



**Sub. H.B. 163**

123rd General Assembly

(As Reported by H. Finance & Appropriations)

(excluding appropriations, fund transfers, and similar provisions)

**Reps. Core, Damschroder, Thomas, Hoops, Krebs, Mead, Metzger, Mottley, O'Brien, Perz, Vesper, Barrett, Boyd, Jones, D. Miller, R. Miller, Opfer, Roberts, Sullivan, Wilson**

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**BILL SUMMARY**

**Provisions related to transportation**

- Requires for each fiscal year that at least 20% of Ohio Department of Transportation (ODOT) construction projects be bid requiring a warranty, and that at least 10% of its construction program be bid requiring a pavement warranty.
- In the contracts with warranties, requires minimum warranty periods of seven years for new construction pavement, five years for pavement resurfacing, and two years for bridge painting, pavement markings, guardrail, and other project items.
- Continues for the biennium the ODOT pilot program for combining the design and construction elements of projects, by allowing the Director to enter into contracts for an additional \$250 million worth of design-build projects during that period.
- Allows the Director to award up to six 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 letting bids, and to advertise for bids for non-

highway construction projects in appropriate publications two consecutive weeks before letting bids.

- 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.
- Directs ODOT, in its research and development program, to consider technologies for improving roadways that are being developed by states similar to Ohio, and to collaborate in the development of the technologies.
- Requires ODOT and the Transportation Review Advisory Council to consider whether certain proposals to construct interchanges outside the jurisdiction of a metropolitan planning organization promote farmland preservation and efforts to control urban sprawl.
- 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.
- Provides that 0.75%, rather than 0.5%, of motor fuel tax revenue is attributable to the operation of watercraft and must be credited to the Waterways Safety Fund.
- Requires the Legislative Budget Office to conduct a study to determine the need for additional resources to meet local construction and maintenance needs for highways, bridges, and mass transit, and to report the results of the study to the General Assembly by July 1, 2000.
- Requires the Executive Director of the Ohio Rail Development Commission to submit a report to the General Assembly by December 31, 1999, on issues concerning grade separations and improvements needed to alleviate safety problems and congestion in the state.
- Requires ODOT to study aviation fuel sales in Ohio, the taxes paid on the fuel, and the state of the infrastructure of Ohio's public use general aviation airports, and to report the results of the study to the House Finance and Appropriations Committee by October 1, 1999.

- Requires ODOT to study the travel inducement effects of a major highway capacity expansion project, and to report its findings to the General Assembly by June 30, 2000.

**Provisions related to public safety**

- Makes changes to the financial responsibility random verification program by requiring the pilot project to provide additional safeguards to a person who fails to respond to a financial responsibility random verification request, including the use of certified mail and an additional attempt to determine the address of the person.
- Makes changes concerning the arrest, trial, and disposition of certain persons whose license or registration are under suspension or impoundment by reason of the random verification program.
- Creates a task force to study the Bureau of Motor Vehicle's existing method of random selection to verify financial responsibility, and requires it to recommend changes to the General Assembly by June 1, 1999.
- Decreases the fees for 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.
- Provides that a DPS enforcement agent who is lawfully on any premises and who witnesses a violation of the cigarette and tobacco product sales law on those premises can arrest the person who committed the violation.
- 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.
- Requires the DPS to compile, analyze, and publish statistics relative to the number of motor vehicle accidents in which cellular telephone use was the primary or an important contributing cause of the accident.
- Requires the BMV to provide written and, for personal transactions, verbal notice to an individual that personal information collected by the bureau may be disclosed for bulk distribution uses, and give the individual an opportunity to prohibit those uses of the individual's personal information.
- Creates the Task Force on Motor Vehicle Titling, and directs it to report to the Governor and General Assembly within 180 days after the bill becomes law on the feasibility of establishing an integrated system of delivering information regarding motor vehicle titling and ownership.
- 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**

**Warranties in ODOT contracts**

(sec. 5525.25; Section 11)

The bill requires that certain percentages of ODOT capital construction contracts each fiscal year include a warranty. The specific terms of each warranty are to be set forth in the bidding documents for the particular contract, but must satisfy minimum warranty periods prescribed in the bill. At least 20% of the department's capital construction projects must be bid requiring a warranty, and at least 10% of the department's capital construction program must be bid requiring a pavement warranty. The warranty requirements do not apply to contracts the Director of Transportation makes on behalf of a political subdivision.

The minimum warranty periods are seven years for pavement in the case of new construction; five years for pavement resurfacing and rehabilitation; and two years for pavement preventative maintenance, pavement markings and raised

markers, bridge painting, guardrail, and other project items as determined by the Director.

**Warranty reports and plans**

The Director is required to report to the Controlling Board within 90 days of the bill's effective date on the department's comprehensive implementation plan for warranties. The report must include:

--The number and types of projects to be bid meeting the new warranty requirements;

--An investigation of alternative warranty contracting options, including (1) incentives, (2) different bidding methods, and (3) implementation of new technologies, construction techniques, and materials to prolong pavement life considering such factors as density, smoothness, and segregation;

--Development of a surface warranty for all pavement projects on interstate highways and multi-lane, fully controlled-access highways under ODOT jurisdiction. The surface warranty is to be limited to warranting against only common pavement distresses, including delamination, raveling, and rutting. The implementation plan must include a schedule for introducing the surface warranty into the annual ODOT construction program, with a requirement that by June 30, 2001, the warranty be included in all pavement project contracts let by the department.

By December 31, 2000, the Director is required to report to the General Assembly on the department's findings on the use of warranties. The report must include comparisons of cost, techniques and quality of warranted and non-warranted items, and recommendations for further use of warranties.

**Pilot program for 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 pilot program for the fiscal year 2000-2001 biennium, allowing the Director to enter into contracts for an additional \$250 million worth of design-build projects during that period. The Director can award contracts for up to six of the new projects through a new "value-based" selection process that the bill creates and is described below. These six projects must cost at least \$10 million each. For the other new projects, the Director must award the contracts through standard ODOT competitive bidding procedures. The bidders are to base their bids upon a scope-of-work document that the Director must prepare and distribute.

### **New value-based selection procedures for design-build contracts**

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 this 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 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.

**Report on design-build pilot program**

Under existing law, the Director of Transportation is required to submit a report on the design-build pilot program to the General Assembly within one year after the completion of the sixth special project. (Department testimony indicates the sixth project is not yet completed, so the report has yet to be made.) The bill changes the reporting requirement to instead provide that the Director must submit the report on or before December 31, 2000. The report must evaluate ODOT's experience with each of the original six pilot projects and with the new projects authorized by the bill, including whether any cost or time savings were realized. With regard to the projects, the report also is to include a discussion of the number and cost of change orders, the quality of work performed, the number of bids received, the impact on minority and female contract participation, and other issues the Director considers appropriate.

**Revised ODOT 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

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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.)*

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

<b>Seating capacity of the aircraft</b>	<b>Amount of annual tax<sup>2</sup></b>
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.

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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.*

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.

**ODOT research and development with other states**

(sec. 5501.03)

The bill imposes two requirements concerning the ODOT research and development program. The department is directed to consider technologies for improving roadways, including construction techniques and materials to prolong project life, that are being used or developed by other states with geographic, geologic, or climatic features similar to those of Ohio. The department also is required to collaborate with the other states in the development of those technologies.

**Consideration of farmland preservation and efforts to control urban sprawl**

(sec. 5512.10)

The bill prescribes an additional factor that ODOT and the Transportation Review Advisory Council (TRAC) must consider in reviewing certain highway proposals. Specifically, the requirement applies if a political subdivision that is outside the jurisdiction of a metropolitan planning organization submits a request to the department for an interchange to be constructed on an interstate highway or other multi-lane, fully controlled-access highway under ODOT jurisdiction. When reviewing such a request, ODOT or TRAC must consider whether the proposal promotes farmland preservation and efforts to control urban sprawl.

**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;
- 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.

**Waterways Safety Fund share of motor fuel tax receipts**

(sec. 5735.051; Section 14)

Existing law includes a statement that the General Assembly finds that 0.5% of revenue resulting from the motor fuel tax is attributable to the operation of watercraft upon waters within state boundaries. Instead of being used for highway purposes, the revenue attributed to watercraft is credited to the Waterways Safety Fund. The Division of Watercraft in the Department of Natural Resources uses the Waterways Safety Fund to pay for the various watercraft-related programs it operates.

The bill increases to 0.75% the share of motor fuel tax revenue that is attributed to the operation of watercraft and must be credited to the Waterways Safety Fund. The bill contains a statement that for the 2000-2001 biennium, the General Assembly intends that the additional money be expended 1/3 for improving boating access, 1/3 for additional dredging, and 1/3 for additional marine patrol and watercraft education activities.

**Transportation-related studies required by the bill**

**Local transportation needs**

(Section 10)

The bill requires the Legislative Budget Office (LBO) to conduct a study to determine the need for additional resources to meet local construction and maintenance needs for highways, bridges, and mass transit. The study must identify possible alternative sources of revenue that could be imposed by local

governments, or imposed by the state and distributed to local governments. The study also must consider whether and how the state's allocation of funds to local projects could be done in ways more responsive to local needs and local variations in the conditions of highways, bridges, and mass transit systems. LBO must submit a report setting forth the results of the study to the General Assembly by July 1, 2000.

**Rail grade separation issues**

(Section 13)

The bill requires the Executive Director of the Ohio Rail Development Commission to review and evaluate information and develop a report concerning the following topics:

--Grade separations and improvements needed to alleviate safety problems and congestion in the state;

--How to develop a priority system to determine the order in which those grade separations and improvements could be made;

--Potential funding sources for the grade separation and improvement projects.

The Executive Director must submit the report to the General Assembly by December 31, 1999.

**Aviation fuel and airport infrastructure**

(Section 4.08)

ODOT is required under the bill to complete a comprehensive aviation study on the following topics:

--The amount of aviation fuel sold in the state by type;

--A breakdown of all taxes paid on that fuel;

--The current state of the infrastructure of the state's public use general aviation airports;

--The forecasted needs of those airports in the 21st century;

--Any other information deemed necessary.

The Office of Budget and Management, Legislative Budget Office, Department of Taxation, and any other agency deemed necessary are required to cooperate with ODOT on the study. ODOT must complete the study by October 1, 1999, and report its findings to the House Finance and Appropriations Committee.

**Travel inducement effects of highway projects**

(Section 12)

The bill requires ODOT to use state-of-the-art methodologies to study the travel inducement effects of a major highway capacity expansion project. A metropolitan planning organization selected by ODOT is also to work on the study. ODOT is required to report its findings to the General Assembly by June 30, 2000.

PUBLIC SAFETY PROVISIONS

**Financial responsibility verification**

(secs. 4507.02 and 4509.101; Section 16)

**Background**

State law currently prohibits any person from operating a motor vehicle in this state, unless proof of financial responsibility is maintained on the vehicle continuously throughout the registration period. Failure to continuously maintain proof of financial responsibility results in the imposition of two civil penalties. The person's operating privileges are suspended and the person's driver's license is impounded. Also, the person's vehicle registration is suspended and the certificate of registration is impounded.

Any person operating a motor vehicle may be required to verify the existence of proof of financial responsibility under the following specified circumstances:

- (1) Involvement in a traffic accident requiring the filing of an accident report;
- (2) Receipt of a traffic ticket indicating that proof of the maintenance of financial responsibility was not produced upon the request of a peace officer or state highway patrol trooper; and
- (3) Whenever, in accordance with rules adopted by the Registrar of Motor Vehicles, the person is randomly selected by the Registrar and requested to provide verification.

The requirement that a person verify proof of financial responsibility when randomly selected by the Registrar was adopted in 1994. The 1994 legislation also required the Director of Public Safety and the Registrar to adopt rules requiring persons randomly selected according to a method developed by the Director and the Registrar to verify proof of financial responsibility.

In 1997, the requirement to adopt rules concerning random verification was amended. The Registrar was required to adopt rules by January 1, 1998 to establish a pilot program to randomly verify proof of financial responsibility. The Registrar continued to be required to develop the method of random verification. Not later than January 1, 2000, there must be a permanent, statewide program for random verification of financial responsibility.

The Registrar has adopted rules governing random verification of financial responsibility. The rules require the Registrar to randomly select vehicles and to send the vehicle owners a notice that they are required to submit proof of financial responsibility. The notice must be sent by regular mail and must tell the owner how to submit the proof. The proof must be submitted within 21 days of the mailing of the notice.

If the person fails to submit the proof of financial responsibility, the Registrar must issue an order suspending the license of the person and impounding the person's certificate of registration and license plates. These are the penalties for failing to continuously maintain proof of financial responsibility. The suspension and impoundment take effect 30 days after the date of the mailing of notification. However, the Registrar must terminate the order of suspension and the impoundment of the registration and license plates if the person presents proof of financial responsibility within 15 days of the mailing of the notification.

### **The bill**

**Overview.** The bill requires the Registrar to adopt rules for the pilot project that provide additional safeguards to a person who fails to respond to a financial responsibility random verification request. The additional safeguards include use of certified mail and an additional attempt to determine the address of the person. New procedures apply when a person whose license or registration are suspended or impounded for failure to respond to a financial responsibility random verification request is stopped for driving under a financial responsibility license suspension, when the person defends a suspension charge, and when the person's operating privileges and registration rights are reinstated.

**Rules of the Registrar.** The bill requires the rules of the Registrar for the pilot project to do all of the following:

(1) Establish a three-step process for written notification to the owner of a vehicle randomly selected to submit proof of financial responsibility, with the last notification, when necessary for an owner who fails to respond to the previous notices, to be sent by certified mail, return receipt requested. If the second notice is returned as not deliverable, the Registrar must make reasonable efforts to determine if the owner's address has changed before sending the third notice.

(2) Allow an order of the Registrar imposing the civil penalties required under the Financial Responsibility Law to be issued upon the failure of a vehicle owner to provide proof of financial responsibility in response to the initial notice, but allow the order to be implemented only after the owner has failed to respond to the third notice sent by certified mail or the certified mail is returned as refused or not deliverable.

(3) Require the Registrar, when recording the necessary information for an order imposing the civil penalties required under the Financial Responsibility Law, to distinctly indicate the type of suspension and impoundment when the suspension of the person's license and the impoundment of the person's certificate of registration and license plates results from a failure to respond to the random verification.

(4) Establish procedures for a person to provide proof of financial responsibility at the office of a deputy registrar if the operating privileges or registration rights of the person are suspended because of a failure to respond to a financial responsibility random verification request.

If the suspension of a person's license and the impoundment of the person's certificate of registration and license plates results from a failure to respond to a random verification, the bill requires the Registrar to distinctly indicate the type of suspension and impoundment when putting information of such an order into the law enforcement automated data system and recording the information as part of the person's permanent record.

**Arrest for driving under suspension.** Current law authorizes peace officers to confiscate the license, certificate of registration, and license plates when the officer becomes aware of a person whose license is under an order of suspension or whose certificate of registration and license plates are under an order of impoundment. The bill modifies the authority of a peace officer in this situation.

Under the bill, when a peace officer becomes aware of a person whose license is under an order of suspension, or whose certificate of registration and license plates are under an order of impoundment resulting from failure to respond to a financial responsibility random verification, the officer may not, for that

reason, arrest the owner or operator, or seize the vehicle or license plates. Instead, the officer must issue a citation for a driving under financial responsibility law suspension or revocation specifying the circumstances as failure to respond to a financial responsibility random verification. (Sec. 4509.101(D)(1)(b).)

**Prosecution for driving under suspension.** Current law prohibits a person whose driver's or commercial driver's license was suspended or revoked for violating financial responsibility laws from operating a motor vehicle during the period of the suspension or revocation. Driving under a financial responsibility law suspension or revocation is a first degree misdemeanor, with the potential for vehicle immobilization, impoundment, and forfeiture, depending on the person's prior convictions for violating a financial responsibility suspension or revocation (sec. 4507.99(C), not in bill).

Under the bill, if an order of suspension results from the failure of a person to respond to a financial responsibility random verification request, the person may raise as an affirmative defense to any prosecution for operating a motor vehicle in violation of a financial responsibility suspension the fact that the person is able to show that he was in compliance with the requirements of financial responsibility at the time of the initial random verification request.

**Restoration of operating privileges.** Current law establishes the conditions under which a person's operating privileges and registration rights may be reinstated including: (1) payment of a financial responsibility reinstatement fee, (2) payment of a financial responsibility nonvoluntary compliance fee if the person did not voluntarily surrender the license, certificate, or license plates as ordered by the Registrar, and (3) a requirement to file and continuously maintain proof of financial responsibility.

The bill establishes an exception to these requirements. If the suspension order resulted from the failure of a person to respond to a financial responsibility random verification request and the person either successfully maintains an affirmative defense to the charge of driving under a financial responsibility suspension or is determined by the Registrar or a deputy registrar to have been in compliance with financial responsibility requirements at the time of the initial financial responsibility random verification request, the Registrar must do both of the following:

- (1) Terminate the order of suspension or impoundment;
- (2) Restore the operating privileges and registration rights of the person without payment of the financial responsibility reinstatement fee or the financial

responsibility nonvoluntary compliance fee, and without a requirement to file proof of financial responsibility. (Sec. 4509.101(A)(6).)

**Task force on random selection to verify financial responsibility**

(Section 18)

The bill creates a task force to study the Bureau of Motor Vehicle's existing method of random selection to verify financial responsibility. The task force is required to study the existing method and to make recommendations on changes to the General Assembly by June 1, 1999.

The task force is to consist of 12 members, including the Registrar of Motor Vehicles and the Superintendent of Insurance. The Speaker of the House of Representatives must appoint five members of the House to the task force, no more than three of whom can be from the Speaker's party. Similarly, the President of the Senate must appoint five members of the Senate to the task force, no more than three of whom can be from the President's party. The Speaker and President are required to make their appointments within two weeks after the bill becomes law, and to jointly select the chairperson of the task force.

The bill provides that the task force ceases to exist after making its recommendations to the General Assembly.

**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 15.01)

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.

**Authority to enforce the Criminal Code**

(secs. 5502.13 and 5502.14; sec. 5502.61(repealed))

In addition to food stamp enforcement activities, a food stamp trafficking agent is authorized to enforce and make arrests for any suspected violation of the state's Criminal Code (R.C. Title 29) if he or she is in view of the suspected violation. The Criminal Code enforcement powers of liquor control investigators are more limited. Besides enforcing liquor control laws, a liquor control investigator can enforce and make arrests for 14 specified Criminal Code (13) or Highway Code (1) offenses. These offenses include aggravated assault, assault, negligent assault, public indecency, disorderly conduct, falsification, obstructing official business, obstructing justice, resisting arrest, carrying concealed weapons, illegal possession of a firearm in liquor permit premises, various possession of drugs offenses, permitting drug abuse, and use of a driver's license that is fake or was issued to another person. However, a liquor control investigator can exercise these additional law enforcement powers only if the investigator witnesses a specified offense while investigating or making an arrest for a liquor law violation.

For the new DPS enforcement agents, the bill merges and modifies this law enforcement authority. Enforcement agents who (1) are on, immediately adjacent to, or across from retail liquor permit premises and are performing investigative duties relating to the premises, (2) are on premises that are not liquor permit premises but on which a violation of a liquor control law or rule allegedly is occurring, or (3) view a suspected violation of a liquor control or food stamp law or rule, can enforce violations of the liquor control and food stamp laws and rules, and also violations of the Criminal Code that they witness under these three

circumstances, including any of the specific offenses for which liquor control investigators are currently authorized to make arrests.

**Enforcement of cigarette and tobacco product sales laws**

(secs. 5502.13 and 5502.141)

As described in the preceding section of this analysis, DPS enforcement agents generally can exercise law enforcement authority with respect to Criminal Code violations only when they are performing an investigation on, immediately adjacent to, or across from a retail liquor premises; on other premises where alleged liquor control law violations are occurring; or in view of a suspected violation of the liquor control and food stamp laws or rules. But the bill expands the powers of enforcement agents beyond those limited circumstances with regard to violations of the cigarette and tobacco product sales law.

The cigarette and tobacco products sales law prohibits manufacturers, producers, distributors, wholesalers, or retailers of cigarettes or other tobacco products (or their agents or employees) from selling, giving away, or otherwise distributing their products (1) to minors, or (2) in any place that does not have posted in a conspicuous place a sign stating that selling, giving away, or otherwise distributing cigarettes or other tobacco products to a minor is illegal. Additionally, the law provides that cigarettes and other tobacco products can be sold by vending machine only in areas that are not open to the general public, areas to which minors are not generally permitted access, or areas in which the machine is in the immediate vicinity, plain view, and control of the owner or operator of the establishment (or an employee of the owner or operator) and not accessible to the public when the establishment is closed. Violation of the cigarette and tobacco product sales law is a fourth degree misdemeanor for the first offense and a third degree misdemeanor for a subsequent offense. (Sec. 2927.02, not in the bill.)

Under the bill, a DPS enforcement agent who is lawfully on any premises and who witnesses a violation of the cigarette and tobacco product sales law on those premises can arrest and detain, without a warrant, the person who committed the violation. The agent's arrest authority is the same as a peace officer having jurisdiction in the political subdivision in which the premises are located, and is in addition to and not qualified by the circumstances generally governing the agent's arrest authority with respect to liquor and food stamp law or rule violations or incidentally witnessed Criminal Code violations.

The bill also specifies that the new DPS Investigative Unit can conduct investigations into and enforce the cigarette and tobacco products sales law.

**Enforcement agent retirement provisions**

(secs. 145.01 and 145.33; Section 15)

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 15.01)

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.

**DPS statistics on cellular telephone use**

(sec. 5502.01)

Existing law requires the Department of Public Safety to compile, analyze, and publish statistics relative to motor vehicle accidents and their causes. The bill provides that these statistics must include specific information on the number of accidents in which cellular telephone use was the primary or an important contributing cause of the accident.

**BMV disclosure of personal information for bulk distribution**

(sec. 4501.27)

Existing law authorizes the Registrar of Motor Vehicles to disclose personal information about an individual that BMV obtains in connection with a motor vehicle record, for bulk distribution for surveys, marketing, or solicitations. Such

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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.

personal information includes an individual's name, telephone number, address (but not a zip code), medical or disability information, and photograph. (It does not include information pertaining to vehicular accidents, driving or traffic violations, or a driver's status.) The Registrar can disclose the information only after implementing methods and procedures to ensure that (1) individuals are provided in a clear and conspicuous manner an opportunity to prohibit uses of this nature, and (2) the surveys, marketing, and solicitations will not be directed at an individual who has requested in a timely fashion not to receive them.

The bill expands the individual safeguard described in (1) in the preceding paragraph. Under the bill, the Registrar must provide both written and verbal notice to an individual that personal information collected by BMV may be disclosed for bulk distribution uses. The written notice must be provided in a clear and conspicuous manner on forms for the issuance or renewal of driver's licenses or commercial driver's licenses, motor vehicle certificates of title, motor vehicle registrations and license plates, and identification cards. The verbal notice is required when a transaction is performed in person. In addition, the individual must be given an opportunity to prohibit bulk distribution uses of the individual's personal information by completing and submitting a form provided by BMV.

The bill also specifies that personal information includes an individual's digital image for purposes of the bulk distribution program and other provisions of the BMV law concerning disclosure of personal information.

### **Task Force on Motor Vehicle Titling**

(Section 19)

The bill creates the Task Force on Motor Vehicle Titling, and directs it to evaluate the current state of technology to determine if it would be feasible to establish an efficient, integrated, and accurate system of delivering information regarding ownership and other interests and related data concerning motor vehicles, including the area of motor vehicle titling. The evaluation must include consideration of recent advancements in the electronic transfer of information that would make creation of such a system possible. If the task force determines the system is feasible, it must develop a general estimate of the costs involved in creating it. The task force also must make recommendations regarding actions that would need to be taken to create the system.

The bill requires the task force to submit a report on its evaluations and recommendations to the Governor and General Assembly within 180 days after the bill becomes law.

The task force is to consist of 15 members, including four legislators. Two Senators and two members of the House of Representatives are to be appointed by the President of the Senate and Speaker of the House, respectively, with each of the members from a chamber being from a different political party. Other task force members are the Director of Public Safety, the Registrar of Motor Vehicles, a representative of the Office of the Attorney General designated by the Attorney General, a representative of the Department of Taxation designated by the Tax Commissioner, the president of the Ohio Clerks of Court Association or the president's representative, the president of the Ohio Automobile Dealers Association or the president's representative, the president of the Ohio Auto Auction Association or the president's representative, one person who represents a company that is a member of the Ohio Telecommunications Association and is appointed by the Governor, one person who represents a company that is engaged in the business of providing financing for the purchase or leasing of motor vehicles and is appointed by the Governor, and two members of the public at large who are appointed by the Governor.

The President, Speaker, and Governor are required to make their appointments, and the Tax Commissioner and Attorney General are required to designate their representatives, within two weeks after the bill becomes law. The President and Speaker are to jointly select the chairperson of the task force from among the four legislative members.

The bill provides that the task force ceases to exist after it submits its report.

#### **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 20 to 23)

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 appropriations for current expenses and certain other uncodified sections, 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 that make appropriations for current expenses or are otherwise specified 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:



## ELIGIBILITY REQUIREMENTS

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.

(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	02-09-99	pp. 173-174
Reported, H. Finance & Appropriations	02-24-99	p. 230



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