



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [Am. Sub. H.B. 533 of the 130th G.A.](#)

**Date:** May 22, 2014

**Status:** As Passed by the House

**Sponsor:** Reps. McGregor and Mallory

**Local Impact Statement Procedure Required:** No

**Contents:** Use of tolling on transportation facilities

### State Fiscal Highlights

- The Ohio Department of Transportation (ODOT) could receive new toll revenues from a tolled interstate bridge project under the bill. Revenues to ODOT would be deposited in the Ohio Toll Fund, which is currently inactive, or disposed of pursuant to a public-private partnership (P3) agreement, if one is entered into.
- Toll revenues to the state would depend on toll rates, traffic volumes, and whether or not the project is constructed under a P3. Tolls collected under a P3 could be split between the state and a private operator, depending on the terms of the agreement.
- ODOT could incur costs to implement an electronic tolling system for a bridge project under the bill. The state's portion of the start-up costs for such a system would likely be borne by the Highway Operating Fund (Fund 7002).
- The bill limits ODOT's portion of the costs of an agreement involving an interstate highway bridge across the Ohio River to another state to no more than 50% of the total project costs.
- The bill permits ODOT to reimburse private entities that submit proposals for a P3 agreement for the cost of submitting such proposals, either in full or on a prorated basis, depending on the solicitation and selection of vendors. This would likely result in a net expenditure from Fund 7002.
- ODOT could receive some revenue as a result of toll violation cases under the bill that result in a violator being assessed the cost of tolls, administrative fees, and penalties. Such amounts are to be deposited into Fund 7002 or disposed of pursuant to a P3 agreement, as applicable.
- ODOT could incur some administrative costs for holding the required public hearing regarding the process for setting toll rates. Like other costs that ODOT could incur as a result of the bill, the cost for holding this required hearing or others would be borne by Fund 7002.

- As a result of the increased workload related to processing record requests from toll operators, the Bureau of Motor Vehicles (BMV) will incur an estimated annual increase of \$175,000 in salaries and benefits, which will be offset by the current \$5 records fee charged per request.
- The BMV will see an increase in expenditures related to mailing notices to inform drivers who do not pay tolls that they may have their vehicle registrations blocked. These expenditures will be offset by a new \$5 fee to be paid by toll operators for every vehicle registration block order issued.
- The GRF could lose some revenue from the bill's exemption of construction and building materials contracted for under a P3 from the sales and use tax, possibly in the millions of dollars, if a private entity, rather than the state, is the contracting authority for a P3 project.

### **Local Fiscal Highlights**

- If cases involving toll violations reach the courts, the county or municipal court in the location where a toll project is located could incur the costs of hearing such cases.
- The bill requires individuals found liable by a court for payment of tolls or related administrative fees to also pay court costs, which may offset some of the costs of hearing such cases.
- If a private entity, rather than the state, is the contracting authority for a P3 project, the Local Government Fund (LGF) and the Public Library Fund (PLF) would each bear 1.66% of any revenue loss (or gain) experienced by the GRF from the bill's sales and use tax exemptions for construction and building materials purchased under a P3 agreement. Any revenue losses to the LGF and PLF would result in reduced distributions to counties, municipalities, townships, and public libraries. Conversely, any revenue gains to the funds would result in increased distributions to those political subdivisions.

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## Detailed Fiscal Analysis

### Toll projects

The bill expands the definition of a toll project in the Revised Code to include the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location carrying two interstate highways across the Ohio River to another state and any roadways that provide access to the bridge(s). Currently, the only bridge in Ohio that meets these criteria is the Brent Spence Bridge, which carries I-71 and I-75 between Cincinnati and Covington, Kentucky. According to the Ohio Department of Transportation (ODOT), approximately 172,000 vehicles cross the bridge daily, and it is currently under consideration for replacement.

### Interstate bridge agreements

The bill authorizes the Ohio Department of Transportation (ODOT) to enter into an agreement with another state for the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges that carries two interstate highways across the Ohio River and any roadways that provide access to the bridge(s). The bill prohibits such an agreement from obligating the state of Ohio to spend more than 50% of the total project costs. This would presumably allow the state to share the costs of the project with another state or outside entity.

### Toll collection

Under the bill, tolls may be collected by ODOT or any agency, political subdivision, authority, or other entity that operates a toll project. If ODOT is the toll project operator, tolls would be deposited in the Ohio Toll Fund as under current law.<sup>1</sup> However, if tolls are collected under a public-private partnership (P3) agreement, the bill specifies that tolls are to be deposited in accordance with that agreement.

The bill would result in new toll revenues to the extent that the toll project, as defined by the bill, is actually constructed, completed, and placed into operation. Actual toll revenues to ODOT would depend on toll rates, traffic volumes, and whether or not the project is operated under a P3. If a P3 is involved, ODOT may share revenues with a private operator or other entity, subject to the project agreement. If another state is involved, as would likely be the case with the Brent Spence Bridge replacement project, that state may also share toll revenues, depending on the nature of the agreement reached between Ohio, that state, and a potential private operator. The bill does not

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<sup>1</sup> The Ohio Toll Fund is currently not used, as the only toll road in the state is the Ohio Turnpike. Turnpike revenues are controlled by the Ohio Turnpike and Infrastructure Commission, which is not a state agency, and its revenues and expenditures are not part of the state treasury and not subject to appropriation by the General Assembly.

specify a precise distribution formula for tolls collected under such an agreement, leaving it up to the discretion of ODOT and any potential private partners.

#### **Electronic toll collection systems**

The bill permits ODOT to collect tolls on a toll project by using an electronic toll collection device mounted on a vehicle (e.g., E-ZPass) and, for vehicles not equipped with such a device, an electronic monitoring system that uses photographs, video, or some other method of identifying vehicles using the toll road. Typically, such systems photograph vehicle license plates to identify and bill motorists.

If the toll project is operated under a P3, the costs of implementing an electronic toll collection system would likely be shared by ODOT and any other public or private entities that are party to the partnership. Costs could include those of constructing electronic toll collection and monitoring points as well as those associated with personnel and information systems to accurately identify and bill users of the toll facility. Actual costs would depend on the size and scope of the toll collection system, as well as the structure of any P3 agreement or interstate agreement that governs the overall toll project. Any start-up costs borne by ODOT would likely be paid out of the Highway Operating Fund (Fund 7002).

#### **Plan for setting toll rates**

The bill requires ODOT, as part of its plan for setting toll rates required under continuing law, to develop a written process for setting toll rates. As part of this process, the bill requires the Department to hold at least one public hearing concerning the proposal within 50 miles of the location of the toll project. As a consequence, there could be additional administrative costs for holding this hearing or others, most likely borne by the Highway Operating Fund (Fund 7002).

#### **Bureau of Motor Vehicles**

The bill requires the Bureau of Motor Vehicles (BMV) to provide toll operators with driver records so that the toll operators can send billing notices for tolls to those drivers whose vehicles are not equipped with an electronic toll collection device. As a result of the increased workload related to processing these record requests, the BMV estimates that it will have to hire three additional staff. These staff will result in an annual increase in expenditures of approximately \$175,000 in salaries and benefits. These expenditures will likely be offset by the \$5 records fee that is currently charged by the BMV for all records requests. The amount of revenue gained from this \$5 fee is dependent on the number of records requested by the toll operators.

If a vehicle owner does not pay the required tolls, the BMV is required to block any vehicle registrations for that owner. Prior to issuing a block order, the BMV mails a notice to the vehicle owner. The amount of the increase in expenditures related to this provision is dependent on the number of notices required to be mailed out. It typically costs the BMV \$0.50 per notice, so, if, for example, there are 2.2 million mailings per year (5% of the estimated 43 million Ohio drivers on the bridge annually), the annual

expenditures would be \$1.1 million. The bill establishes a new \$5 fee, to be paid by the toll operator, for every vehicle registration block order sent to, and processed by, the BMV under the bill. The revenue gained from these fees will likely more than offset any mailing costs.

### **Toll collection enforcement**

The bill lays out procedures by which the toll project operator may pursue motorists who do not pay tolls, and by which motorists may contest toll charges. In some cases, such proceedings may result in hearings conducted by the toll project operator. In these cases, the operator would bear the costs of conducting the hearings and employing or contracting for hearing officers. Which entity is responsible for conducting the hearings depends on who is the toll project operator as determined in any agreement governing the toll project.

Some cases may reach the courts, in which case the municipal or county court having jurisdiction over the location of the toll project would hear the case. There could be some costs to the courts in this location if toll cases reach them; however, it is likely that most of these cases will be resolved before reaching court. If a case does reach court and the court judges a motorist liable for payment of a toll or administrative fee, the bill requires the motorist to pay all tolls and fees due, as well as court costs. The bill also requires courts to impose a civil penalty of \$75 for a first offense, \$150 for a second offense within one year of a first offense, \$250 for a third offense within two years of a second offense, and \$500 for a fourth or subsequent offense within three years of a third offense.

The bill requires courts to pay any user fees, administrative fees, and penalties assessed to violators into the Highway Operating Fund (Fund 7002) or designate them for payment in accordance with a P3 agreement, as applicable.

### **Public-private partnership (P3) agreements**

#### **P3 proposal submission reimbursements**

If ODOT solicits proposals for a P3 agreement for a bridge project under the bill, the bill would allow it to reimburse private entities with which it does not ultimately enter into an agreement for the cost of submitting a proposal. In cases where ODOT terminates a solicitation before its expiration date, the bill requires ODOT to prorate the reimbursement due to each entity participating in the solicitation based on the number of days of the original solicitation period that elapsed before the solicitation was terminated. For instance, if ODOT terminated a solicitation 45 days (75%) into a 60-day period, it would only need to reimburse private entities for 75% of their eligible reimbursement amount. If ODOT selects a proposal and enters into negotiations with a private entity, but subsequently terminates those negotiations for the convenience of ODOT and through no fault of the proposer, the proposer would be entitled to a full reimbursement from ODOT. Overall, this would likely result in a net expenditure from the Highway Operating Fund (Fund 7002).

### **Contract performance and payment bonds**

The bill requires a private entity involved in a P3 for an interstate bridge project under the bill to provide (1) a contract performance bond conditioned upon the private entity performing the work in accordance with the agreed upon terms, within the time prescribed, and in conformance with any other such terms and conditions as are specified by the Director, and (2) a payment bond conditioned upon the payment for all labor, work performed, and materials furnished in connection with the agreement and any other such terms and conditions as are specified by the Director. ODOT would not receive revenue from these bonds unless they are forfeited, in which case they will likely be deposited into the Highway Operating Fund (Fund 7002).

### **Sales and use tax exemption for construction materials**

The bill exempts building and construction materials that will be incorporated into a transportation facility pursuant to a P3 agreement from the sales and use tax. Under current law, building and construction materials sold to contractors for structures or improvements to real property under a contract with the state or a political subdivision thereof, or with the U.S. government, are already exempt from these taxes. However, these exemptions do not necessarily encompass transportation projects under which a private entity, rather than the state, may be the one contracting for these materials. Therefore, this provision could result in a loss in sales and use tax revenues that would otherwise go to the GRF if a private entity, and not the state, is the contracting authority under a P3.

Depending on the amount of materials that would be subject to the tax, which itself would depend on the number of P3 agreements that are entered into under the bill, such a loss to the GRF could reach into the millions of dollars. Please note that revenue changes to the GRF affect local governments, since 1.66% of GRF revenue received in a month is transferred the next month to the Local Government Fund (LGF); similarly, another 1.66% of GRF revenue in a month is transferred the next month to the Public Library Fund (PLF). These transfers dilute the ultimate effect on the GRF of a change in GRF revenue; the ultimate change in GRF revenue is 96.68% of the initial change.