



Bill Analysis

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Legislative Service Commission

H.B. 73*

124th General Assembly

(As Introduced)

(excluding appropriations, fund transfers, and similar provisions)

Rep. Buehrer

BILL SUMMARY

- Modifies the applicable governing provisions of a land appropriation proceeding to provide that the laws applicable to civil actions and ***the Rules of Civil Procedure*** govern the proceeding.
- Deletes statutory language regarding (1) the taking of depositions and (2) the prohibition against evidence regarding appraisals or land values being adduced or elicited in depositions for a land appropriation proceeding.
- Authorizes the Director of Transportation to purchase or appropriate property for bikeways and bicycle paths.
- Generally authorizes the Director to purchase property from a willing seller to replace, preserve, or conserve any environmental resource under specified conditions.
- Establishes that highway proximity requirements governing certain ODOT property acquisitions do not apply to the acquisition of property to replace wetlands or to replace, preserve, or conserve environmental resources.
- Establishes requirements and procedures by which the Director of Transportation may enter into professional services contracts, and establishes requirements for those contracts.

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

- Requires certain professional services contracts to be approved by the Controlling Board, and establishes professional liability insurance requirements for firms that enter into such contracts.
- Lengthens from one year to two years the period of time during which a permit for an advertising device located along an interstate or primary highway is in effect.
- Continues for the biennium the ODOT pilot program for combining the design and construction elements of projects by allowing the Director to enter into contracts for an additional \$250 million worth of design-build projects during that period.
- Allows the Director to award up to \$85 million and no more than two contracts for design-build projects that cost more than \$20 million through a value-based selection process.
- Specifies that an unsuccessful finalist for a design-build project must elect either to be compensated and have the Director retain the unsuccessful proposal or waive compensation and have the Director return the proposal to the unsuccessful finalist.
- Corrects an erroneous statutory reference in the General Obligation Bond Law.
- Creates the Film Production Reimbursement Fund for the deposit of moneys received by the Department of Public Safety from other agencies for services and supplies provided by the Department for the production of public service announcements, media materials, and training materials.
- Requires Ohio Penal Industries to continue to produce motor vehicle license plate validation stickers and county identification stickers unless the Registrar of Motor Vehicles adopts rules that permit the Registrar or deputy registrars to print or otherwise produce those stickers.
- Creates the Security Deposit Fund, requires all security deposits that the Registrar of Motor Vehicles requires to be deposited as the result of certain motor vehicle accidents to be deposited into the Fund, and requires money in the Fund to be applied only to the payment of judgments for damages arising out of those accidents and to the return of security deposits.

- Requires copies of motor vehicle accident reports that are prepared by law enforcement agencies representing political subdivisions to be furnished by those law enforcement agencies rather than by the Director of Public Safety, and increases the fee for such copies from \$3 to not more than \$4.
- Allows the Superintendent of the State Highway Patrol to authorize the Registrar of Motor Vehicles and designated deputy registrars to collect certain inspection and testing fees on behalf of the Patrol.

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CONTENT AND OPERATION

TRANSPORTATION PROVISIONS

State acquisition of real property by appropriation

(R.C. 163.10 and 163.22)

Existing law

The state or an agency of the state (including the Department of Transportation) may acquire real property pursuant to R.C. 163.01 to 163.22 by filing a petition for appropriation of the real property in a proper court only after the agency is unable to agree, for any reason, with the owner, or if for another specified reason the agency is unable to contract for the real property. (R.C. 163.04, not in the bill.)

The action for appropriation is governed by the law applicable in civil actions in the court of common pleas except as otherwise provided. (R.C. 163.22.) One of the specified exceptions to the governing law regards depositions. Depositions may be taken as in other civil cases, subject to the requirements of the Department of Transportation administrative provisions. Depositions of the officers, agents, or employees of the agency or owner must be taken as on cross-examination. No evidence may be adduced or elicited in depositions as to value or appraisals on cross-examination, unless raised by direct examination. (R.C. 163.10 and 163.22.)

Operation of the bill

The bill modifies the applicable governing provisions of a land appropriation proceeding to provide that the laws applicable to civil actions and ***the Rules of Civil Procedure*** govern the proceeding. Additionally, the bill deletes language possibly conflicting with the above modification regarding (1) the taking of depositions and (2) the prohibition against evidence regarding appraisals or land values being adduced or elicited in depositions for a land appropriation proceeding. (R.C. 163.10 and 163.22.)

ODOT's purchase or appropriation of property

(R.C. 5501.31)

In addition to the purchase or appropriation of property for highway improvements, current law allows the Director of Transportation to purchase or appropriate property for certain related purposes, including slopes, detour roads,

sewers, roadside parks, rest areas, recreational park areas, park and ride facilities, park and carpool or vanpool facilities, scenic view areas, drainage systems, and land to replace wetlands. In addition to these special purposes, the bill authorizes the Director to purchase or appropriate property for bikeways and bicycle paths.

The bill also authorizes the Director to purchase property from a willing seller to replace, preserve, or conserve any environmental resource if state or federal law requires the replacement, preservation, or conservation. The purchase of property also must be incident to any authorized highway improvement. An example of this may be acquiring streams for environmental mitigation under federal regulations.

Law unaffected by the bill requires that property acquired by the Director be titled in the name of the state and that property deeds contain a description of the property. The bill specifies that the property may be described by metes and bounds or by the ODOT parcel number as shown on a right of way plan recorded in the county where the property is located.

Restrictions on the purchase or appropriation of property

(R.C. 5529.03)

Current law generally authorizes the Director of Transportation to acquire property adjacent to state highways as may be necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways. Additionally, the Director may acquire property adjacent to state highways to establish rest and recreation areas and sanitary and other facilities within or adjacent to the right-of-way of state highways. Current law also establishes that this authority to acquire property does not authorize the Director to *appropriate* property further than 300 feet from the nearest edge of the highway right-of-way.

Under the bill, none of the restrictions described above apply to the purchase or appropriation of any interest in property that is required for land to replace wetlands, including the prohibition against appropriating property further than 300 feet from the nearest edge of the highway right-of-way. Similarly, the requirement to purchase property *adjacent* to a highway does not apply to the purchase of property to replace, preserve, or conserve any environmental resource.

Contracts for professional services

Overview

(R.C. 5501.17, 5501.18, 5526.01(A) and (C), and 5526.02)

Under existing law, the Director of Transportation may employ consulting engineers and enter into contracts for consulting engineering services with any qualified person. The Director also may employ and enter into contracts with any qualified person to assist in acquiring certain rights-of-way. The bill repeals these provisions and instead authorizes the Director to employ or enter into contracts with any qualified firm for professional services. It establishes detailed requirements and procedures governing those contracts.

The bill defines "firm" to mean any person or limited liability company that is legally engaged in rendering professional services. "Professional services" means any of the following:

- (1) The practice of engineering as defined in current law;
- (2) The practice of surveying as defined in current law;
- (3) The practice of landscape architecture as defined in current law;
- (4) The evaluation of environmental impacts performed in accordance with the National Environmental Policy Act, the Federal Water Pollution Control Act, or any other applicable law or regulation;
- (5) Right-of-way acquisition services such as right-of-way project management, title searches, property valuations, appraisals, appraisal reviews, negotiations, relocation services, appropriation activities, real estate closings, and property management activities that are performed for the purpose of properly acquiring private and public property rights in conjunction with public highway projects and that conform to specified provisions of state law, various federal acts and regulations pertaining to highway development, and applicable policies and procedures of the Department of Transportation;
- (6) Services related to the Department's administration of construction contract claims, including, but not limited to, the analysis of claims, assistance in negotiations, and assistance during litigation;
- (7) Architectural services related to bridges; and

(8) Any other professional service that is determined by the Director or any other designated officials of the Department to be necessary for the provision of transportation services.

The bill states that "professional services" does not include the practice of architecture as regulated under current law, except landscape architecture and architectural services related to bridges.

Public notice of intent to contract

(R.C. 5526.03)

Prior to entering into a contract for professional services, the Director must issue public notice of the Department's intent to enter into such a contract. The Director must advertise the public notice via the internet or by other means to ensure that qualified firms are notified and given the opportunity to be considered for the award of the contract. The public notice must be issued in a uniform and consistent manner and must be issued sufficiently in advance of the time that responses must be received. In addition, the public notice must include a general description of the project, a statement of the specific professional services required, and a description of the qualifications required for the project. Finally, the public notice must describe the procedures by which firms may submit statements of qualifications in order to be considered for a contract.

The bill also authorizes the Director to include more than one contract in a single public notice. The Director may limit the number of contracts to which a firm may respond for the purpose of ensuring quality in the performance of those contracts.

Evaluation of qualifications of potential professional service firms

(R.C. 5526.01(D), 5526.04, and 5526.05(A))

The bill authorizes the Director to institute prequalification requirements for firms seeking to provide professional services and authorizes the Director to require that each prequalified firm maintain a current statement of qualifications with the Department. "Qualifications" is defined by the bill to mean:

(1) The competence of a firm to perform required professional services as indicated by the technical training, education, and experience of the firm's personnel, in particular the technical training, education, and experience of the firm's personnel assigned to perform professional services for the Department;

(2) The ability of a firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional services competently and expeditiously;

(3) The past performance of a firm as indicated by evaluations of previous clients of the firm with respect to such factors as control of costs, quality of work, and meeting of deadlines; and

(4) Any other relevant factors as determined by the Director.

The prequalification requirements must be based on those factors.

For every professional service contract for which the Department provides public notice, the Director must evaluate the qualifications of each firm seeking to enter into the contract. The Director may hold discussions with any of the firms for the purposes of obtaining more information about a statement of qualifications submitted by the firm, the scope and nature of the services that the firm would provide, and the various technical approaches that the firm may take with respect to the project.

Contract negotiations

(R.C. 5526.05(B), (C), and (D))

Following the evaluation of the qualifications of firms and any additional discussions with those firms with respect to a contract, the Director must select and rank no fewer than three firms that the Director considers to be the most qualified to provide the required professional services unless the Director determines that fewer than three qualified firms are available, in which case the Director must select and rank those firms. Next, the Director must negotiate a contract with the firm that is ranked the most qualified to perform the required professional services. The contract negotiations must be directed toward ensuring that the firm and the Department have a mutual understanding of the essential requirements involved in providing the required professional services; determining that the firm will make available the necessary personnel, equipment, and facilities to perform the professional services within the time that will be required in the contract; and agreeing on compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the services.

If the Director fails to negotiate a contract with the firm that is ranked most qualified, the Director must notify the firm in writing of the termination of negotiations and must enter into negotiations with the firm that is ranked next most qualified. If negotiations fail with that firm, the Director must negotiate with each subsequently ranked firm in order of ranking until a contract is negotiated

and entered into or until the Director selects and ranks additional firms (see below). All negotiations must comply with the bill and any rules adopted under it.

If the Director fails to negotiate a contract with any of the selected firms, the Director must select and rank additional firms based on their qualifications. Negotiations must continue as outlined above until a contract is negotiated and entered into.

Controlling Board approval

(R.C. 5526.05(E))

When a contract is negotiated, the Director, if required under current law, must request approval of the Controlling Board to make expenditures under the contract. However, if the Director is selecting firms for a group of contracts included in a single announcement and approval of the Controlling Board is required, the Director may present the selections to the Controlling Board for the Board's approval prior to negotiation of the contracts. When approving a group of contracts submitted by the Director, the Board must approve a total amount for all of the contracts rather than individual amounts for each contract. Final negotiations of the group of contracts may be completed after the Controlling Board's approval. If the Director fails to negotiate a contract with a firm that is selected to perform one of the contracts of a group of contracts, the Director must notify the Controlling Board of the selection of an alternate firm.

If the estimated construction cost of a project is \$20 million or more, the Director may present preliminary estimates regarding the project to the Controlling Board for the purpose of requesting authority to select firms and enter into contracts for professional services for that project without further consent of the Board. The Director must keep itemized records of the funds that are obligated under each contract and must report those amounts to the Controlling Board annually.

Emergency contracts

(R.C. 5526.08)

The Director may declare an emergency if circumstances exist that threaten life, safety, or health or if a situation arises that would greatly increase the costs of a project if not addressed. The Director is required to declare an emergency by preparing a written statement of the circumstances that exist that warrant the declaration. The Director may then select a firm with appropriate qualifications and negotiate a contract for the immediate performance of emergency professional services. Not later than 30 days after the professional services have been

performed, the Director must submit a written report to the Controlling Board indicating the amount of the emergency contract, the services performed by the firm, and the circumstances giving rise to the emergency.

Rules and exemptions

(R.C. 5526.06)

The bill authorizes the Director to adopt rules in accordance with the Administrative Procedure Act for the purpose of implementing the bill. In addition, the bill specifies that its provisions generally do not apply to:

(1) A project with an estimated cost of less than \$50,000;

(2) A project that is determined by the Director to be an emergency requiring immediate action, except that, when contracting for professional services for the purpose of addressing the emergency, the Director must comply with the emergency contract portion of the bill; and

(3) A project requiring special expertise where there exist fewer than three qualified firms.

Liability insurance requirements

(R.C. 5526.07)

Except for any firm providing professional services that relate to research or training, right-of-way acquisition services, or services to assist the Department in the administration of contract claims, a firm that renders professional services to the Department, during the period of the performance of professional services for the Department and for any other period of time specified in a contract with the Department, must have and maintain, or be covered by, a professional liability insurance policy or policies with a company or companies that are authorized to do business in Ohio and that afford professional liability coverage for the professional services rendered. The insurance must be in an amount considered sufficient by the Director. However, the requirement to have or be covered by professional liability insurance may be waived by the Director for good cause.

Advertising device permits

(R.C. 5516.10)

With certain exceptions, current law generally prohibits the erection or maintenance of advertising devices within 660 feet of the right-of-way of a highway on the interstate system or the primary highway system and, outside of

urban areas, the erection of such devices between 660 and 3,000 feet of the right-of-way of a highway on the interstate or primary system. However, a person who first obtains a permit from the Director of Transportation may erect and maintain any advertising device located in: (1) commercial or industrial zones traversed by segments of the interstate system within the boundaries of a municipal corporation, as the boundaries existed on September 21, 1959, or (2) zoned or unzoned industrial or commercial areas adjacent to highways on the primary system. Also with a permit from the Director, a person may maintain various "nonconforming" devices that could not now be lawfully erected, but were already in place at the time that the advertising device regulatory scheme was enacted.

Currently, all permits issued by the Director are in effect for one year and may be renewed upon application. Under the bill, permits are in effect for a period of two years and continue to be renewable.

Pilot program for design-build contracts for transportation projects

(R.C. 5517.011)

Before advertising for bids for a project, the Director of Transportation generally is required under current law to prepare the map, plans, specifications, and estimates that make up the design of the project. In 1995, the General Assembly authorized the Director to conduct a pilot program to test combining the design and construction elements of projects. Under the program, contracts for up to six highway or bridge projects could be awarded in which the contractor was responsible for both designing and constructing the project. In 1999, the General Assembly expanded the pilot program for the fiscal year 2000-2001 biennium, allowing the Director to enter into contracts for an additional \$250 million worth of design-build projects during that period. Of these new projects, the Director, annually, could award contracts for up to \$60 million and no more than three of the new projects through a "value-based" selection process. To be eligible for value-based selection, projects had to cost at least \$10 million each.

The bill expands the pilot program again for the fiscal year 2002-2003 biennium. It specifies that for each biennium, the Director may enter into contracts for an additional \$250 million worth of design-build projects during that period. However, the bill revises the restrictions on using value-based selection for the pilot program. It allows the Director to award contracts for up to \$85 million and no more than two of the new projects through the value-based selection process. Under the bill, to be eligible for value-based selection, projects must cost at least \$20 million each.

Under law unaffected by the bill, the Director begins the value-based selection process by preparing conceptual documents for review by interested

parties. After potential design-build teams submit letters of interest, the Director selects the three most qualified teams to submit technical proposals. The bill modifies the criteria that the Director must use for selecting the three finalists. It continues the requirement to include the qualifications and experience of the team, including personnel who would be utilized, the team's general project approach, and the team's schedule of activities and financial resources. However, the bill eliminates equipment usage as a criteria for selecting the three finalists and also eliminates a requirement that the Director consider the design-build team's affirmative action policies and record with regard to employees and subcontracts.

Current law generally requires the three finalists to prepare both a technical proposal and a price proposal. The technical proposal must state the finalist's qualifications and experience, including prior performance by the design-build team on similar projects, the identity of the members of the team, and a detailed project approach and schedule, including innovative design and construction techniques. The bill specifies that the technical proposal also may include aesthetics, environmental protection, a maintenance of traffic plan, and the type and duration of warranty coverage.

Current law requires the Director to compensate each responsive finalist that is not selected. The compensation must be in an amount generally equal to 0.25% of the unadjusted price proposal submitted by the selected finalist or an amount that the Director establishes at the time of advertising. The bill generally retains the requirement to compensate unsuccessful finalists, but requires the unsuccessful finalists to choose between compensation and retaining the proposal. Under the bill, the proposals of the two unsuccessful finalists become the property of the Director unless an unsuccessful finalist elects to waive the compensation. If an unsuccessful finalist waives the compensation, the Director must return the proposal to the unsuccessful finalist.

Bond law correction

(R.C. 151.01)

The General Obligation Bond Law authorizes the General Assembly to repeal or reduce any tax or fee that has been pledged to the payment of debt service on general obligations and, if necessary, to levy or increase any other tax or fee as a substitute to provide new revenue needed to meet the pledge. But the law specifies that motor vehicle fuel taxes, license taxes, and registration fees can be substituted for a decreased tax or fee only with regard to a pledge to pay debt service on bonds issued for highway construction, since the Ohio Constitution provides that revenue raised from such motor vehicle taxes and fees can be spent only for certain highway-related purposes. The bill removes from this provision an erroneous reference to obligations issued for parks and conservation purposes.

PUBLIC SAFETY PROVISIONS

Film Production Reimbursement Fund

(R.C. 4501.35)

The bill creates in the state treasury the Film Production Reimbursement Fund. The Department of Public Safety must deposit into the Fund moneys that it receives from other agencies for services and supplies that the Department provides for the production of public service announcements, media materials, and training materials. Moneys in the Fund must be expended by the Department only for supplies and maintenance of equipment necessary to perform such services.

License plate validation and county identification stickers

(R.C. 4503.191)

Current law requires motor vehicle identification license plates, validation stickers, and county identification stickers to be produced by Ohio Penal Industries. However, the Registrar of Motor Vehicles and Ohio Penal Industries may enter into an agreement under which the Bureau of Motor Vehicles, at certain times, may produce certain types of validation and county identification stickers. The agreement must specify those times and types of stickers.

Under the bill, Ohio Penal Industries still is required to produce motor vehicle identification license plates. Ohio Penal Industries must continue to produce validation stickers and county identification stickers unless the Registrar adopts rules that permit the Registrar or deputy registrars to print or otherwise produce them.

Security Deposit Fund

(R.C. 4509.27)

Under current law, if the driver of a motor vehicle is at fault in a motor vehicle accident and the accident results in either: (1) injury to another person resulting in at least \$500 in damages, or (2) damage in excess of \$400 to the property of anyone other than the driver who was at fault or the owner of the vehicle that the driver was driving at the time of the accident, if the driver and owner are not the same person, and if the Registrar of Motor Vehicles determines that neither the owner nor the driver, if they are not the same person, has any form of motor vehicle liability insurance or other proof of financial responsibility to cover the damage, the Registrar, based on the accident reports, may require the owner or driver to deposit security with the Registrar in an amount that is sufficient to satisfy any judgment for damages that may be recovered against the

owner or driver. (R.C. 4509.12 *et seq.*, not in the bill.) All money and securities so deposited with the Registrar must be delivered to the Treasurer of State, who is their custodian. The Treasurer cannot relinquish any such money or securities except upon the written order of the Registrar. The owner is entitled to receive all income from securities so deposited, and the Registrar is required to issue a receipt for each deposit stating this fact.

The bill repeals all of the existing provisions governing the deposit and relinquishing of the money and securities and instead creates the Security Deposit Fund in the state treasury. Under the bill, all security deposits that the Registrar requires to be paid as discussed above and receives must be deposited into the Fund. Money in the Fund must be applied only to the payment of a judgment for damages arising out of an accident and to the return of security deposits as provided in current law. All investment earnings on the cash balance in the Fund must be credited to the Fund.

Motor vehicle accident reports

(R.C. 5502.12)

Current law requires every law enforcement agency that represents a township, county, municipal corporation, or other political subdivision, after investigating a motor vehicle accident involving a fatality, personal injury, or property damage in an amount of \$150 or more, to forward within five days a written report of the accident to the Director of Public Safety on a form prescribed by the Director. (R.C. 5502.11, not in the bill.) The Director must use these accident reports for purposes of statistical, safety, and other studies. Under current law, the Director must search for and furnish a copy of such a report to any person claiming an interest arising out of a motor vehicle accident, or to the person's attorney, upon the payment of a nonrefundable fee of \$3. With respect to accidents investigated by the State Highway Patrol, the Director must furnish all related reports and statements upon the payment of a nonrefundable fee of \$4. The cost of photographs is in addition to the nonrefundable \$4 fee. With regard to accidents that are investigated by other law enforcement agencies, the bill instead requires the law enforcement agency that submitted a report to furnish a copy of the report and associated documents to any person claiming an interest arising out of a motor vehicle accident, or to the person's attorney, upon the payment of a nonrefundable fee not exceeding \$4.

Collection of State Highway Patrol inspection and testing fees

(R.C. 5503.12)

The bill allows the Superintendent of the State Highway Patrol, with the approval of the Director of Public Safety, to authorize the Registrar of Motor Vehicles and designated deputy registrars to collect certain specified inspection and testing fees on behalf of the Highway Patrol. The Superintendent and the Registrar must jointly determine and designate the deputy registrars who will collect inspection and testing fees on behalf of the Highway Patrol.

The bill requires the Superintendent, with the approval of the Director, to establish procedures for determining proof that a person paid the required fees to the Registrar or a designated deputy registrar. Presumably a person seeking a specified inspection or testing service from the Highway Patrol would be required to present proof of payment prior to receiving the service.

The specified inspection and testing fees that may be collected by the Registrar and designated deputy registrars include:

(1) Fees for inspection of a rebuilt salvage vehicle (R.C. 4505.11, not in the bill), inspection of a vehicle assembled by a person other than a manufacturer (R.C. 4505.111, not in the bill), inspection of a bus, generally other than a school bus or church bus (R.C. 4513.52 and 4513.53, not in the bill), affixing a vehicle identification number to an off-highway motorcycle or all-purpose vehicle (R.C. 4519.56, not in the bill), inspection of a rebuilt salvage off-highway motorcycle or all-purpose vehicle (R.C. 4519.61, not in the bill), and inspection of an ambulance or nontransport vehicle owned by an emergency medical service organization (R.C. 4766.07, not in the bill);

(2) Fees for testing commercial driver's license applicants (R.C. 4506.09, not in the bill); and

(3) Any statutory fees for similar vehicle inspections or driver testing conducted by the Highway Patrol that the Superintendent may specify for collection by the Registrar or a designated deputy registrar unless the fees are specifically designated for a different type of collection.

The bill allows the Registrar and each designated deputy registrar, in addition to collecting the inspection and testing fees, to collect and retain a service fee for each inspection and testing fee collected on behalf of the Highway Patrol. The amount of the service fee is established by reference to existing service fees collected by deputy registrars for vehicle registration services and currently is set at \$2.25.

Upon receipt of any inspection and testing fee, each designated deputy registrar must transmit the fees to the Registrar in the manner prescribed by the Registrar. The bill requires the Registrar to deposit the inspection and testing fees collected by and transmitted to the Registrar to the credit of the fund specified by law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

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