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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 163\***

123rd General Assembly

(As Introduced)

(excluding appropriations, fund transfers, and similar provisions)

**Reps. Core, Damschroder, Thomas**

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### **BILL SUMMARY**

- Authorizes the Director of Transportation to enter into contracts combining the design and construction elements of transportation projects, but limits total Ohio Department of Transportation (ODOT) construction expenditures for such "design-build" contracts to \$250 million per year.
- Requires the Director to follow competitive bidding procedures in awarding contracts for design-build projects estimated to cost \$10 million or less, and to award contracts for design-build projects that cost more than \$10 million through a value-based selection process the bill creates.
- Replaces the requirement that ODOT advertise for bids in newspapers of general circulation with one that instead requires the Director to submit a schedule of highway construction projects to all potential prequalified bidders four weeks before the bid-letting, and to advertise for bids for non-highway construction projects in appropriate publications two consecutive weeks before the bid-letting.
- Provides that the certificate of registration for an aircraft may no longer be transferred for a \$1 fee when the aircraft is sold; instead, the new owner must obtain a new certificate of registration and pay the annual aircraft licensing tax.

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\* *This analysis was prepared before the introduction of the bill appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Changes ODOT's organizational structure, by eliminating the Division of Transportation Assistance and moving the Offices of Aviation and Public Transportation to the renamed Division of Multi-Modal Planning and Programs.
- Decreases the fees to obtain replacement license plates and validation stickers, from \$5 to \$2 for each set of two plates and from \$3 to \$1 for each single plate or validation sticker.
- In the Department of Public Safety (DPS), combines the separate staffs of liquor control investigators and food stamp trafficking agents into a new Investigative Unit, to consist of "enforcement agents" who perform both liquor control and food stamp functions.
- Authorizes DPS enforcement agents to enforce the law prohibiting the sale of cigarettes and other tobacco products to children if they witness a violation of that law while performing their liquor control and food stamp duties.
- Provides that DPS enforcement agents receive retirement benefits through the Public Employees Retirement System (PERS) law enforcement division; currently, DPS liquor control investigators receive these benefits but food stamp trafficking agents receive regular PERS retirement benefits.
- Provides that DPS enforcement agents are eligible for death benefits from the Firemen and Policemen's Death Benefit Fund; currently, DPS liquor control investigators are eligible for these benefits but food stamp trafficking agents are not.
- Provides that money received by the Department of Public Safety from the sale of surplus BMV motor vehicles and related equipment must be credited to the State Bureau of Motor Vehicles Fund.

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**CONTENT AND OPERATION**

**TRANSPORTATION PROVISIONS**

**Design-build contracts for transportation projects**

(sec. 5517.011)

Before advertising for bids for a project, the Director of Transportation is required under existing law to prepare the map, plans, specifications, and estimates that make up the design of the project. But in 1995 the General Assembly authorized the Director to conduct a pilot program to test combining the design and construction elements of projects. Under the program, contracts for up to six highway or bridge projects could be awarded in which the contractor was responsible for both designing and constructing the project.

The bill expands the Director's authority to enter into contracts combining the design and construction elements of transportation projects. (The bill refers to these types of construction projects as "design-build" projects.) There is no longer a numerical limit on the number of design-build contracts the Director can award, but total department construction expenditures for all design-build contracts are restricted to \$250 million annually.

For design-build projects estimated to cost \$10 million or less, the Director must follow standard ODOT competitive bidding procedures in awarding the contract. Contractors are to base their bids on a scope-of-work document the Director must prepare and distribute. For design-build projects estimated to cost more than \$10 million, the Director is to award the contract after soliciting technical proposals through a new "value-based" selection process that the bill



creates and is described below. The bill restricts the Director to awarding no more than six projects a year through the value-based selection process. In addition, the Director can award no more than \$175 million in any year by one of the selection methods, and must award any other design-build contracts that year by the other method. For example, if the Director awards \$250 million of design-build contracts for a year, no more than \$175 million of the contracts can be awarded through value-based selection, and the remaining \$75 million has to be awarded through competitive bidding.

### **New value-based selection procedures**

To begin the value-based selection process, the Director must prepare conceptual documents for review by interested parties. After potential design-build teams submit letters of interest, the Director is required to select the three most qualified teams to submit technical proposals. Criteria the Director must use for selecting the three finalists include the qualifications and experience of the team (including personnel who would be utilized), equipment usage, the team's general project approach, and the team's schedule of activities and financial resources.

The three finalists must prepare both a technical proposal and a price proposal. The Director can require that the price proposal be submitted separately. The technical proposal must state the finalist's qualifications and experience (including prior performance by the design-build team on similar projects), the identity of the members of the team, and a detailed project approach and schedule that incorporates innovative design and construction techniques.

Upon review of the technical proposals, the Director is required to ascribe a numerical score to each. Then the technical score must be equated to a percentage adjustment to be applied to the finalist's price proposal, using an adjustment schedule made known at the time the Director advertises for proposals. The technical proposal rating cannot exceed 25% of the overall selection criteria. The bill authorizes the Director to determine that a proposal is nonresponsive and to eliminate that finalist from further consideration.

Upon rating the technical proposals, the Director must open the price proposals in public, and apply to each price proposal the percentage adjustment determined from its technical score. Unless all bids are rejected, the Director is required to select the finalist with the lowest adjusted price. But the adjusted price is to be used for selection only; the contract must be based on the unadjusted price submitted by the finalist.

The bill requires the Director to compensate each responsive finalist that is not selected. The compensation must be in an amount generally equal to 0.25% of the unadjusted price proposal submitted by the selected finalist, or an amount the Director establishes at the time of advertising.

**Revised bid advertising procedures**

(sec. 5525.01)

Under current law, before entering into a contract, the Director of Transportation is required to advertise for bids for two consecutive weeks in a newspaper of general circulation published in the county in which the improvement is located.<sup>1</sup> If there is no such newspaper, the Director must advertise in a newspaper having general circulation in an adjacent county. The Director also can advertise for bids in other publications as considered advisable.

The bill eliminates these requirements. Instead, four weeks before a bid-letting for highway construction projects, the Director is required to submit a schedule of the projects to be let to all potential bidders who are "prequalified" to bid on ODOT contracts. (Under current law that is not changed by the bill, prospective bidders on ODOT contracts must apply in advance to the department for a certificate of qualification to bid (sec. 5525.03).) The Director can furnish the information either in writing or electronically. For non-highway construction projects, the bill requires the Director to advertise for bids in "appropriate" publications two consecutive weeks prior to the bid-letting.

**New registration and payment of tax required when an aircraft is transferred**

(sec. 4561.20)

The owner of an aircraft based in Ohio must register the aircraft with the Department of Transportation, and pay an annual licensing tax. (The tax revenue is credited to the General Revenue Fund.) The registration is renewed each year in

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<sup>1</sup> To qualify as a newspaper of general circulation, a publication must (1) bear a title or name, (2) be regularly issued as frequently as once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, (3) have a second class mailing privilege, (4) be not less than four pages, (5) have been published continuously during the immediately preceding one-year period, (6) be circulated generally in the political subdivision in which it is published, and (7) be of a type to which the general public resorts for passing events of a political, religious, commercial, or social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements, and other notices. (Sec. 7.12, not in the bill.)

January upon payment of that year's tax. The amount of tax depends on the maximum seating capacity of the aircraft, as follows:

Seating capacity of the aircraft	Amount of annual tax <sup>2</sup>
one or two persons	\$6
three persons	\$8
four persons	\$12
five persons	\$15
more than five persons	\$15 plus \$5 for each person in excess of five

Under existing law, when an aircraft for which the current license tax has been paid is sold or otherwise transferred, the previous owner is required to give the new owner the certificate of registration for the aircraft. The new owner must apply to the department to transfer the registration, and must pay a \$1 transfer fee with the application.

Under the bill, aircraft registrations may no longer be transferred. Instead, upon the sale or other transfer of an aircraft for which the current license tax has been paid, the previous owner's registration expires, and the new owner must apply to the department for a new certificate of registration. When submitting the application, the new owner must pay the annual licensing tax on the aircraft instead of the \$1 transfer fee.

**Changes to ODOT's organizational structure**

(secs. 4561.021, 4561.341, 4563.01, 4906.10, 5501.04, and 5501.07)

Current law establishes the following eight divisions in the Department of Transportation:

--Project Management;

--Engineering Policy;

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<sup>2</sup> The amount of tax is prescribed under R.C. 4561.18, which is not in the bill. For gliders, the annual tax is \$3, regardless of seating capacity.

- Multi-Modal Planning;
- Transportation Assistance;
- Finance;
- Information Technology;
- Business Services;
- Human Resources.

The bill eliminates the Division of Transportation Assistance and renames the Division of Multi-Modal Planning. The renamed division is called Multi-Modal Planning and Programs. The Office of Aviation and Office of Public Transportation, which are currently located in the Division of Transportation Assistance, are moved to the Division of Multi-Modal Planning and Programs.

## PUBLIC SAFETY PROVISIONS

### **Fee decrease for replacement license plates**

(sec. 4503.19)

To obtain replacement license plates or validation stickers, a person must pay a fee of \$5 for each set of two plates or \$3 for each single plate or validation sticker. The bill decreases the fees to \$2 for each set of two plates or \$1 for each single plate or validation sticker. (As under current law, the person also must pay a 25¢ per plate charge to cover production costs, and a \$2.25 deputy registrar service fee if obtaining the items from a deputy registrar.)

### **Enforcement agents in the Department of Public Safety**

(secs. 109.71, 109.77, 2935.01, 4301.021, 4301.10, 4301.21, 4301.31, 4301.53, 4301.66, 5502.01, 5502.13, 5502.14, 5502.16, 5502.17, 5502.18, 5502.19, 5502.61, and 5502.62; Section 9.01)

In 1995, the General Assembly transferred to the Department of Public Safety (DPS) the duty to perform enforcement activities related to the liquor control and food stamp laws. (See Am. Sub. S.B. 162 of the 121st General Assembly.) Liquor control investigators were transferred to DPS from the Department of Liquor Control, and food stamp trafficking and fraud employees were transferred to DPS from the Department of Human Services. DPS was required to maintain separate staffs of liquor control investigators and food stamp trafficking agents.



The bill combines these separate staffs into a new DPS Investigative Unit, to consist of employees who perform both liquor control and food stamp functions. Under the bill, any person employed by DPS and designated by the Director of Public Safety to enforce the state's liquor control and food stamp laws and rules is to be known as an "enforcement agent." The bill specifies that the department's existing authority to establish requirements for its enforcement personnel concerning standards of conduct, work rules and procedures, and criteria for eligibility as law enforcement personnel, also apply to enforcement agents.

**Illegal cigarette sales enforcement**

(secs. 5502.13 and 5502.14)

The bill authorizes DPS enforcement agents to enforce the law governing the sale of cigarettes and other tobacco products if they witness a violation of that law while performing their liquor control and food stamp duties. In general under the cigarette and tobacco products sales law, (1) cigarettes cannot be sold to minors and in any place that does not post a sign stating that sales to those under 18 are prohibited by law, and (2) vending machine sales of cigarettes can be made only in certain specified types of areas that are not open to minors or in which purchases from the machine can be monitored (sec. 2927.02, not in the bill).

**Enforcement agent retirement provisions**

(secs. 145.01 and 145.33; Section 9)

Under current law, DPS liquor control agents receive retirement benefits through special provisions of the Public Employees Retirement System (PERS) Law that apply to certain law enforcement officers. But DPS food stamp trafficking agents do not. PERS provisions for law enforcement officers differ from those for other PERS members with regard to eligibility for age and service retirement and the formulas used to compute retirement benefits (see **COMMENT**). Law enforcement provisions differ also in that members of PERS in that division contribute 9% of their salaries to PERS, while other PERS members contribute 8.5%. Employers of PERS members contribute 13.31% of the member's salary for each regular state government employee, 13.55% for each regular local government employee, and 16.7% for each employee in the law enforcement division.

The bill provides that the PERS law enforcement provisions apply to all DPS enforcement agents. Service as a DPS food stamp trafficking agent prior to the bill's effective date is to be considered service as a law enforcement officer for the purposes of the retirement law. But the bill gives these current enforcement

agents who are food stamp trafficking agents the option of transferring to the PERS law enforcement division or remaining subject to the regular PERS age and service retirement provisions. Not later than 90 days after the bill takes effect, each of these agents must indicate to PERS a choice of whether to receive benefits under the regular PERS provisions or the law enforcement division provisions. PERS must supply the form on which the agents indicate the choice.

### **Firemen and Policemen's Death Benefit Fund**

(sec. 742.63)

The Firemen and Policemen's Death Benefit Fund pays death benefits to survivors of law enforcement officers and firefighters killed in the line of duty. Benefits are paid on a monthly basis, and equal the full monthly salary received by the deceased person prior to death, minus any amounts paid as a survivor benefit by a state or municipal retirement system, and plus any increases in salary that the deceased would have been granted. The death benefit continues until the earlier of the deceased person's retirement eligibility date or the date the survivor becomes ineligible.<sup>3</sup>

DPS liquor control investigators currently are eligible for death benefits from the Firemen and Policemen's Death Benefit Fund, but DPS food stamp trafficking agents are not. The bill provides that all DPS enforcement agents are eligible for the fund's death benefits.

### **Merged contraband funds**

(secs. 2925.44 and 2933.43; Section 9.01)

Under current law, if the Department of Public Safety receives funds as a result of the sale of seized contraband property, the money must be credited to either the Liquor Enforcement Contraband, Forfeiture, and Other Fund or the Food Stamp Contraband, Forfeiture, and Other Fund, depending on whether the liquor control or food stamp trafficking unit was involved in the seizure. The bill merges these two funds into a new Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund. Money received by DPS as a result of contraband property seizures by the Investigative Unit must be credited to the new fund.

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<sup>3</sup> *A surviving spouse becomes ineligible upon remarriage or death. A surviving child becomes ineligible at age 18 unless the child is mentally or physically unable to support himself or herself or is a student under age 22.*

### *Use of proceeds from selling surplus BMV vehicles and equipment*

(sec. 4501.10)

If the Bureau of Motor Vehicles (BMV) has motor vehicles or related equipment that it no longer needs, it must dispose of them through a program run by the Department of Administrative Services to sell or lease surplus state property. Any money received for the vehicles or equipment must be credited to the Highway Safety Salvage and Exchange Bureau of Motor Vehicles Fund, and used to purchase replacement vehicles or related equipment.

The bill eliminates the Highway Safety Salvage and Exchange Bureau of Motor Vehicles Fund, and provides that any money received by the Department of Public Safety for surplus BMV motor vehicles or related equipment must be credited to the State Bureau of Motor Vehicles Fund. Money in the State Bureau of Motor Vehicles Fund can be used for any BMV operating expenses.

### *Effective dates for the bill's provisions*

(Sections 10 to 13)

Section 1d of Article II of the Ohio Constitution states that "laws providing for \* \* \* appropriations for the current expenses of the state government and state institutions \* \* \* shall go into immediate effect," and "shall not be subject to the referendum." The Ohio Supreme Court has held that the presence in an act of an appropriation for current expenses does not necessarily put the entire act into immediate effect. *State, ex rel. Ohio AFL-CIO, v. Voinovich* (1994), 69 Ohio St. 3d 225. In response to this case, the General Assembly enacted R.C. 1.471, which provides that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly shall determine which sections go into immediate effect.

The bill provides that except for uncodified provisions making or related to appropriations for current expenses, its provisions are subject to the referendum and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The uncodified provisions related to appropriations for current expenses go into immediate effect when the act becomes law.

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## COMMENT

The following chart shows how eligibility and benefits for PERS law enforcement officers differ from eligibility and benefits for other PERS members.

### ELIGIBILITY REQUIREMENTS

#### Law Enforcement Officers

#### Other PERS Members

Regular retirement:

Age 52 with 25 or more years of service;

Any age with 30 or more years of service;

Age 62 with 15 or more years of service.

Age 65 with 5 or more years of service.

Early retirement:

Age 48 with 25 or more years of service;

Age 60 with 5 or more years of service;

15 or more years of service (but, payment of benefits is deferred until age 52).

Age 55 with 25 or more years of service.

### BENEFIT FORMULAS

#### Law Enforcement Officers

#### Other PERS Members

Regular retirement:

2.5% final average salary (FAS) x years of service through 20 years, plus 2.1% FAS x years over 20, not to exceed 90% of FAS.

The greater of:

(a) \$86 x years of service;

(b) 2.1% FAS x years of service through 30 years, plus 2.5% FAS x years over 30, not to exceed 100% of FAS.

Early retirement:

(a) 25 years of service, but under age 52 benefit is reduced 7% to 25% depending on age;

Less than 30 years of service, or under age 65, benefit is reduced by 3% to 25% depending on age and years of service.



**BENEFIT FORMULAS**

Law Enforcement Officers

Other PERS Members

(b) less than 25 years of service, but not less than 15 years of service, 1.5% FAS x years of service.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

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