Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)
(Excluding appropriations, fund transfers, and similar provisions)

Rep. McGregor

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OHIO TURNPIKE COMMISSION

- Authorizes the Ohio Turnpike Commission (renamed as the Ohio Turnpike and Infrastructure Commission) to issue revenue bonds for infrastructure projects.

- Requires that infrastructure projects first must be approved by the Transportation Review Advisory Council (TRAC) and then be recommended by the Director of Transportation and evaluated and approved by the Commission.

- Separates the Commission duties related to "turnpike projects" and "infrastructure projects."

- Requires that infrastructure projects must (1) generally relate to public highway construction or improvements and (2) have an anticipated economic or transportation-related impact on the turnpike and infrastructure system.

- Requires the Commission to adopt rules establishing procedures and criteria to evaluate infrastructure project funding requests and specifies that a determination to fund an infrastructure project is conclusive and incontestable.

- Specifies that infrastructure bond proceeds, after expenses and required debt service payments, be exclusively used to pay the cost of approved infrastructure projects,

but allows income earned by an infrastructure fund to be used by the Commission towards the payment of bond service charges.

- Specifies that in paying the cost of a turnpike project, the Commission may use funds specifically acquired for that turnpike project or excess funds available from any other turnpike project and removes language restricting the use of toll revenue to the turnpike project generating the revenue.

- Revises the law on fixing and adjusting tolls for turnpike projects that continue to be toll roads after payment of outstanding bonds.

- Modifies the membership of the renamed Ohio Turnpike and Infrastructure Commission to: (1) add two new public members appointed by the Governor; (2) set terms for members appointed after July 1, 2013 at three years, rather than eight; and (3) remove the Director of the Ohio Development Services Agency.

- Makes all voting Commission members, including the Director of Transportation, eligible to be elected as the chairperson or vice-chairperson of the Commission.

- Repeals authority (1) allowing the Director of Budget and Management and Director of Transportation to execute a contract with a private entity for the purpose of outsourcing turnpike-related highway services, and (2) granting the Director of Transportation the authority to exercise the powers of the Commission.

- Eliminates the Highway Services Fund, which was created to receive money from the contract outsourcing highway services.

- Makes the Commission subject to certain general public contracting provisions as a "public authority."

- Allows the Commission to adopt rules governing citations for the evasion of toll payments.

- Requires the Ohio Turnpike and Infrastructure Commission to make an annual report to the Governor and General Assembly on the funding of turnpike and infrastructure projects and also requires an annual report to the Turnpike Legislative Review Commission on infrastructure projects approved and funded by the Commission.

- Modifies the authority of the Ohio Turnpike and Infrastructure Commission in regard to the business logo sign program by removing explicit language allowing the Commission to contract with a private person to operate the program in accordance with rules it adopts.

Turnpike and infrastructure projects

(R.C. 5537.01, 5537.02, 5537.03, 5537.04, 5537.05, 5537.051, 5537.06, 5537.07, 5537.08, 5537.09, 5537.11, 5537.12, 5537.13, 5537.14, 5537.15, 5537.16, 5537.17, 5537.18, 5537.19, 5537.20, 5537.21, 5537.22, 5537.24, 5537.25, 5537.26, 5537.27, 5537.28, and 5537.30; R.C. 126.60, 126.601, 126.602, 126.603, 126.604, and 126.605 (repealed); and conforming changes in R.C. 153.65, 718.01, 2937.221, 3354.13, 3355.10, 3357.12, 5503.31, 5503.32, 5513.01, 5533.31, 5728.01, 5735.05, 5735.23, 5739.02, 5747.01, and 5751.01)

Overview

The bill renames the Ohio Turnpike Commission as the Ohio Turnpike and Infrastructure Commission and authorizes the Commission to issue revenue bonds to provide funding for infrastructure projects. In general, infrastructure projects must involve public highways and are selected for funding through a three-step process, as described in detail below. In order to be considered for funding by the Commission, the project first must be reviewed and recommended by the Transportation Review Advisory Council (TRAC). Next, the Director of Transportation must submit an application to the Commission. Lastly, the Commission may approve an application based on criteria that it establishes by rule.

The bill also repeals all authority granted in 2011 that allowed the Director of Budget and Management and Director to execute a contract with a private entity for the purpose of outsourcing turnpike-related highway services. Also under the provisions being repealed, the Director was given the authority to exercise the powers of the Ohio Turnpike Commission.

Infrastructure projects and funding

The bill specifies that the financing of infrastructure projects that enhance mobility and economic development in Ohio is an express purpose underlying the general authority of the Ohio Turnpike and Infrastructure Commission. The Commission also is expressly authorized to provide the infrastructure funds to pay the cost or a portion of the cost of infrastructure projects. The bill specifically requires that the costs of infrastructure projects be funded exclusively out of the infrastructure fund for that infrastructure project.

The bill authorizes the use of Commission revenue (primarily tolls) to support bonds issued by the Commission to fund infrastructure projects and generally uses the existing bond authority of the Commission for this function. To fund the bonds for infrastructure projects, the bill revises existing bond and tolling provisions.

An "infrastructure project" for which the Commission may issue bonds is generally defined by the bill as any public highway (including all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, and those portions of connecting public roads that serve interchanges), that is constructed or improved with infrastructure funding approved by the Commission. For purposes of an infrastructure project, "cost" is broadly defined in the same manner as in existing law; it generally includes any expense necessary or incident to the construction of a project and also includes the acquisition of property acquired by the owner of the infrastructure project. An infrastructure project owner is the public entity for whom an infrastructure project is funded by the Commission.

For purposes of the bill, "infrastructure fund" means the fund or funds created by the bond proceedings, which must be used to pay or defray the cost of approved infrastructure projects. The proceeds of bonds issued for the payment of the costs of infrastructure projects, net of the payment of all financing expenses and deposits into debt service reserves or other special funds as may be required in the applicable bond proceedings, must be deposited to the infrastructure fund or funds and must be exclusively used to pay the cost of infrastructure projects approved by the Commission. However, income earned by the infrastructure fund may be used by the Commission towards the payment of bond service charges.

As a general matter, the bill stipulates that the proceeds of bonds be used solely to pay the costs of (1) the turnpike project or projects for which such bonds were issued, or (2) for the payment of the costs of an approved infrastructure project. With respect to bonds issued for an infrastructure project, the bill requires the proceeds of the bonds to be used exclusively for the payment of the costs of the infrastructure project or projects for which those bonds are issued. Under current law, the proceeds of each issue of turnpike project bonds must be used solely for the payment of the costs of the turnpike project or projects for which the bonds were issued.

The bill revises the provision of current law related to maintaining a turnpike project as a toll road after the bonds issued in connection with that project are paid. Under current law, generally retained by the bill, the Commission may continue to operate a turnpike as a toll road after the outstanding bond service charges related to the project have been paid. Under the bill, all revenues received by the Commission for such a turnpike project must be applied and the tolls for such a project must be fixed and adjusted so that all of the revenues relating to that project are in amounts to provide moneys *at least sufficient* to pay: (1) the cost of maintaining, improving, repairing, constructing, and operating the Ohio turnpike system, and for any reserves for those purposes, and (2) any unpaid bond service charges on outstanding bonds payable from pledged revenues, and for any reserves for that purpose. Under this

provision of existing law, tolls for a turnpike project that is maintained as a toll road *after* the bonds are paid must be fixed and adjusted so that moneys are *sufficient* to pay the costs described above. Under the provision of existing law generally authorizing the Commission to revise tolls, irrespective of whether there are outstanding bonds, the tolls must be *at least sufficient* to maintain and operate the turnpike system and to pay and unpaid bond service charges on outstanding bonds and for any reserves.

The bill allows the Commission, in the bond proceedings, to pledge bond revenue to the payment of bond service charges to secure "the bonds senior or subordinate to or on a parity with bonds" previously or subsequently issued, if and to the extent provided in the bond proceedings. The bill removes a provision of existing law, establishing that, unless the bond proceedings provide otherwise, a bond service fund must be a fund for all bonds, without distinction or priority of one over another.

Law retained by the bill establishes that tolls are not subject to supervision, approval, or regulation by any state agency other than the Commission. Existing law, also generally unaffected by the bill, establishes notice and hearing requirements for any increase in toll rates.

As under existing law, the bonds to support infrastructure projects do not constitute a debt, or a pledge of the faith and credit, of the state or of any political subdivision of the state. The transfer of Commission bonds and the income from bonds is free from taxation within the state.

Law generally unaffected by the bill allows the Commission to sell bonds by competitive bid on the best bid after advertisement or request for bids or by private sale in the manner, and for the price, it determines to be for the best interest of the state. However, the bill removes a provision of existing law that requires Controlling Board approval of the Commission's determination as to the manner of sale.

The bill allows the Commission to spend such moneys as it considers necessary for studies of any infrastructure project, whether proposed, under construction, or in operation. As under current law for turnpike projects, the Commission may employ anyone it considers necessary to properly implement the studies and may pay the cost of the studies from revenues or other available funds, including bond proceeds.

Infrastructure project selection

(R.C. 5537.18)

The bill requires the Commission to adopt rules establishing the procedures and criteria under which the Commission may approve an application for infrastructure

project funding received from the Director of Transportation. The rules must require an infrastructure project to have an anticipated economic or transportation-related impact on the Ohio turnpike and infrastructure system.

When the Director submits an infrastructure project funding application to the Commission, the bill requires that the application be limited only to infrastructure projects that previously have been reviewed and recommended by the TRAC. The TRAC is an appointed council that is chaired by the Director and that assists in developing Department of Transportation (ODOT) project selection and approves funding for major new projects. The Commission then must evaluate each application for infrastructure project funding in accordance with the procedures and criteria established in its rules. A determination or approval by the Commission is conclusive and incontestable. The bill grants the Commission express authority to approve funding and authorize agreements with ODOT for the funding of infrastructure projects recommended by the Director.

Changes to laws governing turnpike projects

(R.C. 5537.28)

To enable the funding of infrastructure projects, the bill generally separates "turnpike projects" and "infrastructure projects." Additionally, the bill removes the following provisions of existing law that restrict the ability of the Commission to fund projects:

- A prohibition against expending toll revenues that are generated by an existing turnpike project to fund "another turnpike project." Under current law this prohibition generally allows only infrastructure improvements on the Ohio turnpike and connecting roadways within one mile away of an Ohio turnpike interchange.

- A prohibition against the Commission expending any toll revenues generated by the Ohio turnpike to pay for bonds or bond anticipation notes issued by the Commission for the cost of "another turnpike project" or a new turnpike project or the cost of the operation, repair, improvement, maintenance, or reconstruction of any turnpike project other than the project that generated those toll revenues.

- A requirement that Commission projects be constructed, operated, maintained, and repaired entirely with funds generated by that project or otherwise specifically acquired for that project.

In place of these prohibitions, the bill requires that a turnpike project be constructed, operated, maintained, and repaired with funds specifically acquired for that project or with excess funds available from any other turnpike project. Under the bill, "any turnpike project" excludes infrastructure projects. For turnpike projects, the bond proceeds of each issue must be used solely for the payment of the costs of the turnpike project or projects for which the bonds were issued.

Commission membership and other general provisions

(R.C. 5537.02 and 5537.04)

Under the bill, the renamed Ohio Turnpike and Infrastructure Commission consists of ten members, rather than nine as under current law. The Governor appoints six members under the bill, rather than four, and no more than three of the Governor's appointments may be of the same political party. The bill allows the Governor to appoint persons who reside in different geographic areas of the state, taking into consideration the various turnpike and infrastructure projects. Additionally, members appointed prior to July 1, 2013, serve eight year terms as in current law, while members appointed after that date serve three year terms.

The bill removes the Director of Development Services from the Commission. Accordingly, the remaining members not appointed by the Governor consist of (1) the Director of Transportation, who may vote as under current law, (2) the Director of Budget and Management, whose status as an ex officio, nonvoting member is not changed by the bill, and (3) a member of the Senate appointed by the President of the Senate and a member of the House of Representatives appointed by the Speaker of the House of Representatives, each of whom, as provided in existing law, are nonvoting members, must represent a district near the Ohio turnpike, and serve during the remainder of their legislative terms. The bill also increases the number of members needed for a quorum and a vote to take action from three to four.

The bill allows any voting member of the Commission to be elected as the chairperson or vice-chairperson of the Commission. Under current law, the voting members elect the chairperson and vice-chairperson from the appointed, voting members. As a result, the Director of Transportation is eligible under the bill to be elected as the chairperson or vice-chairperson of the Commission.

Generally, the Commission is established as a "body both corporate and politic." It is an instrumentality of the state and the exercise of its powers in regard to the turnpike system are held under current law to be "essential governmental functions of the state. Under the bill, the exercise of Commission powers in regard to entering into agreements with ODOT to pay the costs of infrastructure projects also are held to be

essential functions of the state. The bill specifies that the Commission is a political subdivision for purposes of Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.). Current law retained by the bill states generally that the Commission is not immune from liability because it exercises an essential governmental function of the state.

Under the bill, a legal action against the Commission with respect to infrastructure projects specifically must be brought in the Franklin County Court of Common Pleas. With respect to the turnpike system or turnpike projects, as under current law, a legal action against the Commission is brought in the court of common pleas of the county where "the principal office of the Commission is located" (presently in Cuyahoga County). For both types of projects, notice of a legal action must be served at the Commission's principal office (presently in Berea, Ohio).

Under existing law, the Commission makes an annual report with a complete operating and financial statement to the Governor and the General Assembly. The bill requires the annual report to include funding of any turnpike projects and infrastructure projects. Additionally, the bill requires the Commission, at least annually, to make a report to the Turnpike Legislative Review Committee of those infrastructure projects approved and paid for by the Commission.

Repeal of turnpike outsourcing laws

The bill repeals authority granted in 2011 that allowed the Director of Budget and Management and Director of Transportation to execute a contract with a private entity for the purpose of outsourcing turnpike-related highway services. The provisions being repealed also (1) granted the Director of Transportation the authority to exercise the powers of the Commission, (2) established a proposal process requiring General Assembly approval before the release of an invitation to bid, and (3) created the Highway Services Fund, which was to receive money from the contract outsourcing highway services.

Other turnpike provisions

Toll collection and evasion

(R.C. 5537.04 and 5537.16)

Under the bill, the Commission is authorized to charge and collect tolls by any method it approves, including manual methods or through electronic technology accepted within the tolling industry.

The bill also authorizes the Commission to adopt rules for the issuance of citations either by a policing authority or through administrative means to individuals or corporations that evade the payment of tolls established for the use of any turnpike project. Under current law, the Commission adopts bylaws and rules for the control and regulation of traffic on a turnpike project and also to establish liability for failure to comply with toll collection rules. Violation of these bylaws and regulations may be criminal or civil. Just as under current law for a civil violation of failure to comply with toll collection, the bill specifies that fees or charges assessed by the Commission against an owner or operator of a vehicle as a civil violation of the toll evasion rules are revenues of the Commission.

Business logo sign program

(R.C. 5537.30)

Current law requires the Commission to establish a business logo sign program for the placement of business logos for identification purposes on directional signs within the turnpike right-of-way. The bill eliminates the express rule-making authority for the Commission to contract with any private person to operate, maintain, or market the business logo sign program. Under the language being removed by the bill (1) a contract could allow for a reasonable profit to be earned by the successful applicant and (2) in awarding a contract, the Commission is required to consider the skill, expertise, prior experience, and other qualifications of each applicant.

Though the bill removes the language allowing the Commission to act by rule, it generally continues to require that money generated from participating businesses in excess of the direct and indirect costs and any reasonable profit earned by a person awarded a contract to operate, maintain, or market the business logo sign program be remitted to the Commission. The bill also retains a provision allowing the Commission to retain all money collected from participating businesses if the Commission operates the program.

General public contracting provisions

(R.C. 9.33 and 153.65)

The bill makes the Ohio Turnpike and Infrastructure Commission (as renamed by the bill) subject to certain general public contracting provisions by specifying that the Commission is a "public authority" for purposes of those laws. In particular, the Commission is a public authority for purposes of the public contracting provisions that establish standards for hiring a construction manager, including advertising for bids, selection, and contract standards. The Commission also is a public authority for

purposes of professional design services (an architect or registered landscape architect or a professional engineer or registered surveyor) or design-build services, including evaluating and selecting firms and any prequalification requirements of a design-build firm's proposed architect or engineer of record. A design-build firm contracted for design-build services by a public authority may perform design, construction, demolition, alteration, repair, or reconstruction work and also may perform professional design services for design-build services even if the design-build firm is not a professional design firm.

Under current law, the Commission is not a public authority for purposes of these contracting laws.

DEPARTMENT OF TRANSPORTATION

- In regard to the authority for the Department of Transportation (ODOT) to enter into public-private partnership agreements (known as P3s), allows the Director of Transportation to adopt rules for the control of traffic on public-private transportation facilities, particularly rules related to the avoidance of user fees.

- Establishes criminal penalties for violations of the rules, and establishes civil penalties for failure to comply with rules related to user fees.

- Allows the Director to include a binding dispute resolution provision in any P3 agreement.

- Establishes scope of work limits allowing ODOT to proceed by force account without competitive bidding for certain bridge, culvert, and paving projects based on the size of the project and not the cost of the project.

- Increases the ODOT force account limits for projects not covered by the scope of work limits: (1) from $25,000 per mile to $30,000 per centerline mile, (2) from $50,000 to $60,000 for any single traffic control signal, and (3) from $50,000 to $60,000 for other single projects.

- Requires the Director to adjust the force account limits in odd numbered years (beginning in 2015) by the lesser of 3% or the percentage amount of any increase in ODOT's construction cost index for the prior two calendar years.

- Requires ODOT force account project cost estimates to include costs for subcontracted work and any competitively bid project components.

- Clarifies that the operator of a motor vehicle, when facing a red traffic signal, whether a round signal or an arrow, may not turn left after stopping at the signal unless the turn is being made from a one-way street into a one-way street.

- Permits money in the existing Airport Assistance Fund to be used to pay operating costs associated with ODOT's Office of Aviation, as well as for maintenance and capital improvements to publicly owned airports as is authorized under current law.

- Terminates Ohio's participation in the Midwest Interstate Passenger Rail Compact.

- Permits the Director, when granting a permit to an individual, firm, or corporation to use or occupy a portion of a state road or highway, to charge a one-time access permit processing fee not exceeding $30, $70, or $300, depending on the type of access granted.

- Permits the Director to engage a construction manager during the design phase of a transportation facility project to provide constructability input and then utilize the same construction manager to construct the project, but limits this authority to one pilot project as determined by the Director.

- Specifies that certain general laws related to the bidding of contracts and public improvements do not apply to ODOT contracts for transportation facilities.

- Permits ODOT to advertise for bids for construction contracts by allowing ODOT to advertise under an existing optional provision of law that specifies that, after first advertising for bids by full publication, the second advertisement may be made in an abbreviated form.

- Requires the amount of an ODOT construction contract performance bond and payment bond to be equal to 100% of the contract amount rather than 100% of the estimated cost of the work as in existing law.

- Authorizes the Director to remove snow and ice and maintain, repair, improve, or provide lighting upon interstate highways that are located within the boundaries of a municipal corporation.

- Authorizes the Director, pursuant to an agreement with a municipal corporation, to reimburse the municipal corporation for costs incurred in removing snow and ice and maintaining and repairing lighting upon interstate highways located in the municipal corporation.

- Authorizes the Director to use revenues from the state motor vehicle fuel tax to match approved federal grants awarded to ODOT, regional transit authorities, or eligible public transportation systems for public transportation highway purposes.
- Requires the Auditor of State to conduct a performance audit of ODOT.
- Authorizes the Director to enter into agreements with specified federal agencies for the purpose of dedicating staff to the expeditious and timely review of environmentally related documents as necessary for the approval of federal permits.

ODOT public-private partnership agreements

Under current law, the Department of Transportation (ODOT) may enter into public-private partnership agreements (known as P3s) based on proposals from private entities relating to transportation facilities (generally, all publicly owned modes and means of transporting people or goods and related structures and properties). Funding for a transportation facility controlled by a P3 may include private contributions, any available public funds, user fees, and State Infrastructure Bank obligations. A user fee may be a rate, toll, fee, or other charge imposed by an operator for use of all or part of a transportation facility.

Rulemaking for traffic control and regulation on public-private transportation facilities

(R.C. 5501.77)

The bill allows the Director of Transportation to adopt rules for the control and regulation of traffic on any transportation facility subject to a P3. The rules may address (1) the protection and preservation of the transportation facility, (2) the maintenance and preservation of good order within the transportation facility, and (3) vehicle owner or operator liability for avoidance of user fees.

The bill prohibits any person from violating any ODOT rule described above and establishes criminal and civil penalties for violations of the rules. In general, whoever violates such a rule is guilty of a minor misdemeanor on a first offense; on each subsequent offense such person is guilty of a misdemeanor of the fourth degree. When the violation is a civil violation for failure to comply with toll collection rules, the person is subject to a fee or charge established by ODOT by rule.

All fines collected for the violation of applicable laws of the state and the rules of ODOT or money arising from bonds forfeited for a violation must be disposed of in

accordance with existing law governing the disposition of fines from persons apprehended or arrested by the State Highway Patrol. All fees or charges assessed by ODOT against an owner or operator of a vehicle as a civil violation for failure to comply with toll collection rules are declared to be revenues of ODOT or the public-private operator as set forth in the P3 agreement.

Additionally, the rules must provide that public police officers be afforded ready access, while in the performance of their official duties, to the transportation facility without the payment of user fees.

Binding dispute resolution in P3 contracts

(R.C. 5501.73)

The bill allows the Director of Transportation to include in any P3 agreement a provision authorizing binding dispute resolution for any contract controversy. Binding dispute resolution requires the agreement of all parties to the controversy and if all parties do not agree, a party having a claim against ODOT must exhaust its administrative remedies as specified in the P3 agreement before filing any action against ODOT in the Court of Claims. Under a binding dispute resolution, a technical expert makes a binding determination after review of all relevant items, which may include documents, interviewing appropriate personnel, and visiting the project site involved in the controversy.

The bill prohibits an appeal from the determination of a technical expert, but allows the Franklin County Court of Common Pleas to issue an order vacating such a determination if (1) the determination was procured by corruption, fraud, or undue means, (2) there was evidence of partiality or corruption on the part of the technical expert, or (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 prejudicial misbehavior.

ODOT force account limits

(R.C. 5517.02 and 5517.021)

Overview

In general, "force account" is a term used to refer to circumstances under which ODOT is not required to competitively bid a construction project. Instead, ODOT may use its own labor force and equipment for the project. ODOT may perform a force account project if the estimated cost of the project is below specified force account limits established under the law. In order to determine the estimated cost of a project, ODOT

must first complete the force account project assessment form developed by the Auditor of State. When the total estimated cost exceeds the force account amounts, the Director of Transportation must competitively bid the project and let the work to the lowest competent and responsible bidder.

As explained below, the bill establishes scope of work limits that are not subject to (1) the force account limits, (2) the requirement to estimate the cost of the project, or (3) the competitive bidding requirements. The bill also increases the force account limits, requires the Director of Transportation to adjust the amounts in odd-numbered years, and requires the costs for subcontracted work and competitively bid project components to be included in project estimates.

Scope of work limits

Under the bill, the Director of Transportation may proceed by force account without completing the Auditor's project assessment form and without competitive bidding to do any of the following work:

(1) Replace or widen any single span bridge if the deck area of the new or widened bridge does not exceed 700 square feet as measured around the outside perimeter of the deck;

(2) Replace the bearings, beams, and deck of any bridge on that bridge's existing foundation if the deck area of the rehabilitated structure does not exceed 800 square feet;

(3) Construct or replace any single cell or multi-cell culvert whose total waterway opening does not exceed 52 square feet; and

(4) Pave or patch an asphalt surface if the operation does not exceed 120 tons of asphalt per lane-mile of roadway length, except that ODOT cannot perform a continuous resurfacing operation under this scope of work authority if the cost of the work exceeds the force account amount of $30,000 per centerline mile of highway, as adjusted.

In addition to being exempt from completing the Auditor's project assessment form, these types of work projects are exempt from audit for force account purposes, except to determine compliance with the applicable size or tonnage limitations.

Force account estimates, increases, and adjustments

Generally, before undertaking the construction, reconstruction by widening or resurfacing, or improvement of a state highway, or a bridge or culvert, or the

installation of a traffic control signal, the Director is required to make an estimate of the cost of the work using the Auditor's force account project assessment form. The bill specifies that when a force account project assessment form is required, the estimate must include costs for subcontracted work and any competitively bid component costs.

Under the bill, the force account limits, subject to adjustment, are increased as follows:

- To $30,000 per centerline mile of highway for highway construction and reconstruction projects, exclusive of structures and traffic control signals, from $25,000 per mile of highway under current law;

- To $60,000 for any single traffic control signal or any other single project, from $50,000 for such projects under current law.

Beginning on July 1, 2015, and every odd-numbered year thereafter, the bill requires the Director to increase the force account amounts by an amount not to exceed the lesser of 3%, or the percentage amount of any increase in ODOT's construction cost index as annualized and totaled for the prior two calendar years. The Director must publish the applicable amounts on ODOT's internet web site.

The bill specifies that when a project proceeds by force account as a result of the project estimated cost being within the force account limits or within the scope of work limits, ODOT must perform the work in compliance with any project requirements and specifications that would have applied if a contract for the work had been let by competitive bidding. Also, ODOT must retain in the project record all records documenting materials testing compliance, materials placement compliance, actual personnel and equipment hours usage, and all other documentation that would have been required if a contract for the work had been let by competitive bidding.

Lastly, the bill requires the Director to proceed by competitive bidding to let work to the lowest competent and responsible bidder after advertisement in both of the following situations:

(1) When the scope of work exceeds the prescribed limits established by the bill; and

(2) When the estimated cost of a project, other than a scope-of-work project, exceeds the force account amounts, as adjusted.

Programs to expedite the sale and construction of special projects

(R.C. 9.33, 153.01, 153.65, and 5517.011)

The bill permits the Director of Transportation to establish a new program to expedite the sale and construction of special projects, in addition to one such program authorized under current law. Under the new program, the Director may engage a construction manager during the design phase of a transportation facility project to provide constructability input including scheduling, pricing, and phasing, and then utilize the same construction manager to construct the project. The Director may execute separate contracts with the construction manager for constructability input and construction, and may include a guaranteed maximum price in the construction contract. The Director also may develop and use a value-based selection process that combines technical qualifications and competitive bidding elements when letting special projects that utilize a construction manager for both constructability input and construction, including consideration for minority or disadvantaged businesses that may include joint ventures. The new program is limited, however, to one pilot project as determined by the Director unless otherwise specified by law.

The Director may establish the new program notwithstanding general laws relating to the bidding of public improvement contracts (added by the bill) and notwithstanding existing law that requires the Director to produce maps, profiles, plans, specifications, and quantity estimates for a proposed ODOT construction project (current law).

The current program that permits the Director to expedite the sale and construction of special projects authorizes the Director to combine the design and construction elements of a highway or bridge project into a single contract. The bill eliminates the terms "highway" and "bridge" and substitutes the general term "transportation facility."[1] Thus, the bill allows the Director, under the program, to combine design and construction elements for any transportation facility. The bill also eliminates the requirement that such a contract be awarded under ODOT's existing construction contract requirements. The bill then provides that the Director may not only use a value-based selection process that combines technical qualifications and competitive bidding elements, but that the Director also may develop such a selection process.

The bill addresses several other aspects of ODOT construction contracts. First, it specifies that the Director must award all other contracts in accordance with ODOT's

[1] "Transportation facilities" are defined in Revised Code section 5501.01, which is not present in the bill.

existing construction contract requirements. Next, the bill provides that ODOT is not a "public authority" for purposes of the state construction manager law and professional design services law, and therefore is not subject to those laws. Finally, the bill provides that nothing in the general laws that govern bids for public improvements may interfere with the power of the Director to prepare plans for, acquire rights-of-way for, construct, or maintain transportation facilities, or to let contracts for those purposes.

Advertising by ODOT for bids for construction contracts

(R.C. 5525.01)

The bill permits the Director of Transportation to advertise for bids for construction contracts under an existing optional provision of law. This provision provides that, after first advertising for bids by full publication, the second advertisement may be made in abbreviated form in a newspaper of general circulation and if the newspaper has an Internet web site, on that web site. Current law requires the Director to arrange for the full publication of an advertisement for bids for a construction contract for two consecutive weeks in one newspaper of general circulation published in the county in which the project or any part of the project is located.

ODOT construction contract bonds

(R.C. 5525.16)

Before entering into a construction contract, the Director of Transportation must have a contract performance bond and a payment bond with sufficient sureties from the contractor. The bill requires the amount of the contract performance bond and payment bond to be equal to 100% of the contract amount rather than 100% of the estimated cost of the work as required in existing law.

Under existing law, a contract performance bond is conditioned upon the contractor's performing the work upon the terms proposed, within the time prescribed, and in accordance with applicable plans and specifications. It is also conditioned upon the contractor indemnifying the state against any damage that may result from the contractor's failure to perform under the contract. The payment bond is issued to ensure that all laborers, suppliers, and subcontractors are paid in full.

Left turn on red traffic signal clarification

(R.C. 4511.13)

The bill clarifies that the operator of a motor vehicle, when facing a red traffic signal at an intersection, whether a round signal or an arrow, may not turn left unless the turn is being made from a one-way street into a one-way street. This restriction prevents a vehicle, when making a left turn on a red signal at an intersection, from proceeding through a lane carrying oncoming traffic, approaching either from the left or from ahead. Current law does not contain the "into a one-way street" restriction.

Airport Assistance Fund

(R.C. 4561.21)

The bill permits money in the existing Airport Assistance Fund to be used to pay operating costs associated with ODOT's Office of Aviation, as well as for maintenance and capital improvements to publicly owned airports as provided in current law.

Midwest Interstate Passenger Rail Compact

(R.C. 4981.36 (repealed) and 4981.361 (repealed))

The bill terminates Ohio's participation in the Midwest Interstate Passenger Rail Compact. The Compact and the Midwest Interstate Passenger Rail Commission formed under the Compact was established for the purpose of advancing passenger rail service within the Compact's member states. The ten states that enacted legislation joining the Compact are Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, and Wisconsin.

ODOT access permit processing fee

(R.C. 5515.01)

The bill permits the Director of Transportation, when granting a permit to an individual, firm, or corporation to use or occupy a portion of a state road or highway, to charge a reasonable one-time access permit processing fee. The fee must not exceed $30 for agricultural access, $70 for residential access, and $300 for commercial or industrial access. The installation of a driveway that enters onto a road or highway is an example of when such a permit is required.

Maintenance of interstate highways

(Section 203.70)

Under the bill, the Director of Transportation may remove snow and ice and maintain, repair, improve, or provide lighting upon interstate highways that are located within the boundaries of a municipal corporation. The actions taken by the Director must be adequate to meet the requirements of federal law. When agreed to in writing by the Director and the legislative authority of a municipal corporation and notwithstanding general laws related to competitive bidding, ODOT, as provided by the agreement, may reimburse a municipal corporation for all or any part of the costs incurred by the municipal corporation in maintaining and repairing lighting upon the interstate system, and removing snow and ice from the interstate system.

Public transportation highway purpose grants

(Section 203.80)

The bill authorizes the Director of Transportation to use revenues from the state motor vehicle fuel tax to match approved federal grants awarded to ODOT, regional transit authorities, or eligible public transportation systems, for public transportation highway purposes, or to support local or state funded projects for public transportation highway purposes. Under the bill, "public transportation highway purposes" include: the construction or repair of high-occupancy vehicle traffic lanes, the acquisition or construction of park-and-ride facilities, the acquisition or construction of public transportation vehicle loops, the construction or repair of bridges used by public transportation vehicles or that are the responsibility of a regional transit authority or other public transportation system, or other similar construction that is designated as an eligible public transportation highway purpose. Motor vehicle fuel tax revenues may not be used for operating assistance or for the purchase of vehicles, equipment, or maintenance facilities.

Performance audit required of ODOT

(Section 701.10)

The bill requires the Auditor of State to conduct a performance audit of ODOT and requires ODOT to cooperate fully with the Auditor of State in conducting the audit.

Review agreements for federal environmental permits

(Section 755.10)

Under the bill, the Director of Transportation may enter into agreements with the United States or any department or agency of the United States, including, but not limited to, the United States Army Corps of Engineers, the United States Forest Service, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service. An agreement must be solely for the purpose of dedicating staff to the expeditious and timely review of environmentally related documents submitted by the Director, as necessary for the approval of federal permits. The agreements may include provisions for advance payment by the Director for labor and all other identifiable costs of the United States or any department or agency of the United States providing the services. The Director must submit a request to the Controlling Board indicating the amount of the agreement, the services to be performed by the United States or the department or agency of the United States, and the circumstances giving rise to the agreement.

DEPARTMENT OF PUBLIC SAFETY

- Changes the name of the State Board of Emergency Medical Services to the "State Board of Emergency Medical, Fire, and Transportation Services," eliminates the Ohio Medical Transportation Board, and assigns the duties of that Board to the renamed State Board of Emergency Medical, Fire, and Transportation Services.

- Provides that the renamed State Board of Emergency Medical, Fire, and Transportation Services be composed of 16 members of the former State Board of Emergency Medical Services and 4 former members of the Ohio Medical Transportation Board.

- Requires certain fees and money collected by the renamed State Board of Emergency Medical, Fire, and Transportation Services that the Ohio Medical Transportation Board currently collects to be deposited into the existing Trauma and Emergency Medical Services Fund instead of the existing Occupational Licensing and Regulatory Fund.

- Requires that penalties imposed for failure to pay or forward fees charged for copies of birth records, certifications of birth, and death records, and for the filing of

divorce and dissolution decrees, be paid to the Department of Public Safety rather than the Treasurer of State as in current law.

- Requires the Department of Public Safety to forward the penalties to the Treasurer of State for deposit in the Family Violence Prevention Fund.

- Eliminates the Motorcycle Safety and Education Fund and requires those portions of motorcycle registration fees that are deposited into that Fund and are used for conducting motorcycle safety and education instruction be deposited instead into the existing State Highway Safety Fund (primarily funds the State Highway Patrol) to be used for that same purpose.

- Creates the Local Motor Vehicle License Tax Fund and requires all revenue received from local permissive motor vehicle registration taxes to be deposited into the Fund for subsequent distribution to local authorities.

- Redirects certain driver's license revenue from the State Highway Safety Fund (primarily funds the State Highway Patrol) to the existing State Bureau of Motor Vehicles Fund (funds the expenses of the Bureau).

- Requires that the fee charged by the State Highway Patrol for the annual inspection of certain commercial buses be paid directly into the State Highway Safety Fund, rather than being paid into the GRF and transferred into the State Highway Safety Fund.

- Requires that rental fees paid by a deputy registrar for the use of space in a driver's license examining station be paid into the State Bureau of Motor Vehicles Fund rather than the Registrar Rental Fund as in current law.

- Eliminates the Registrar Rental Fund, which is currently used by the Department of Public Safety to pay the rent and expenses of driver's license examining stations.

- Permits a duly authorized designee of a county sheriff, chief of police, State Highway Patrol trooper, or chief of a fire department to remove an unoccupied motor vehicle, its cargo, or personal property from a motor vehicle accident scene.

State Board of Emergency Medical Services and the Ohio Medical Transportation Board

(R.C. 307.05, 307.051, 307.055, 505.37, 505.375, 505.44, 505.72, 4503.49, 4513.263, 4743.05, 4765.02, 4765.03, 4765.04, 4765.05, 4765.06, 4765.07, 4765.08, 4765.09, 4765.10, 4765.101, 4765.102, 4765.11, 4765.111, 4765.112, 4765.113, 4765.114, 4765.115, 4765.116, 4765.12, 4765.15, 4765.16, 4765.17, 4765.18, 4765.22, 4765.23, 4765.28, 4765.29, 4765.30, 4765.31, 4765.32, 4765.33, 4765.37, 4765.38, 4765.39, 4765.40, 4765.42, 4765.48, 4765.49, 4765.55, 4765.56, 4766.01, 4766.02 (repealed), 4766.03, 4766.04, 4766.05, 4766.07, 4766.08, 4766.09, 4766.10, 4766.11, 4766.12, 4766.13, 4766.15, 4766.20 (repealed), 4766.22, and 5502.01; Section 747.10)

The bill changes the name of the State Board of Emergency Medical Services to the "State Board of Emergency Medical, Fire, and Transportation Services." It eliminates the Ohio Medical Transportation Board and assigns the duties of that board to the renamed State Board of Emergency Medical, Fire, and Transportation Services. The bill provides that the renamed State Board of Emergency Medical, Fire, and Transportation Services be composed of 16 members of the former State Board of Emergency Medical Services and four former members of the Ohio Medical Transportation Board, although the bill contains changes in the qualifications or nominating entities for some of the members.

Modification to the Board

Several of the positions on the former State Board of Emergency Medical Services continue unchanged on the renamed State Board of Emergency Medical, Fire, and Transportation Services. The bill makes the following modifications to positions on the former State Board of Emergency Medical Services that continue on the renamed State Board of Emergency Medical, Fire, and Transportation Services:

(1) One member is a physician certified by the American Academy of Pediatrics or American Osteopathic Board of Pediatrics who is active in the practice of pediatric emergency medicine and actively involved with an emergency medical service organization. The bill requires the Governor to appoint this member from among not only three persons nominated by the Ohio Chapter of the American Academy of Pediatrics, as specified in current law, but also from among three persons nominated by the Ohio Osteopathic Association.

(2) Under the bill, one member is the administrator of a hospital located in Ohio; current law specifies that this member must be the administrator of a hospital that is not a trauma center. Under the bill, the Governor must appoint this member from among three persons nominated by OHA: the Association for Hospitals and Health Systems,

three persons nominated by the Ohio Osteopathic Association, and three persons nominated by the Association of Ohio Children's Hospitals; these nominating entities are three of the four specified in current law. The bill provides that the Health Forum of Ohio no longer is to nominate three persons for this position, the fourth entity specified in current law.

(3) Under the bill, one member is a registered nurse with EMS certification who performs mobile intensive care or air medical transport; current law specifies that this member must be a registered nurse who is in the active practice of emergency nursing. The bill requires the Governor to appoint this member from among three persons nominated by the Ohio Nurses Association, three persons nominated by the Ohio State Council of the Emergency Nurses Association, and three persons nominated by the Ohio Association of Critical Care Transport. Of these three nominating entities, the first two are specified in current law for this member while the third entity is a new nominating entity specified in the bill.

(4) Under the bill, one member must be a person who is certified to teach in this state in an emergency medical services training program or an emergency medical services continuing education program and holds a valid certificate to practice as an EMT, advanced EMT, or paramedic. The bill eliminates current language that provides that if the State Board has not yet certified persons to so teach in this state, the person must be qualified to be certified to so teach.

(5) Under the bill, one member must be an EMT, advanced EMT, or paramedic, and one member must be a paramedic. ("EMT" is the new term for "EMT-basic" and "advanced EMT" or "AEMT" are the new terms for "EMT-I.") The Governor must appoint these members from among three EMTs or AEMTs and three paramedics nominated by the Ohio Association of Professional Fire Fighters.

Current law specifies that one member must be an EMT-basic, one must be an EMT-I, and one must be a paramedic, and that the Governor must appoint these members from among three EMTs-basic, three EMTs-I, and three paramedics nominated by the Ohio Association of Professional Fire Fighters and three EMTs-basic, three EMTs-I, and three paramedics nominated by the Northern Ohio Fire Fighters.

(6) Under the bill, one member must be an EMT, AEMT, or paramedic, and one member must be a paramedic, and the Governor must appoint these members from among three EMTs or AEMTs and three paramedics nominated by the Ohio State Firefighter's Association.

Current law specifies that one member must be an EMT-basic, one member must be an EMT-I, and one must be a paramedic, and that the Governor must appoint these

members from among three EMTs-basic, three EMTs-I, and three paramedics nominated by the Ohio State Firefighter's Association.

(7) Under the bill, one member must be a person whom the Governor must appoint from among an EMT, an AEMT, or a paramedic nominated by the Ohio Association of Emergency Medical Services or the Ohio Ambulance and Medical Transportation Association. Current law specifies that one member must be a person whom the Governor must appoint from among an EMT-basic, an EMT-I, and a paramedic nominated by the Ohio Association of Emergency Medical Services.

New positions on the Board

The bill also creates the following new positions on the renamed Board:

(1) One member must be an EMT, an AEMT, or a paramedic, whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(2) One member must be a paramedic, whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(3) One member must be the owner or operator of a private emergency medical service organization whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

(4) One member must be a provider of mobile intensive care unit transportation in this state whom the Governor must appoint from among three persons nominated by the Ohio Association of Critical Care Transport.

(5) One member must be a provider of air-medical transportation in this state whom the Governor must appoint from among three persons nominated by the Ohio Association of Critical Care Transport.

(6) One member must be the owner or operator of a nonemergency medical service organization in this state that provides ambulette services whom the Governor must appoint from among three persons nominated by the Ohio Ambulance and Medical Transportation Association.

Elimination of members and terms of office

In a section of uncodified law, the bill provides that on the effective date of the amendments the bill makes to the Revised Code section that establishes the renamed

State Board of Emergency Medical, Fire, and Transportation Services, the following members of the current State Board of Emergency Medical Services will cease to be members of the renamed Board:

(1) The member who is an administrator of an adult or pediatric trauma center;

(2) The member who is a member of the Ohio Ambulance Association;

(3) The member who is a physician certified by the American Board of Surgery, American Board of Osteopathic Surgery, American Osteopathic Board of Emergency Medicine, or American Board of Emergency Medicine, is chief medical officer of an air medical agency, and is currently active in providing emergency medical services;

(4) Of the members of the renamed State Board of Emergency Medical, Fire, and Transportation Services who were EMTs, advanced EMTs, or paramedics and were appointed to the previous Board in those capacities, only the members who are designated by the Governor to continue to be members of the renamed Board will continue to be so; the other persons will cease to be members of the renamed Board.

In addition, on the effective date of the amendments the bill makes to the Revised Code section that establishes the renamed State Board of Emergency Medical and Transportation Services, the member who is a registered nurse and is in the active practice of emergency nursing will cease to be a member of the renamed Board. Not later than 60 days after the effective date of those amendments, the Governor must appoint to the renamed State Board of Emergency Medical and Transportation Services a registered nurse with EMS certification who performs mobile intensive care or air medical transport. The Governor must appoint this member from among three persons nominated by the Ohio Nurses Association, three persons nominated by the Ohio Association of Critical Care Transport, and three persons nominated by the Ohio State Council of the Emergency Nurses Association.

In addition, on that same effective date, all members of the former State Board of Emergency Medical Services who do not cease to be members of the renamed State Board of Emergency Medical, Fire, and Transportation Services as specified in the bill will continue to be members of the renamed State Board of Emergency Medical, Fire, and Transportation Services, and the dates on which the terms of those continuing members expire remain unchanged.

On that same effective date, the bill provides that the following members of the former Ohio Medical Transportation Board become members of the State Board of Emergency Medical, Fire, and Transportation Services for the terms specified:

(1) The person who owns or operates a private emergency medical service organization operating in this state, as designated by the Governor, for a term that ends November 12, 2014;

(2) The person who owns or operates a nonemergency medical service organization in this state that provides only ambulette services, for a term that ends November 12, 2014;

(3) The person who is a member of the Ohio Association of Critical Care Transport and represents air-based services, for a term that ends November 12, 2015;

(4) The person who is a member of the Ohio Association of Critical Care Transport and represents a ground-based mobile intensive care unit organization, for a term that ends November 12, 2015.

All subsequent terms of office for these four positions on the State Board of Emergency Medical, Fire, and Transportation Services will be for three years as provided in current law governing the State Board.

Transfer procedures

The bill provides that on July 1, 2013, the Medical Transportation Board and all of its functions are transferred to the Department of Public Safety. On that date, the Medical Transportation Board will operate under the Department, which will assume all of the Board's functions. All assets, liabilities, related capital spending authority, and equipment and records related to the Medical Transportation Board's functions are transferred to the Department on that date.

No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer, and all of the Medical Transportation Board's rules, orders, and determinations continue in effect until modified or rescinded by the Department. No action or proceeding pending on July 1, 2013, is affected by the transfer, and any action or proceeding pending on that date will be prosecuted or defended in the name of the Department or the Director of Public Safety.

On or after July 1, 2013, the Director of Budget and Management is required to take any action with respect to budget changes made necessary by the transfer, including the transfer of cash balances between funds. The Director also may cancel encumbrances and reestablish encumbrances or parts of encumbrances as needed in the fiscal year in the appropriate fund and appropriation item for the same purpose and to the same vendor.

The bill provides that these uncodified provisions are exempt from the referendum and therefore take effect immediately when the bill becomes law.

Disposition of certain fees and money

The bill requires certain fees and money collected by the renamed State Board of Emergency Medical, Fire, and Transportation Services to be deposited in the state treasury to the credit of the existing Trauma and Emergency Medical Services Fund. Under current law, these fees and money are collected by the Ohio Medical Transportation Board, are credited to the existing Occupational Licensing and Regulatory Fund, and must be used solely to pay the salaries and expenses that the Board incurs in implementing and enforcing the laws governing the Board.

Under current law, all money in the Trauma and Emergency Medical Services Fund is used by the Department of Public Safety for the administration and operation of the Division of Emergency Medical Services and the State Board of Emergency Medical Services, and by the State Board of Emergency Medical Services to make grants. The bill does not alter these uses.

Other changes

In conducting investigations of alleged violations of laws and rules governing emergency medical service transportation entities and personnel and complaints alleging such violations, the bill eliminates an existing provision that permits the Ohio Medical Transportation Board to use any method of communication, including a telephone conference call, to receive descriptions of evidence for reviewing allegations and for voting on a suspension. The bill also requires the affirmative vote of a majority of the members of the State Board of Emergency Medical, Fire, and Transportation Services to suspend without a hearing a medical transportation-related license the State Board issues. Current law requires the affirmative vote of at least four members of the Ohio Medical Transportation Board to suspend such a license.

The bill requires the Department of Public Safety to administer the laws and rules relative to not only trauma and emergency medical services as in current law, but also any laws and rules relative to commercial medical transportation services.

Late payment penalty for copies of public documents

(R.C. 3705.242)

The bill requires that a 10% penalty for failure to pay or forward fees charged for any of the following must be paid to the Department of Public Safety and forwarded to the Treasurer of State for deposit in the Family Violence Prevention Fund: (1) copies of

birth records, (2) copies of certifications of birth, (3) copies of death records, (4) filings of divorce decrees, and (5) filings of dissolution decrees. Current law provides that the penalty must be paid directly to the Treasurer for deposit in the Family Violence Prevention Fund.

In order to obtain any of the above documents or submit any of the above filings, current law requires a person to pay a fee to the Director of Health, a person authorized by the Director, a local commission of health, or a local registrar of vital statistics. As specified above, a penalty equal to 10% of the fees due is assessed if the underlying fees are not paid.

Elimination of the Motorcycle Safety and Education Fund

(R.C. 4501.04, 4501.06, 4501.13 (repealed), and 4508.08)

The bill eliminates the Motorcycle Safety and Education Fund and requires those portions of motorcycle registration fees that currently are deposited into that Fund ($6 of each $14 motorcycle registration fee) and are used to pay the costs of conducting motorcycle safety and education instruction to be deposited instead into the existing State Highway Safety Fund to be used for that same purpose.

Local Motor Vehicle License Tax Fund

(R.C. 126.06, 127.14, 4501.03, 4501.031, 4501.04, 4501.041, 4501.042, 4501.043, 4503.42, 4503.45, 4504.19, and 4504.21)

The bill creates the Local Motor Vehicle License Tax Fund and requires all revenue received from local permissive motor vehicle registration taxes to be deposited into the Fund for subsequent distribution to local authorities. Current law requires this revenue to be deposited into the Auto Registration Distribution Fund. These local permissive taxes are levied by municipal corporations, counties, townships, and transportation improvement districts in increments of $5.

The bill also clarifies that when special reserved and collector's vehicle license plates are issued, all applicable local permissive motor vehicle registration taxes are to be collected, not just two specific such taxes.

Redirection of certain driver's license revenue

(R.C. 4501.06, 4506.08, 4506.09, and 4507.23)

The bill redirects certain driver's license revenue from the State Highway Safety Fund to the existing State Bureau of Motor Vehicles Fund. The revenue that is

redirected is some or all of the revenue that is collected when the following are issued or given: a commercial driver's license (CDL) temporary instruction permit, a CDL, a restricted CDL, a renewal of a CDL, a CDL waiver for farm-related service industries, CDL skills tests, a driver's license temporary instruction permit, a driver's license, a duplicate or renewal of a driver's license, a motorcycle operator's endorsement, and a motorized bicycle license or duplicate of such a license.

All of the money in the State Bureau of Motor Vehicles Fund is used to pay the expenses of the Bureau of Motor Vehicles, while the vast majority (over 90%) of the money in the State Highway Safety Fund is used to pay the expenses of the State Highway Patrol.

Commercial bus safety inspection fee

(R.C. 4501.06 and 4513.53)

The State Highway Patrol conducts annual safety inspections of certain commercial buses (school and church buses generally are not inspected under this program) and is authorized to charge a fee of up to $200 for each bus inspected. By rule of the Department of Public Safety, the fee currently is set at $100 for each bus inspected. The bill requires that these fees be paid directly into the State Highway Safety Fund.

Under current law, the fees first are paid into the state treasury to the credit of the General Revenue Fund. Following an annual determination and certification by the Director of Public Safety of the amount of fees collected, the Director of Budget and Management then is authorized to transfer cash up to the amount certified from the GRF to the State Highway Safety Fund.

Deputy registrar rental fees

(R.C. 4507.011)

The bill requires that rental fees paid by deputy registrars who are assigned to driver's license examining stations be deposited by the Director of Public Safety into the State Bureau of Motor Vehicles Fund rather than the Registrar Rental Fund as in current law. The bill then eliminates the Registrar Rental Fund.

Under current law, rental fees deposited into the Registrar Rental Fund may only be used by the Department of Public Safety to pay the rent and expenses of the deputy registrars' driver's license examining stations. Rental fees from deputy registrars who are assigned to Bureau of Motor Vehicles locations are currently paid to the Registrar and deposited into the State Bureau of Motor Vehicles Fund.

Thus, under the bill, all rental fees paid by deputy registrars are required to be deposited into the State Bureau of Motor Vehicles Fund, rather than split amongst two separate funds.

Clearing of motor vehicle accident scenes

(R.C. 4513.66)

The bill permits a duly authorized designee of certain public officials to remove an unoccupied motor vehicle, its cargo, or any personal property from an accident scene located on a highway, street, or property ordinarily used for vehicular travel. The officials that may designate a person under the bill include a county sheriff; chief of police of a municipal corporation, township, or township or joint police district in which the accident occurred; a State Highway Patrol trooper; or the chief of the fire department having jurisdiction where the accident occurred.

The bill also extends the existing immunity from liability that applies to public officials to designees of those officials. That immunity from liability applies to any injury, death, or loss to person or property that results from the removal, including any loss involving a private tow truck or towing company authorized to perform the removal. Current law, which the bill does not change, provides that the immunity does not apply if a removal causes or contributes to the release of a hazardous material or to structural damage to the roadway. Current law also specifies that a private tow truck operator or towing company is not immune if the operator or company performs the removal in a reckless or willful manner.

DEPARTMENT OF TAXATION

- Segregates commercial activity tax revenue attributable to selling motor vehicle fuel used on public highways from other commercial activity tax revenue based on taxpayers' reports, and credits such motor fuel-related revenue to a separate fund.
- Extends through the FY 2014-FY 2015 biennium the existing reductions in the motor fuel dealers' prompt payment and shrinkage allowances that applied during FY 2008-FY 2013 (1% and 0.5%, respectively).

Commercial activity tax revenue from motor fuel

(R.C. 5751.02, 5751.051, and 5751.20; Section 757.20)

The bill segregates commercial activity tax (CAT) revenue attributable to sales of motor fuel used for propelling vehicles on public highways from other taxable gross receipts and requires the Tax Commissioner and Director of Budget and Management to credit the tax attributable to those receipts, minus administrative costs, to a separate fund. Accordingly, CAT revenue arising from such fuel sales will no longer be distributed to the General Revenue Fund (GRF) and to some local governments and school districts to partially reimburse them for the earlier legislated repeal of local tangible personal property taxes.

Under continuing law, the CAT is levied on the basis of each taxpayer's taxable gross receipts. On December 7, 2012, the Ohio Supreme Court held that spending motor fuel–related CAT revenue on nonhighway purposes violates the constitutional provision prohibiting money derived from excises relating to motor vehicle fuel from being spent on nonhighway purposes (Ohio Constitution, Article XII, Section 5a).[2] Under current law, all revenue from the CAT was credited to the GRF and to two other funds to provide tangible personal property tax replacement payments to some local governments and school districts. The Court enjoined CAT motor fuel revenue from being spent for those purposes after December 7, 2012.

The bill requires every CAT taxpayer to indicate on the taxpayer's return the portion of the taxpayer's receipts, if any, that are attributable to motor fuel used to propel vehicles on public highways. The Department of Taxation must publicize this requirement to taxpayers. If a taxpayer reports the CAT on a quarterly basis, the taxpayer must report the actual amount of such receipts and pay the full amount of tax due on those receipts. A quarterly taxpayer is not permitted to pay the tax based on estimates of such receipts, as is permissible for other receipts.

Under continuing law, CAT revenue is initially deposited in the Commercial Activities Tax Receipts Fund. The bill creates the Commercial Activity Tax Motor Fuel Receipts Fund to receive motor fuel–related CAT revenue. On or before February 20, May 20, August 20, and November 20 of each year, the Tax Commissioner, after deducting an amount from revenue in the Commercial Activities Tax Receipts Fund to cover the Department of Taxation's administrative costs, is required to transfer from the amount remaining in the Commercial Activities Tax Receipts Fund a proportionate amount of the remainder of the collected revenue attributable to CAT motor fuel

[2] *Beaver Excavating Co. v. Testa*, Slip Opinion No. 2012-Ohio-5776.

revenue to the Commercial Activity Tax Motor Fuel Receipts Fund. The bill does not specify how money in that fund is to be spent.

To address the disposition of motor fuel–related CAT taxes imposed since the Supreme Court's decision, the bill requires the Department of Taxation to determine the amount of such taxes that are remitted between December 7, 2012, the date of the Court's decision, and June 30, 2013. The Tax Commissioner must estimate and certify this amount to the Director of Budget and Management on or before June 30, 2013. The Director must transfer that amount from the GRF to the Commercial Activity Tax Motor Fuel Receipts Fund. Before November 20, 2013, the Commissioner must calculate a reconciled amount and certify the difference to the Director, who must transfer the reconciled amount from the GRF to the Commercial Activity Tax Motor Fuel Receipts Fund, or vice versa if the reconciled amount is less than the amount previously estimated.

Continuation of the motor fuel evaporation and shrinkage allowance

(Section 757.10)

Ohio law imposes a motor fuel excise tax of 28¢ per gallon on motor fuel dealers. The codified law governing the motor fuel excise tax provides that a motor fuel dealer filing a complete and timely monthly tax report with payment is entitled to deduct the tax due on 3% of the fuel gallonage the dealer received, minus 1% of the fuel gallonage sold to retail dealers.[3] This deduction is to cover the costs of filing the report and to account for evaporation, shrinkage, and other losses. The last three transportation appropriations acts reduced the 3.0% deduction for fiscal years 2008 through 2013 to 1.0% (minus 0.50% of gallonage sold to retail dealers). The act extends through the FY 2014-FY 2015 biennium the uncodified 1.0% motor fuel shrinkage allowance for motor fuel dealers (minus 0.5% of gallonage sold to retail dealers).

Under the ongoing codified motor fuel excise tax law, retail dealers of motor fuel who have purchased fuel on which the motor fuel excise tax has been paid are granted a refund for evaporation and shrinkage equal to 1.0% of the taxes paid on the fuel each semiannual period.[4] The last three transportation appropriations acts reduced the refund percentage to 0.5% for fiscal years 2008 through 2013. The act extends through the FY 2014-FY 2015 biennium the uncodified 0.5% retail dealer shrinkage refund of the taxes paid on the fuel received by a retail dealer.

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[3] R.C. 5735.06 (not in the bill).

[4] R.C. 5735.141 (not in the bill).

- Adjusts the payment schedule related to payments from the Casino Operator Settlement Fund to the municipality or township in which a horseracing track is located or will be located.

- Specifies that federal money received by the state for fiscal stabilization and recovery purposes is to be used in accordance with the Buy-U.S. and Buy-Ohio preferences established in state law, but only to the extent permitted by federal law.

Payments related to racetracks

(Sections 601.10, 601.11, and 812.30)

The bill adjusts the payment schedule related to location of a racetrack. To the extent that sufficient cash is available, within three months after the receipt of moneys into the Casino Operator Settlement Fund, the Director of Budget and Management must pay $1 million to the municipality or township in which each commercial racetrack is located, including a municipality or township to which a racetrack is to relocate as specified in the memorandum of understanding of February 17, 2012, between the Office of the Governor, State of Ohio, and Penn National Gaming, Inc., pertaining to racing permit transfers, but excluding the previous municipality or township of each moved track and excluding a municipality or township in a county with a population between 1,100,000 and 1,200,000 in the most recent federal decennial census (Franklin County). Additionally, within six months after these first payments are made, the Director of Budget and Management must pay an additional $1 million to each of these municipalities and townships.

If, after either of the payments referenced above, a municipality or township loses a racetrack as a result of the racetrack permit holder's decision to relocate to another municipality or township, the municipality or township losing the racetrack becomes eligible for a payment from the Racetrack Facility Community Economic Redevelopment Fund. Such a municipality or township is not entitled to more than the sum of $3 million minus any payments made by the Director of Budget and Management under these provisions. The Director of Budget and Management may establish any necessary appropriation items in the appropriate funds and agencies in order to make any required payments.

The bill specifies that these provisions are effective immediately.

Under current law, the Director of Budget and Management must make the first payment described above, totaling $6 million, by December 31, 2012, and the second payment, totaling $6 million, by June 30, 2013.

Federal stabilization and recovery money subject to Buy-US and Buy-Ohio preferences

(Section 701.20)

The bill specifies that federal money received by the state for fiscal stabilization and recovery purposes is to be used in accordance with the preferences established in Ohio law for products and services made or performed in the U.S. and Ohio, but only to the extent complying with the preferences is permitted by federal law.[5] The Director of Administrative Services adopts rules under the Administrative Procedure Act prescribing criteria and procedures for giving preferences to products produced or mined in the U.S. and in Ohio. Contrary to what seems to be assumed by the bill, services are not mentioned in the statutory preferences that authorize the rule-making, but services do seem to be mentioned in the rules.[6]

Generally, before awarding a contract, the Department of Administrative Services or a state agency that is responsible for evaluating a contract is required to evaluate the bids to determine if the product that is the subject of the bid is produced or mined in the U.S. and if the product that is the subject of the bid is produced or mined in Ohio. Bidders who produce or mine products in states bordering Ohio are to be treated as if their products were produced or mined in Ohio, so long as the interstate commerce between Ohio and the border state is of sufficient level and regularity, and the border state does not impose greater restrictions than the Ohio Buy-U.S. and Buy-Ohio preferences. And bidders having a significant economic presence in Ohio also are to be treated as if their products were produced in Ohio, so long as their products were produced in other states or in North America. (Products mined outside Ohio do not qualify for the latter exception.) Significant economic presence in Ohio is measured by number of employees and capital investment in Ohio.

In evaluating bids under the preferences, the department or state agency first must remove bids that offer products that have not been or that will not be produced or mined in the U.S. Then, from among the remaining bids, the department or state agency

[5] Section 801.20 of the bill defines the American Recovery and Reinvestment Act of 2009 (ARRA) for purposes of the bill. The ARRA has fiscal stabilization and recovery purposes. Section 701.20, however, refers more generally to "federal law," and not just to the ARRA.

[6] R.C. 125.09(C) and 125.11(B). These sections are not in the bill.

must select the lowest responsive and responsible bid that offers products that have been produced or mined in Ohio, so long as sufficient competition can be generated within Ohio to ensure that compliance with the Buy-US and Buy-Ohio preferences will not result in an excessive price for the product or in acquiring a disproportionately inferior product.

Technical corrections

(R.C. 5503.04)

The bill corrects an outdated reference to the Trauma and Emergency Medical Services Grants Fund, which previously was renamed the Trauma and Emergency Medical Services Fund.

HISTORY

ACTION	DATE
Introduced	02-05-13

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