



**Sub. S.B. 295\***

123rd General Assembly

(As Reported by H. Transportation and Public Safety)

Sen. Oelslager

Reps. Olman, Damschroder, Collier

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**BILL SUMMARY**

- Establishes \$20,000, rather than \$5,000, as the maximum value unneeded real property of the Department of Transportation (ODOT) may have when the Director offers the property to the abutting owner through a private sale.
- Allows the Director to offer to exchange unneeded ODOT property within a project corridor for other property ODOT needs to acquire.
- Consolidates the authority of the Director of Transportation to sell unneeded property into one section of codified law.
- Authorizes the Director to purchase or appropriate property for park and ride facilities, and park and carpool or vanpool facilities.
- Exempts from competitive bidding requirements a change order or extra work contract that exceeds 5% of the value of a construction contract, but results in a change of \$25,000 or less.
- Authorizes the Director to include a binding dispute resolution method in any construction contract.
- Replaces the notice and hearing requirements in connection with highway projects with a requirement that the Director notify the general community of a project and offer different types of opportunities for appropriate public involvement in the project process.

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\* *This analysis was prepared before the report of the House Transportation and Public Safety Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Authorizes the Director to amend the rule identifying the specific positions included in the career professional service whenever the Director determines necessary, rather than only within 60 days after the Director adopts a rule establishing ODOT's business plan.
- Allows the Director to remove or relocate objects or structures of other persons that obstruct or interfere with a highway or highway project without prior notice if the Director determines that the object or structure presents an immediate and serious threat to the safety of the traveling public.
- Recognizes the right of a public utility to continue to occupy any portion of a highway being vacated by ODOT.
- Repeals a requirement for a board of directors of a port authority to prepare a plan for the future development, construction, and improvement of the port and its facilities.
- Eliminates obsolete references and provisions in the aeronautics law.
- Increases from \$10,000 to \$35,000 the value above which an Ohio Turnpike Commission contract must be competitively bid.

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## CONTENT AND OPERATION

### Real property

#### Sale of unneeded property

Current law generally authorizes the Director of Transportation to sell land not required for highway purposes. Various sections of law contain similar provisions requiring the Director to (1) obtain an appraisal of the land, (2) advertise the sale of the property, and (3) sell the land at public auction to the highest bidder, for not less than two-thirds of its appraised value. These provisions apply whether the land was acquired from the administrator of worker's compensation or retirement board or "otherwise" (sec. 5501.34), or from the sinking fund (sec. 5501.37), or generally (sec. 5501.32).

Also under current law, if the property has an appraised current fair market value of \$5,000 or less, the Director may sell the land to the sole abutting owner through a private sale at a price not less than its appraised value. If there is more than one abutting owner, the Director may take sealed bids from the abutting owners and sell the land to the highest bidder at not less than its appraised value.

If unneeded land is reappraised as having a fair market value of \$1,000 or less, and no abutting owner purchased the property, current law authorizes the Director to sell the land at public auction to the highest bidder. (Secs. 5501.34 and 5501.37.)

The bill consolidates the authority of the Director to sell unneeded property into one section of the Revised Code, regardless of how or from whom the property was acquired (secs. 5501.32, 5501.34, and repeal of 5501.37). In addition to consolidating the Director's authority, the bill does the following in regard to the sale of unneeded property:

(1) Establishes \$20,000, rather than \$5,000, as the maximum value unneeded real property may have when the Director offers the property to the abutting owner through a private sale at a price not less than its appraised value.

(2) Establishes \$2,000, rather than \$1,000, as the maximum value of unneeded real property that may be sold at public auction without regard to its appraised value after an abutting owner fails to purchase the property, but also authorizes the Director to reject all bids that are less than the full appraised value of the property.

(3) Generally retains the requirement that unneeded real property be appraised, and, after advertisement, be sold at public auction for not less than two-thirds of its appraised value.

(4) Replaces references to "land" with the term "real property," a term including buildings and other affixtures to land and also revises other terminology.

The Department of Transportation (ODOT) must pay all expenses incurred in the sale of a parcel of real property out of the proceeds of the sale and must deposit the balance of the proceeds in the highway fund used to acquire that parcel of real property.

Additionally, the bill allows the Director to exchange certain unneeded ODOT property for other needed property. Upon a determination that real property previously acquired within a highway improvement project corridor no longer is needed for highway purposes, the Director may offer the unneeded ODOT property to another landowner located within that project's corridor. The unneeded property may be sold as full or partial consideration for other real property to be acquired from the landowner. If the landowner accepts the offer, the Director must convey the unneeded property directly to the landowner at the full fair market value determined by ODOT by appraisal. The Director then credits the value of the unneeded ODOT property against the acquisition price of the second piece of property being acquired by ODOT; if the value of the unneeded ODOT property exceeds the acquisition price of the property being acquired, the landowner must pay ODOT the difference. (Sec. 5501.34(F).)

### **Permits to use**

In addition to the sale of all rights, title, and interest in unneeded property described above, the Director has authority to "convey or transfer the fee simple estate or any lesser estate or interest in, or permit the use of" lands that are not needed by the state for highway or recreation purposes (sec. 5501.45). In general, this authority is used to convey a lesser interest in property, such as a "permit to use" or an easement.

When a conveyance, transfer, grant, or permit to use is made to an authorized state entity, political subdivision, or institution receiving financial assistance from the state, it is made upon such consideration as the Director determines to be fair and reasonable, without competitive bidding, and without compliance with statutory procedures generally governing the transfer of real property. The bill defines an "institution receiving financial assistance from the state" as including any public or private organization, especially one of a charitable, civic, or educational character, that is in receipt of a state loan, grant, or other type of state financial assistance. It further requires such institutions to provide the Director with acceptable documentary evidence of the state loan, grant, or other type of state financial assistance. (Sec. 5501.45(E).)

### **Extinguishment of easements and highway vacation to abutting landowners**

Under current law, the Director may extinguish any state easement or permit to use areas of land if the Director determines that the easement or permit to use is not needed by the state for highway purposes. The bill allows the Director to make any extinguishment to the current underlying fee owner of record at no cost. (Sec. 5501.45(G).)

Similarly, current law allows the Director, after appropriate notice, to vacate any part of a highway that is no longer necessary for the purposes of a public highway. The bill requires the Director to make any vacation of a part of a highway to an abutting landowner or current underlying fee owner of record at no cost. (Sec. 5511.07.)

### **Public utilities continuing use of vacated property**

The bill specifies that, when ODOT vacates a highway, no public utility may be required to move or relocate any of its facilities located in or on any portion of the vacated highway. This provision is similar to a provision of existing law recognizing that a public utility cannot be required to relocate its facilities when ODOT disposes of unneeded property. The bill additionally requires any deed, transfer, or other instrument or conveyance made by reason of the vacation

to indicate the right of any public utility to continue its use or occupation of the portion of the highway being vacated.

### **Purchase or appropriation of property for special purposes**

In addition to the purchase or appropriation of property for highway improvements, current law allows the Director to purchase or appropriate property for certain related purposes including slopes, detour roads, sewers, roadside parks, rest areas, recreational park areas, scenic view areas, drainage systems, and land to replace wetlands. In addition to these, the bill authorizes the Director to purchase or appropriate property for park and ride facilities, and park and carpool or vanpool facilities. (Sec. 5501.31.)

### **Contracting issues**

#### **Binding dispute resolution**

The bill authorizes the Director to include a binding dispute resolution method in any construction 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 binding dispute resolution, a party having a claim against ODOT must exhaust its administrative remedies specified in the construction contract prior to filing any action against ODOT in the Court of Claims. Additionally, no appeal from the determination of a technical expert lies to any court except that the Franklin County Court of Common Pleas may issue an order vacating the determination upon the application of any party to the binding dispute resolution if any of the following circumstances applies:

- (1) The determination was procured by corruption, fraud, or undue means.
- (2) There was evident partiality or corruption on the part of the technical expert.
- (3) The technical expert was guilty of misconduct in refusing to postpone the hearing, or in refusing to hear pertinent and material evidence, or of any other misbehavior by which the rights of any party were prejudiced.

The bill requires the Director, not later than February 1 each year, to provide the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives with a written list detailing the claims resolved through the binding dispute resolution method during the preceding calendar year.

As used in these provisions, "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. (Sec. 5525.23.)

### **Contracting for increased quantities or extra work**

Current law authorizes the Director to increase the quantities of any item in a competitively bid construction contract without competitively bidding the increase, but only if the increase does not exceed the lesser of \$100,000 or 5% of the total contract price. The \$100,000 or 5% limitation does not apply to change orders or extra work contracts resulting from (1) an increase in the plan quantity that is determined during the final measurement of an item of work, (2) federally mandated requirements that did not exist at the time of the original contract award, or (3) circumstances that would create a life-, safety-, or health-threatening situation or would unduly delay the completion of a project and increase its costs, but only if the Director makes a finding of such fact, declares an emergency, and issues the finding.

The bill retains the circumstances described above to which the \$100,000 or 5% limitation does not apply, but adds that the \$100,000 or 5% limitation also does not apply to any change order or extra work contract when the total dollar amount of the increase is \$25,000 or less. Accordingly, a change order or extra work contract that exceeds 5% of the total contract value but results in a change of \$25,000 or less, does not need to be competitively bid. (Sec. 5525.14.)

### **Contracts for state highway projects in municipal corporations**

Current law requires that when a municipal corporation agrees to cooperate with ODOT in a state highway project within the municipal corporation, the municipal corporation must enter into a contract with the state providing for payment by the municipal corporation of the agreed portion of the cost. All contracts between ODOT and a municipal corporation for work done cooperatively within the municipal corporation must be submitted to and approved by the Director before the Director advertises for bids for the project. The bill requires the contract to be submitted and approved before the *receipt* of bids, rather than before advertising for bids. This extends the time for submission and approval of the contract by approximately one month. (Sec. 5521.01.)

### **Notification of changes or additions to the state highway system**

Currently, before establishing any additional state highways or making changes to existing highways, the Director must provide notice and a hearing. The notice is by publication in a newspaper and must state the route of the proposed highway or the change proposed. The hearing must be open to the public, and the

Director or a designated deputy must attend and hear any offered "proof." Notice and a hearing also are required before the Director abandons a state highway and before the Director makes a change in the route of any highway through a municipal corporation. Notice and a hearing are not required before the construction, reconstruction, maintenance, improvement, or widening of an existing highway where no relocation is involved.

The bill generally offers the Director greater flexibility in informing the public of a highway project. It replaces the notice and hearing requirements described above with a requirement that the Director notify the "general community" of a project and offer an opportunity for "appropriate public involvement" in the project process before establishing any additional state highways, making *significant* changes in existing state highways, abandoning a state highway, and changing a route in a highway through a municipal corporation (sec. 5511.01).

The opportunity for public involvement must satisfy the requirements of the National Environmental Policy Act of 1969. (See **COMMENT.**) It may consist of activities such as public meetings or hearings, small group meetings with local officials, individual meetings, news releases, public notices, workshops, newsletters, electronic communications, radio announcements, mail notification, and other activities considered "appropriate for the exchange of information."

### **ODOT career professional service program**

In general, current law authorizes the Director to place certain managerial, professional, and supervisory classified ODOT employees in a career professional service program and to hold those employees accountable for their job performance according to the ODOT business plan established by the Director. The career professional service program is a pilot program; no one may be appointed to a position in the career professional service after June 30, 2003.

Specifically, current law requires the Director to adopt a rule establishing a business plan only once in each two years; within 60 days of the effective date of the rule establishing ODOT's business plan, the Director must adopt a rule identifying specific positions within ODOT that are included in the career professional service. Under current law, the rule identifying the specific employee positions that are within the career professional service may be amended only within the 60 days after the Director adopts a rule establishing ODOT's business plan. The bill authorizes the Director to amend the rule identifying the specific positions included in the career professional service whenever the Director determines necessary. (Sec. 5501.20.)

## **Miscellaneous ODOT provisions**

### **Removal of obstructions**

Under current law, persons who use or occupy any part of a road or highway with telegraph or telephone lines, steam, electrical, or industrial railways, oil, gas, water, or other pipes, mains, conduits, or any object or structure must remove the object or structure from the road or highway when the Director determines the objects obstruct or interfere with the highway or a highway project. If a person is occupying a road or highway under a valid franchise or permit, the person must relocate their property when it obstructs or interferes with the highway or a highway project. After notification by the Director, the person has five days to remove or relocate the obstructing or interfering property. If the removal or relocation is not completed within a reasonable time, the Director may remove or relocate the property and certify the costs of the removal or relocation to the Attorney General for collection by civil action.

Under the bill, if the Director is of the opinion that the obstruction or properties present an immediate and serious threat to the safety of the traveling public, he may remove or relocate the obstruction or properties without prior notice. For these purposes, the bill also defines "road or highway" by reference to existing law as including bridges, viaducts, grade separations, culverts, lighting, signalization, and approaches to the road or highway; it further includes any part of the road or highway right-of-way. The bill allows notice that a person needs to remove or relocate an obstruction or property to be made by express mail, as well as by personal service or certified mail, as under current law. (Sec. 5515.02.)

### **Terminology**

The bill replaces a reference to "telegraph and telephone" poles with the more general term "utility" poles in the context of authorization to attach signposts, guideposts, and warning or other signs (sec. 5515.04).

The bill also removes an obsolete reference to "journalization" of an action of the Director and replaces it with "approval" by the Director.

### **Port authorities: plan for future development**

Existing law requires a board of directors of a port authority to prepare a plan for the future development, construction, and improvement of the port and its facilities, including whatever maps, profiles, and other data and descriptions may be necessary to show the location and character of the work to be done by the authority. The bill repeals all requirements and references to a required plan for future development (repeal of secs. 4582.07, 4582.08, 4582.09, 4582.32, 4582.33, and 4582.34).



### **Aeronautics law changes**

The bill eliminates a number of obsolete references and provisions in the aeronautics law (R.C. Chapter 4561.). These references and provisions are as follows:

#### **Ohio Aviation Board**

The Ohio Aviation Board no longer exists, but current law defines an "airway" as a route in the air space over and above the lands or waters of Ohio, designated by the Ohio Aviation Board as a route suitable for the navigation of aircraft (sec. 4561.01(I)). Current law also permits ODOT to adopt rules necessary to carry out the aeronautics law, but provides that all rules and regulations adopted by the Ohio Aviation Board as of September 17, 1957, are valid ODOT rules and regulations until they are rescinded or revoked (sec. 4561.05).

The bill, in the definition of "airway," eliminates the reference to the Ohio Aviation Board and inserts in its place "Federal Aviation Administration." As ODOT has rescinded or revoked all the rules and regulations of the Ohio Aviation Board, the bill also eliminates the provision that states all rules and regulations adopted by the Board as of September 17, 1957, are valid ODOT rules and regulations.

#### **Airman's certificate of competency**

Current law prohibits any person from carrying passengers in an aircraft unless the person piloting the aircraft holds a valid airman's certificate of competency in the grade of private pilot or higher issued by the United States. This prohibition does not apply to the operation of military aircraft of the United States, aircraft of a state, territory, or possession of the United States, or aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such aircraft. (Sec. 4561.15(A)(1).)

The bill modifies this prohibition by prohibiting any person from carrying passengers in an aircraft unless the person piloting the aircraft holds a valid airperson's certificate of competency issued by the United States.

#### **Marking of municipal corporations for aviation purposes**

Under current law, the legislative authority of every municipal corporation must mark the municipal corporation for aviation purposes, subject to and in accordance with applicable law and any applicable ODOT rules and regulations. The costs must be paid from the municipal corporation's general fund. (Sec.

4561.10.) The bill repeals this provision as technology has rendered it obsolete and unnecessary.

**Ohio Turnpike Commission competitive bid threshold amount**

Current law provides that when the cost to the Ohio Turnpike Commission under any contract with a person other than a governmental agency involves an expenditure of more than \$10,000, the Commission must make a written contract with the lowest responsive and responsible bidder after advertising the expenditure for not less than two consecutive weeks in a newspaper of general circulation in Franklin County and in any other publications as the Commission determines. The notice must state the general character of the work and the general character of the materials to be furnished, the place where the plans and specifications may be examined, and the time and place of receiving bids. These requirements do not apply to contracts for the acquisition of real property or compensation for professional or other personal services. The bill increases this threshold bid amount of the Commission from \$10,000 to \$35,000. (Sec. 5537.07.)

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**COMMENT**

In regard to highway projects, the National Environmental Policy Act of 1969 generally requires environmental impact statements. It also establishes related procedures, including early and continuing opportunities for coordinated public involvement during project development. *See*, 42 U.S.C.A. §§ 4321, et seq. and 23 C.F.R. Part 771.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	05-02-00	p. 1634
Reported, S. Highways & Transportation	05-24-00	p. 1811
Passed Senate (33-0)	05-25-00	p. 1865
Reported, H. Transportation & Public Safety	---	---

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