation facility, including a toll project. "User fee" also includes any such rate, toll, fee, or other charge imposed by a toll project operator pursuant to a public-private agreement authorized by sections 5501.70 to 5501.83 of the Revised Code.

Sec. 5531.12. (A) In order to remove present and anticipated handicaps and potential hazards on the highways in this state, to facilitate vehicular traffic throughout the state, to promote the agricultural, commercial, recreational, tourism, and industrial development of the state, and to provide for the general welfare of its citizens, the director of transportation may approve toll projects. Any revenue derived from toll projects shall be used only for purposes of the toll project, including a toll project or any aspect of a toll project pursuant to a public-private agreement authorized by sections 5501.70 to 5501.83 of the Revised Code, and shall not be expended for any purpose other than as provided in Section 5a of Article XII, Ohio Constitution. The toll projects authorized by sections 5531.11 to 5531.18 of the Revised Code are part of the state highway system.

(B) Any toll project shall be developed and submitted for selection in accordance with the policies and procedures of the ~~major new capacity~~ selection process of the transportation review advisory council, created under Chapter 5512. of the Revised Code. Each toll project may be separately designated, by name or number, and may be constructed, improved, or reconstructed as the department of transportation may from time to time determine pursuant to sections 5531.11 to 5531.18 of the Revised Code. A toll project shall be considered a state infrastructure project as defined in section 5531.10 of the Revised Code for all purposes of

that section and section 5531.09 of the Revised Code and also is a transportation facility as defined in section 5501.01 of the Revised Code.

(C)(1) Nothing in this chapter shall be construed to permit ~~tolls~~ user fees to be charged on existing nontoll public roads.

(2) Division (C)(1) of this section does not apply to a toll project as described in division (N)(4) of section 5531.11 of the Revised Code.

Sec. 5531.13. (A) The director of transportation may acquire or dispose of any public or private property or interests therein that the director determines to be necessary, convenient, or proper for the construction, improvement, repair, maintenance, administration, or operation of toll projects in the same manner as the director may acquire or dispose of such property for transportation facilities or highway purposes, under sections 5501.311 to 5501.34 and 5501.45 and Chapter 5519. of the Revised Code.

(B) The director may enter into any contracts the director determines to be necessary, convenient, or proper for the construction, improvement, repair, maintenance, administration, or operation of toll projects in the manner provided in Chapter 5525. of the Revised Code or pursuant to a public-private agreement under sections 5501.70 to 5501.83 of the Revised Code.

(C) The director may enter into any professional contracts the director determines to be necessary, convenient, or proper for the construction, improvement, repair, maintenance, administration, or operation of toll projects in the manner provided in Chapter 5526. of the Revised Code or pursuant to a public-private agreement under sections 5501.70 to 5501.83 of the Revised Code.

(D) ~~Tolls~~ User fees and accounts within the Ohio toll fund established in section 5531.14 of the Revised Code may be used for the acquisition of property under division (A) of this section or pursuant to contracts entered into under division (B) or (C) of this section to the same extent permitted by section 5531.14 of the Revised Code with respect to obligations.

Sec. 5531.14. (A) To the extent permitted by federal law, the director of transportation may fix, revise, charge, and collect ~~tolls~~ user fees for each toll project, and contract with any person or governmental agency desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, electric light, or power lines, service facilities, or for any other purpose, and fix the terms, conditions, rents, and rates of charge for such use; provided, that no ~~toll~~ user fee, charge, or rental may be made for placing in, on, along, over, or under the toll project, equipment or public utility facilities that are necessary to serve service facilities or to interconnect any public utility facilities.

A toll project operator shall display signs that identify the applicable user fees, including fees for motor vehicles that do not have an active, functioning electronic toll collection device registered for and in use in the vehicle. The toll project operator shall erect or otherwise display signs in advance of the toll project at locations that are of distances that are sufficient to notify motor vehicle operators of the opportunity to exit the street or highway on which they are traveling before the street or highway becomes, becomes part of, or otherwise leads to the toll project and for the use of which user fees apply.

(B) In accordance with Chapter 119. of the Revised Code, the director shall establish a plan, schedule, or system of tolls user fees or charges and shall declare the purpose, amount, and duration of the tolls user fees or charges. Any proposal to implement a toll user fee or other charge under this section may include a plan, schedule, or system of tolls or charges that is subject to adjustment by the director within and in accordance with that plan, schedule, or system. As part of the plan, schedule, or system, the director shall develop a written process for setting user fee rates. In developing the process, the director shall seek and consider public comment. In doing so, the director shall hold at least one public hearing within fifty miles of the location of the toll project for which the written process is developed.

~~(B) For any toll imposed under this section, the department of transportation may use a system for toll collection that is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device on a motor vehicle to the toll lane, which information is used to charge the account holder the appropriate toll or charge.~~

~~(C) One or more tolls, or a portion of any toll, may be pledged to the repayment of obligations in the bond proceedings for those obligations and shall be a pledged receipt for those obligations to the extent pledged in those bond proceedings.~~

(D) Tolls The director, in accordance with Chapter 119. of the Revised Code, also may adopt such additional rules as the director determines necessary for the establishment, collection, and enforcement of user fees and administrative fees, including the purpose, amount, and duration of the fees.

(C) One or more user fees, or a portion of any user fees, may be pledged to the repayment of obligations issued for the purpose of financing the toll project and shall be a pledged receipt for those obligations to the extent pledged in the proceedings authorizing such obligations. One or more user fees, or a portion of any user fees, also may be pledged to the repayment of

obligations under any public-private agreement or related financing as provided in sections 5501.70 to 5501.83 of the Revised Code.

(D) User fees shall be so fixed and adjusted by the director as to provide funds at least sufficient with other revenues of the Ohio transportation system, if any, to pay all of the following:

(1) Any ~~bond debt~~ service charges on obligations issued to pay costs of one or more toll projects as such charges become due and payable, taking into account any other amounts available for such purposes;

(2) Any obligations under any public-private agreement entered into in connection with a toll project as such amounts become due and payable;

(3) The cost of maintaining, improving, repairing, constructing, financing and operating toll projects within the interstate system or the state highway system and its different parts and sections, and to create and maintain any reserves for those purposes.

(E) Except as provided in division (F) of this section, money received from ~~tolls imposed under this section~~ user fees, other than those received pursuant to a public-private agreement, which shall be deposited in accordance with such agreement and shall be used for the exclusive benefit of such toll project, shall be deposited to the credit of the Ohio toll fund, which is hereby created in the state treasury. The treasurer of state may establish separate subaccounts within the Ohio toll fund as determined to be necessary or convenient to pay costs of constructing, improving, repairing, maintaining, administering, and operating toll projects within the state highway system. Any remaining money deposited into the Ohio toll fund shall be used at the discretion of the director to support construction, improvement, repair, maintenance, administration, and operation costs for approved toll projects and highway projects within one mile of a toll project. All investment earnings of the fund shall be credited to the fund.

(F) The issuing authority shall of obligations issued for the purpose of financing the toll project, by the fifteenth day of July of each fiscal year, shall certify or cause to be certified to the department of transportation and the office of budget and management the total amount of money required during the current fiscal year to meet in full all ~~bond debt~~ service charges and otherwise comply with the requirements of any applicable bond proceedings and all obligations under any public-private agreement relating to a toll project as provided in sections 5501.70 to 5501.83 of the Revised Code. The issuing authority shall make or cause to be made supplemental certifications to the department of ~~transportation~~ and the office of budget and management for each bond service payment date and at such other times during each fiscal year as may be provided in the applicable bond

~~proceedings~~ proceeding or public-private agreement or required by that department or office. Bond service charges, costs of credit enhancement facilities, other financing costs, and any other amounts required under the applicable bond ~~proceedings~~ and all amounts required under any applicable public-private agreement shall be set forth separately in each certification. Money received from ~~tolls~~ user fees and other pledged receipts shall be deposited to the credit of the bond service fund at such times and in such amounts as are necessary to satisfy all those payment requirements of the applicable bond ~~proceedings~~. When all or to the credit of any fund established for such purpose under any public-private agreement. At such time that bond service charges on all outstanding bonds issued in connection with any toll project and the interest on the bonds have been paid; or a sufficient amount for the payment of all such bonds and the interest on the bonds to the maturity of the bonds has been set aside in trust for the benefit of the bondholders, as provided in the applicable bond proceedings, and at such time as all amounts due and to become due pursuant to a public-private agreement, which are payable from user fees, have been paid, the project shall be operated, improved, and maintained by the department of transportation as a part of the state highway system and shall be free of ~~tolls~~ user fees.

Sec. 5531.141. (A) The department of transportation may collect a user fee by utilizing a system of collection that is capable of charging an account holder the appropriate user fee by transmission of information from an electronic toll collection device on a motor vehicle. In addition, for any motor vehicle that does not use an electronic toll collection device, the department may utilize an electronic-monitoring system for user fee collection.

(B)(1) If a motor vehicle uses a toll project and the user fee is not paid through an electronic toll collection device or otherwise, the toll project operator first shall use the electronic-monitoring system for the toll project to determine if the registered owner of the motor vehicle has established an account for the payment of the user fee. If such an account has been established, the toll project operator shall charge the account holder the appropriate user fee. If the toll project operator cannot locate an established account, or if the toll project operator locates an established account but the account cannot be charged the appropriate user fee, the toll project operator may send by regular first class mail an invoice for the unpaid user fee. The toll project operator shall include with the invoice the information described in section 5531.143 of the Revised Code. The toll project operator shall send the invoice to the registered owner of the motor vehicle as shown in the

records of either of the following:

(a) The bureau of motor vehicles;

(b) The department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the bureau of motor vehicles.

(2) With respect to any user fee and any associated administrative fee, the toll project operator, in the toll project operator's sole discretion, may determine not to pursue collection of that user fee or administrative fee or to terminate collection measures in relation to that user fee or administrative fee.

Sec. 5531.142. (A) A person or entity that receives an invoice under section 5531.141 of the Revised Code or a late notice under division (C) of this section shall do one of the following:

(1) Pay the user fee and any administrative fee set forth in the invoice or late notice directly to the toll project operator within thirty-five days after the date of mailing of the invoice or late notice;

(2) File with the toll project operator a notice to contest liability for the unpaid user fee within thirty-five days after the date of the mailing of the invoice or late notice by utilizing the form provided with the invoice or late notice under section 5531.143 of the Revised Code;

(3) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the toll project operator within thirty-five days after the date of mailing of the invoice or late notice of the name and address of the person who was the lessee or renter of the motor vehicle at the time the user fee was incurred. A motor vehicle leasing dealer or a motor vehicle renting dealer that receives an invoice or late notice shall not pay a user fee or any administrative fee and subsequently attempt to collect a fee or assess the lessee or renter a charge in excess of the amount actually paid on behalf of the lessee or renter.

(B) Upon receipt of the name and address of the lessee or renter of a motor vehicle provided by a motor vehicle leasing dealer or motor vehicle renting dealer under division (A)(3) of this section, the toll project operator shall send an invoice to the lessee or renter of the motor vehicle as described in section 5531.141 of the Revised Code. The toll project operator shall send all subsequent late notices for the unpaid user fees to the lessee or renter, and the motor vehicle renting or leasing dealer has no further liability for unpaid user fees or administrative fees under this chapter.

(C) If a registered owner fails to pay or contest an invoice within thirty-five days after the date of mailing of the invoice, the toll project operator may send to the registered owner by regular first class mail a late

notice containing the information described in section 5531.143 of the Revised Code. The toll project operator may charge an administrative fee for each late notice, the purpose of which is to enable the toll project operator to recover the expenses of collecting the unpaid user fee. The director of transportation shall establish the amount of the administrative fee by rule.

Sec. 5531.143. A toll project operator shall include with each invoice and late notice all of the following:

(A) The registered owner's name and current known address;

(B) Descriptions and amounts of all user fees and administrative fees assessed;

(C) A request for payment within thirty-five days after the date of mailing of such invoice or late notice;

(D) A warning of the potential consequences for failing to pay the total amount due as indicated in such invoice or late notice, including additional fees and penalties, potential court summons, and inability to renew motor vehicle registrations;

(E) Information for disputing the invoice or late notice and a form that a person may use to file a notice to contest liability for a user fee or administrative fee;

(F) Contact information for the customer service center for the applicable toll project; and

(G) Information about obtaining an electronic toll collection device and establishing an electronic toll collection account.

Sec. 5531.144. (A) The registered owner of a motor vehicle that utilizes a toll project is liable for payment of the applicable user fee.

(B)(1) If the registered owner, in response to an invoice mailed to the registered owner under section 5531.141 of the Revised Code or a late notice mailed under section 5531.142 of the Revised Code, submits a notice to contest liability for the user fee or any administrative fee, the toll project operator shall schedule a hearing at which the registered owner may contest liability for the user fee or administrative fee. The toll project operator shall send written notice by regular first class mail to the registered owner listing the time and date of the hearing. A hearing officer of the toll project operator shall preside over the hearing and shall hold the hearing not later than thirty-five days after the date of mailing of the hearing notice. The hearing officer shall conduct the hearing at a location within the county in which the toll project is located. The registered owner may present evidence at the hearing as to the reasons why the registered owner is not liable for payment of the user fee or administrative fee.

At the hearing, the hearing officer shall determine if the registered owner is liable for the payment of any user fee or administrative fee.

(2) Upon a finding by the hearing officer that the registered owner is not liable for payment of the user fee or administrative fee, the hearing officer shall enter that finding into the records of the toll project operator and cancel the invoice.

(3) If the hearing officer finds that the registered owner is liable for payment of the user fee or any administrative fee, the hearing officer shall enter that finding into the records of the toll project operator. If payment in full is not made upon completion of the hearing, the hearing officer shall notify the registrar of motor vehicles of the hearing officer's decision that the registered owner is liable for payment of the user fee or any administrative fee. The hearing officer also shall include with the notification to the registrar a motor vehicle certificate of registration issuance prevention order. The hearing officer shall give the registered owner a copy of the order. The order remains in effect until the toll project operator notifies the registrar that all unpaid user fees and administrative fees have been paid in full.

If the hearing officer finds that the registered owner is liable for payment of the user fee or any administrative fee and the registered owner resides in another state, the hearing officer shall send notice of the hearing officer's decision to the department, division, bureau, office, or other unit of government that is functionally equivalent to the bureau of motor vehicles. The hearing officer shall include with the notice the registration prevention order, which shall have the same effect in another state or jurisdiction as in this state.

(4) If the registered owner does not pay all unpaid user fees and administrative fees within thirty-five days after the date of the hearing officer's decision that the registered owner is liable for payment of such fees, and the registered owner does not file an appeal described in division (C) of this section within that same thirty-five-day time period, the toll project operator may file a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project as provided in section 5531.146 of the Revised Code.

(C)(1) The registered owner may appeal an adverse finding by the hearing officer to the municipal court or county court having jurisdiction over the location of the toll project within thirty-five days after the date of the hearing officer's decision that the registered owner is liable for payment of such fees. If the registered owner fails to file an appeal with the municipal court or county court within that time period, the registered owner is

considered to have waived the registered owner's right to appeal the decision of the hearing officer. After that time period has expired, the toll project operator may file a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project as provided in section 5531.146 of the Revised Code.

Upon the filing of a timely appeal by the registered owner, the clerk of the municipal court or county court shall notify the registrar of the filing of the appeal by the registered owner. The motor vehicle certificate of registration issuance prevention order is automatically stayed pending the results of the appeal in the municipal court or county court.

(2) At the appeal hearing, the municipal court or county court shall determine whether the registered owner is liable for the payment of any user fee or administrative fee. If the court finds that the registered owner is not liable for payment of the user fee or administrative fee, the court shall issue a ruling to that effect and cancel the invoice. The toll project operator immediately shall inform the registrar of the ruling and shall direct the registrar to cancel the motor vehicle certificate of registration issuance prevention order issued under division (B)(3) of this section.

If the court finds that the registered owner is liable for payment of the user fee or any administrative fee, the court shall issue a ruling to that effect. If the court issues such a ruling and payment in full is not made to the toll project operator upon completion of the appeal hearing, the toll project operator shall inform the registrar of motor vehicles of the ruling and the failure by the registered owner to make payment in full. In that circumstance, the stay of the motor vehicle certificate of registration issuance prevention order described in division (C)(1) of this section terminates and the order becomes effective. In addition, if the registered owner fails to pay in full the user fee and any administrative fee within thirty-five days after the date the court issues the ruling, the toll project operator may file a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project as provided in section 5531.146 of the Revised Code.

If, upon completion of the appeal hearing, the registered owner makes payment in full to the toll project operator of all user fees and administrative fees that the court ruled the registered owner was liable for payment, the toll project operator shall inform the registrar of motor vehicles of the ruling and the payment in full by the registered owner and direct the registrar to cancel the motor vehicle certificate of registration issuance prevention order.

(D) If the registered owner fails to pay an invoice and any administrative fee and fails to submit a notice to contest liability for any of

those fees within thirty-five days after the date of mailing of the invoice, the toll project operator may send a late notice to the registered owner as provided in division (C) of section 5531.142 of the Revised Code. If, in response to the late notice, the registered owner submits a notice to contest liability for the user fee and any administrative fee within thirty-five days after the date of mailing of the late notice, the toll project operator shall schedule and hold a hearing as described in division (B)(1) of this section. Divisions (B)(2), (3), and (4) and (C)(1) and (2) of this section apply to such a hearing.

Sec. 5531.145. (A) If the toll project operator sends a late notice to the registered owner and the registered owner, within thirty-five days after the date of mailing of the late notice, fails to pay the user fee and any administrative fee contained in the late notice and fails to submit a notice to contest liability for any of those fees, the toll project operator may do either of the following:

(1) Issue a motor vehicle certificate of registration issuance prevention order to the registrar of motor vehicles and send a copy of the order to the registered owner. If the registered owner resides in another state or jurisdiction, the toll project operator shall send the order to the department, division, bureau, office, or other unit of government that is functionally equivalent to the bureau of motor vehicles. The order shall have the same effect in another state or jurisdiction as in this state.

(2) File a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project as provided in section 5531.146 of the Revised Code.

(B) If the toll project operator sends a motor vehicle certificate of registration issuance prevention order to the registrar under division (A)(1) of this section, the registered owner may file a request for a hearing in the municipal court or county having jurisdiction over the location of the toll project within thirty-five days after the date the toll project operator sends the order to the registrar. The order shall remain in effect pending the results of the hearing in the municipal court or county court. If the registered owner fails to file an appeal with the municipal court or county court within that thirty-five-day period, the registered owner is considered to have waived the registered owner's right to appeal the issuance of the motor vehicle certificate of registration issuance prevention order. The toll project operator may file a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project as provided in section 5531.146 of the Revised Code.

(C)(1) If an appeal hearing is requested under division (B) of this

section, the municipal court or county court shall determine whether the registered owner is liable for the payment of any user fee or administrative fee and whether the issuance by the toll project operator of the motor vehicle certificate of registration issuance prevention order was valid. If the court finds that the registered owner is not liable for payment of the user fee or administrative fee, the court shall issue a ruling to that effect and dismiss the late notice. The toll project operator immediately shall inform the registrar of the ruling and shall direct the registrar to cancel the motor vehicle certificate of registration issuance prevention order issued under division (A)(1) of this section.

(2) If the court finds that the registered owner is liable for payment of the user fee or any administrative fee and that the issuance by the toll project operator of the motor vehicle certificate of registration issuance prevention order was valid, the court shall issue a ruling to that effect. If the court issues such a ruling and payment in full is not made to the toll project operator upon completion of the appeal hearing, the toll project operator shall inform the registrar of motor vehicles of the ruling and the failure by the registered owner to make payment in full, and the motor vehicle certificate of registration issuance prevention order issued under division (A)(1) of this section remains in effect.

(3) If the court finds that the registered owner is liable for payment of the user fee or any administrative fee but the issuance by the toll project operator of the motor vehicle certificate of registration issuance prevention order was not valid, the court shall issue a ruling to that effect. If the court issues such a ruling, the toll project operator shall inform the registrar of the ruling and direct the registrar to cancel the motor vehicle certificate of registration issuance prevention order. The registered owner remains liable for payment of the user fee or any administrative fee. The toll project operator may reissue the motor vehicle certificate of registration issuance prevention order. If the toll project operator reissues the order, the registered owner may appeal the order as provided in division (B) of this section.

(4) If, upon completion of the appeal hearing, the registered owner pays in full to the toll project operator all user fees and administrative fees for which the court ruled the registered owner was liable, the toll project operator shall inform the registrar of the ruling and the payment in full by the registered owner. The toll project operator also shall direct the registrar to cancel the motor vehicle certificate of registration issuance prevention order.

(5) If the court rules under division (C)(2) or (3) of this section that the registered owner is liable for payment of the user fee or any administrative

fee, and the registered owner does not pay all such fees within thirty-five days after the court issues the ruling, the toll project operator may file a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project as provided in section 5531.146 of the Revised Code.

(D) At any time after a toll project operator issues an order under division (A)(1) of this section, the registered owner may pay all user fees and administrative fees owed to the toll project operator. If such payment is made, the toll project operator shall inform the registrar of the payment and shall direct the registrar to cancel the motor vehicle certificate of registration prevention order.

Sec. 5531.146. (A)(1) As provided in sections 5531.144 and 5531.145 of the Revised Code, a toll project operator may file a civil suit against a registered owner in the municipal court or county court having jurisdiction over the location of the toll project. The toll project operator also shall file all related documentation and information described in section 5531.143 of the Revised Code with the clerk of the municipal court or county court.

Except as otherwise provided in division (A)(2) of this section, the toll project operator shall not file such a suit earlier than thirty-five days after the date of mailing of a late notice to the registered owner.

(2) In a circumstance in which a registered owner is liable for multiple user fees and any associated administrative fees involving one or more motor vehicles, the toll project operator may file a civil suit addressing all such user fees and administrative fees; provided, no such suit shall include fees incurred more than one hundred twenty-five days prior to the date of filing of such suit.

(3) The clerk of the municipal court or county court shall execute a summons regarding a suit filed under division (A)(1) of this section by sending a copy of the summons in accordance with the rules of civil procedure to the address of the registered owner of the vehicle as shown in the records of the bureau of motor vehicles, as identified and provided by a motor vehicle leasing dealer or motor vehicle renting dealer, or as shown in the records of the department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the bureau of motor vehicles. The issuance of such a summons constitutes sufficient notice to the registered owner.

The summons shall compel the appearance of the registered owner to appear in the municipal court or county court, and shall include notice of the time and place of the trial as well as the potential civil penalty and any associated costs. The summons also shall include a statement that the

registered owner's motor vehicle utilized a toll project and therefore the registered owner incurred liability for payment of the applicable user fee as provided in division (A) of section 5531.144 of the Revised Code and also shall list the Revised Code citation for that section. The summons constitutes sufficient notice to the registered owner that the vehicle was used on a toll project and, as a result, the registered owner is liable for payment of the user fee.

(B) Proof that a motor vehicle utilized a toll project and therefore the registered owner of the motor vehicle is liable for payment of the applicable user fee shall be evidenced by either or both of the following:

(1) Information and documentation obtained from an electronic-monitoring system or electronic toll collection system;

(2) A certificate confirming the identification of the vehicle issued by a toll project operator that is based on an inspection of photographs, microphotographs, videotapes, other recorded images or identifying data produced by an electronic-monitoring system, or through electronic data collected by an electronic toll collection system.

The certificate and the documentation attached thereto are prima facie evidence of the facts contained therein. The court shall ensure that the certificate and any photographs, microphotographs, videotapes, or other recorded images or electronic data evidencing liability for payment of the applicable user fee are available for inspection in any proceeding to adjudicate the liability for payment of the user fee.

(C)(1) A registered owner is not liable for a user fee and it is a complete defense to a cause of action asserting such liability if within thirty-five days after the mailing of the invoice, late notice, or a summons, the registered owner of the motor vehicle produces for the toll project operator or the court a certified copy of a report of a law enforcement agency showing both of the following:

(a) The motor vehicle had been reported stolen prior to the time that the motor vehicle utilized the toll project.

(b) The motor vehicle had remained stolen at the time of the alleged violation.

(2) The court shall dismiss the case against a registered owner when divisions (C)(1)(a) and (b) apply.

(D) The toll project operator may offer to the registered owner the option to pay the unpaid user fee and any administrative fee, as specified in the summons, plus a reduced civil penalty, provided that the registered owner actually pays to the toll project operator the entire amount so calculated not less than fourteen days prior to the scheduled trial date. The

toll project operator shall establish a schedule for reduced civil penalties that are offered to registered owners pursuant to this division, and the toll project operator shall adhere to the schedule when making such offers. The toll project operator may revise the schedule from time to time as the toll project operator determines necessary.

If the registered owner accepts the offer and the toll project operator receives the entire amount not less than fourteen days prior to the scheduled trial date, the toll project operator shall move the court, not less than five business days prior to the trial date, to dismiss the summons issued to the registered owner. Upon such a motion, the court shall dismiss the summons and dismiss the case.

(E)(1) Upon a finding by the municipal court or county court that the registered owner is liable for payment of the user fee as provided in division (A) of section 5531.144 of the Revised Code, the court shall order the registered owner to pay all applicable court costs, user fees due, and administrative fees. The court also shall impose a civil penalty upon the registered owner, as follows:

(a) For a first instance, as shown in the records of the toll project operator, in which the registered owner was liable for payment of a user fee and the registered owner did not pay the user fee and did not submit a timely notice to contest the user fee and the toll project operator sent both an invoice and a late notice to the registered owner, seventy-five dollars;

(b) For a second instance as described in division (E)(1)(a) of this section within one year of a first such instance, one hundred fifty dollars;

(c) For a third instance as described in division (E)(1)(a) of this section within two years of a second such instance, two hundred fifty dollars;

(d) For a fourth or subsequent instance as described in division (E)(1)(a) of this section within three years of a third such instance, five hundred dollars.

(2) The clerk of the municipal court or county court shall pay all user fees, administrative fees, and penalties the court assesses and collects under this section to the department of transportation for deposit into the state treasury to the credit of the highway operating fund or for payment by the department in accordance with a public-private agreement pursuant to sections 5501.70 to 5501.83 of the Revised Code.

(F)(1) Upon a finding by a court that the registered owner is liable for payment of a user fee as provided in division (A) of section 5531.144 of the Revised Code, the court shall issue a motor vehicle certificate of registration issuance prevention order. The order shall remain in effect until the court has notified the registrar that all unpaid user fees, administrative fees, and

civil penalties have been paid in full and the court has issued a new order rescinding its previous order. The registrar and all deputy registrars shall comply with the order.

(2) If the registered owner resides in another state or jurisdiction, the court shall issue a motor vehicle certificate of registration issuance prevention order and send a copy of the order to the department, division, bureau, office, or other unit of government of another state or jurisdiction that is functionally equivalent to the bureau of motor vehicles for enforcement in that other state or jurisdiction. The order shall have the same effect in another state or jurisdiction as in this state.

(G)(1) A civil penalty imposed pursuant to this section shall not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall it be considered in any manner for insurance purposes in the provision of motor vehicle insurance coverage.

(2) No person shall be subject to both this section and to criminal prosecution under any provision of the Revised Code or any rule adopted thereunder for nonpayment of user fees or related administrative fees.

Sec. 5531.147. A toll project operator shall not initiate collection procedures that are regulated by federal law against a registered owner in any of the following circumstances:

(A) During the thirty-five-day period after the date of mailing of an invoice or a late notice to the registered owner;

(B) The registered owner has timely submitted a notice to contest liability for a user fee or any administrative fee to the toll project operator. The toll project operator may initiate collection procedures that are regulated by federal law against such a registered owner if, at the hearing conducted by the hearing officer described in section 5533.144 of the Revised Code, the hearing officer finds that the registered owner is liable for payment of the user fee or administrative fee at issue and the registered owner does not pay the fee at issue in full within thirty-five days after the hearing officer makes the finding.

(C) The registered owner has filed a request for an appeal hearing with the municipal court or county court having jurisdiction over the location of the toll project. The toll project operator may initiate collection procedures that are regulated by federal law against such a registered owner if, at the appeal hearing conducted by the municipal court or county court described in section 5533.144 of the Revised Code, the court finds that the registered owner is liable for payment of the user fee or administrative fee at issue and the registered owner does not pay the fee at issue in full within thirty-five days after the court issues a ruling to that effect.

(D) The toll project operator has filed a civil suit against the registered owner in the municipal court or county court having jurisdiction over the location of the toll project.

Sec. 5531.148. (A) A toll project operator may enter into an agreement with the bureau of motor vehicles and the department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the bureau of motor vehicles to obtain motor vehicle owner and registration information that is necessary to conduct electronic toll collection and electronic monitoring.

(B)(1) A toll project operator shall ensure that information collected by an electronic toll collection device, an electronic-monitoring system in conjunction with an electronic toll collection system, or under division (A) of this section is limited solely to that information that is necessary for the collection of unpaid user fees and administrative fees; necessary to establish liability of the registered owner of a motor vehicle for payment of a user fee as provided in division (A) of section 5531.144 of the Revised Code; or necessary in any proceeding to establish or confirm such liability.

(2) A toll project operator shall ensure that all images or other data collected by an electronic toll collection device, an electronic-monitoring system, or under division (A) of this section are:

(a) Maintained in a protected database with security that is at least comparable to the security used for databases operated by the department of transportation;

(b) Used solely for the collection of unpaid user fees and administrative fees.

(3) All of the following apply to the images and other data described in division (B)(2) of this section:

(a) The images and other data are not public records under section 149.43 of the Revised Code.

(b) A toll project operator or any other person shall not sell or use the images and data for sales, solicitation, or marketing purposes. Division (B)(3)(b) of this section does not prohibit the department of transportation or the toll project operator from using the images and data to facilitate collection or payment of user fees and administrative fees.

(c) A toll project operator or any other person shall not disclose the images and data to any other entity except to a registered owner who contests liability for and challenges the imposition of a user fee or administrative fee; or except as may be necessary for the collection of unpaid user fees or administrative fees.

(d) The images and data shall not be used in any court in a pending

action or proceeding except upon an order from a court of competent jurisdiction or unless the action or proceeding relates to the liability of the registered owner of a motor vehicle for payment of a user fee as provided in division (A) of section 5531.144 of the Revised Code.

(4)(a) Except as otherwise provided in this section, a toll project operator shall not retain any images or other data collected by an electronic toll collection device, an electronic-monitoring system, or under division (A) of this section and shall purge, write over, or otherwise eliminate, from existence the images or other data not later than one hundred eighty days after the collection of any unpaid user fees or administrative fees. Upon request from the director of transportation, any entity operating an electronic toll collection system or electronic-monitoring system in conjunction with an electronic toll collection system shall certify compliance with this section and, upon request, shall make all records pertaining to such system available for inspection and audit by the director or the director's designee.

(b) No entity operating an electronic toll collection system or electronic-monitoring system in conjunction with an electronic toll collection system shall fail to certify compliance with this section or fail, upon request, to make all records pertaining to such system available for inspection and audit by the director or the director's designee.

(5) Whoever violates division (B)(4)(b) of this section is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

Sec. 5531.149. (A) A toll project operator shall compensate the bureau of motor vehicles for its actions in enforcing sections 5531.11 to 5531.18 of the Revised Code with respect to the registered owner of a motor vehicle that is titled or registered in this state. The toll project operator shall provide such compensation by collecting and paying to the bureau, on a monthly basis, an administrative fee of five dollars for each certificate of registration issuance prevention order sent to and processed by the bureau under sections 5531.11 to 5531.18 of the Revised Code. The bureau shall deposit all money it collects under this division in the state treasury to the credit of the state bureau of motor vehicles fund created in section 4501.25 of the Revised Code.

(B) The director of transportation may enter into an agreement with the department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the department of transportation or the bureau of motor vehicles for the purpose of enforcing sections 5531.11 to 5531.18 of the Revised Code with respect to the registered owner of a motor vehicle that is titled or registered in such other

state or jurisdiction and utilizes a toll project. The agreement may provide for the denial in such other state or jurisdiction of the issuance of a new or renewal motor vehicle certificate of registration in the name of that person and the denial of any motor vehicle certificate of registration for the motor vehicle that utilized a toll project for which the required user fee or associated administrative fee was not paid by the registered owner.

Sec. 5531.15. (A) The director of transportation, in accordance with Chapter 119. of the Revised Code, may adopt such rules as the director considers advisable for the control and regulation of traffic on any toll project, for the protection and preservation of property under the jurisdiction and control of the department of transportation, for the maintenance and preservation of good order within the property under its control, and for the purpose of establishing owner or operator liability for failure to comply with toll collection rules.

(B) The rules shall provide that ~~public police officers~~ all of the following persons shall be afforded ready access, while in the performance of their official duties, to all property under the jurisdiction of the department of transportation and without the payment of ~~tolls~~ any user fee:

(1) Public police officers;

(2) Operators of municipal, township, county, and state maintenance vehicles;

(3) Operators of United States military vehicles traveling in a convoy;

(4) Operators of official emergency response vehicles.

(C) No person shall violate any such rules of the department of transportation.

(D)(1) All fines collected for the violation of applicable laws of the state and the rules of the department of transportation or money arising from bonds forfeited for such violation shall be disposed of in accordance with section 5503.04 of the Revised Code.

(2) All fees or charges assessed by the department of transportation in accordance with this section against an owner or operator of a vehicle as a civil violation for failure to comply with toll collection rules shall be revenues of the department.

Sec. 5531.16. (A) Each toll project shall be maintained and kept in good condition and repair by the department of transportation or in accordance with the terms of a public-private agreement pursuant to sections 5501.70 to 5501.83 of the Revised Code. Toll projects shall be operated by toll collectors and other employees and agents that the department employs or contracts for. Toll projects shall be policed by the state highway patrol in accordance with section 5503.02 of the Revised Code; provided, that the

state highway patrol also shall enforce all rules of the department adopted under division (A) of section 5531.15 of the Revised Code that relate to the operation and use of vehicles on a toll project and that are punishable under division (A) of section 5531.99 of the Revised Code.

(B) An action for damages against the state for any public or private property damaged or destroyed in carrying out the powers granted by sections 5531.11 to 5531.18 of the Revised Code shall be filed in the court of claims pursuant to Chapter 2743. of the Revised Code.

(C) All governmental agencies may lease, lend, grant, or convey to the department of transportation at its request, upon terms that the proper authorities of the governmental agencies consider reasonable and fair and without the necessity for an advertisement, order of court, or other action or formality, other than the regular and formal action of the authorities concerned, any property that is necessary or convenient to the effectuation of the purposes of sections 5531.11 to 5531.18 of the Revised Code, including public roads and other property already devoted to public use.

(D) Each bridge constituting part of a toll project shall be considered a bridge on the state highway system for purposes of sections 5501.47 and 5501.49 of the Revised Code.

(E) In accordance with Chapter 5501. of the Revised Code, the department of transportation shall make an annual report of its toll project activities for the preceding calendar year to the governor and the general assembly.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A)(1) The tax shall be collected as provided in section 5739.025 of the Revised Code. The rate of the tax shall be five and three-fourths per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

(2) In the case of the lease or rental, with a fixed term of more than thirty days or an indefinite term with a minimum period of more than thirty days, of any motor vehicles designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or of any

tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee or renter primarily for business purposes, the tax shall be collected by the vendor at the time the lease or rental is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee or renter under the lease agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee or renter. In the case of an open-end lease or rental, the tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due. As used in this division, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "watercraft" includes an outdrive unit attached to the watercraft.

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in section 5727.01 of the Revised Code, and sales of electricity delivered through wires;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(9)(a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

(b) The limitation on the number of days on which tax-exempt sales may be made by a church or organization under division (B)(9)(a) of this

section does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.

(c) Divisions (B)(9)(a) and (b) of this section do not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution or laws of the United States or the Constitution of this state;

(11) Except for transactions that are sales under division (B)(3)(r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the

production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state; building and construction materials for incorporation into a transportation facility pursuant to a public-private agreement entered into under sections 5501.70 to 5501.83 of the Revised Code; and, until one calendar year after the construction of a convention center that qualifies for property tax exemption under section 5709.084 of the Revised Code is

completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(42)(a), (g), or (h) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(15) of this section does not apply to persons engaged in highway transportation for hire.

(16) Sales of food to persons using supplemental nutrition assistance program benefits to purchase the food. As used in this division, "food" has the same meaning as in 7 U.S.C. 2012 and federal regulations adopted pursuant to the Food and Nutrition Act of 2008.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or

persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

- (25)(a) Sales of water to a consumer for residential use;
- (b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.
- (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;
- (27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:
 - (a) To prepare food for human consumption for sale;
 - (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;
 - (c) To clean tangible personal property used to prepare or serve food for human consumption for sale.
- (28) Sales of animals by nonprofit animal adoption services or county humane societies;
- (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;
- (30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;
- (31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;
- (32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;
- (33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;
- (34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to,

poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(42)(a) or (n) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.

(35)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; and of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(35)(a) of this section;

(c) Sales of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(d) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(38) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in section 5727.01 of the Revised Code; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) or (n) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

(41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in providing taxable services under that section.

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, or directly in the rendition of a public utility service, except

that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering services in the exploration for, and production of, crude oil and natural gas for others are deemed engaged directly in the exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;

(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(d) To use or consume the thing directly in commercial fishing;

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

(i) To use the thing transferred as qualified research and development equipment;

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning

as in division (B)(35) of this section.

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.

As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.

(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed

or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of section 5739.01 of the Revised Code.

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

(48)(a) Sales of machinery, equipment, and software to a qualified direct selling entity for use in a warehouse or distribution center primarily for storing, transporting, or otherwise handling inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside this state;

(b) As used in division (B)(48)(a) of this section:

(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.

(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B)(48) of this section after execution of the tax credit agreement by the tax credit authority.

(c) Division (B)(48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.

(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B)(49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.

(50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services for such full flight simulators. "Full flight simulator" means a replica of a specific type, or make, model, and series of aircraft cockpit. It includes the assemblage of equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-cockpit view, and a system that provides cues at least equivalent to those of a three-degree-of-freedom motion system, and has the full range of capabilities of the systems installed in the device as described in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.

(51) Any transfer or lease of tangible personal property between the state and JobsOhio in accordance with section 4313.02 of the Revised Code.

(52)(a) Sales to a qualifying corporation.

(b) As used in division (B)(52) of this section:

(i) "Qualifying corporation" means a nonprofit corporation organized in this state that leases from an eligible county land, buildings, structures, fixtures, and improvements to the land that are part of or used in a public recreational facility used by a major league professional athletic team or a class A to class AAA minor league affiliate of a major league professional athletic team for a significant portion of the team's home schedule, provided the following apply:

(I) The facility is leased from the eligible county pursuant to a lease that requires substantially all of the revenue from the operation of the business or activity conducted by the nonprofit corporation at the facility in excess of operating costs, capital expenditures, and reserves to be paid to the eligible county at least once per calendar year.

(II) Upon dissolution and liquidation of the nonprofit corporation, all of its net assets are distributable to the board of commissioners of the eligible county from which the corporation leases the facility.

(ii) "Eligible county" has the same meaning as in section 307.695 of the Revised Code.

(53) Sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work. As used in division (B)(53) of this section, "cable service" and "cable service provider" have the same meanings as in section 1332.01 of the Revised Code, and "video service," "video service provider," and "video

programming" have the same meanings as in section 1332.21 of the Revised Code.

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.

SECTION 2. That existing sections 5501.44, 5501.70, 5501.71, 5501.73, 5501.78, 5531.11, 5531.12, 5531.13, 5531.14, 5531.15, 5531.16, and 5739.02 of the Revised Code are hereby repealed.

SECTION 3. Section 5739.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 51 and Am. Sub. H.B. 59 of the 130th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 533

130th G.A.

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 _____