



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 114

129th General Assembly

(As Reported by H. Finance & Appropriations)

(Excluding appropriations, fund transfers, and similar provisions)

Reps. McGregor, Amstutz, Carey

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DEPARTMENT OF TRANSPORTATION

- Allows ODOT to contract with any person or entity to operate, construct, maintain, or market the Traffic Generator Sign (brown sign) Program and provides that the contract may allow for a reasonable profit to be earned by the successful applicant.
- Restricts the cost of relocation of utility facilities necessitated by the construction of a highway project for which a utility may claim reimbursement to those costs that are eligible for reimbursement in accordance with federal law.
- Makes a report that results from the investigation of an incident or unacceptable hazardous condition on a rail fixed guideway system that is operated by a transit agency confidential and not subject to disclosure under the Public Records Law.
- Provides that the engineer's estimate of cost of any particular item of work involved in an ODOT construction project and the unit price components of the project are not public records, even after the bid opening for the project has occurred.



- Permits the Director of Transportation to enter into agreements with an agency of the United States government for the purpose of dedicating staff to the review of environmentally related documents submitted by ODOT that are necessary for the approval of federal permits.
- In regard to the 7.5% vehicle weight limit tolerance on non-interstates:
 - Extends the weight tolerance to a surface mining vehicle transporting minerals and a vehicle transporting hot mix asphalt material;
 - For farm trucks transporting farm commodities, adds manure, turf, sod, and silage to the list of qualifying farm commodities;
 - For log trucks transporting timber, extends the application of the weight tolerance to a "forest product" truck transporting logs, chips, sawdust, mulch, bark, pulpwood, biomass, and firewood; and
 - Establishes that no wheel or axle limits apply if vehicles to which the weight tolerance applies do not exceed the 7.5% gross vehicle weight tolerance.
- Creates the Joint Legislative Task Force on Department of Transportation Funding to examine the funding needs of the Department, and requires the Task Force to issue its report and recommendations not later than December 15, 2011.

Contracting out the Traffic Generator Sign Program

(R.C. 4511.108)

The bill authorizes the Director of Transportation to contract out the operation, construction, maintenance, or marketing of the Traffic Generator Sign Program – under which signs with a white symbol or message and white border on a brown background are erected along a highway to bring to the motorist's attention nearby recreational and cultural interest areas. Any contract for the purpose may allow for a reasonable profit to be earned by the successful applicant. In awarding the contract, the Director may consider the skill, expertise, prior experience, and other qualifications of each applicant. Whether the program is operated by the Department or by a contractor, however, the bill requires that money collected from program participants be credited to the Highway Operating Fund (rather than "be remitted to the department," as under existing law).

Reimbursement of a utility for relocating some of its facilities

(R.C. 5501.51)

Existing law requires the state to reimburse a utility for the cost of relocating any of its facilities because of the construction of a highway project. At present "cost of relocation" is defined as including the actual cost paid by a utility directly attributable to relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility. The bill defines "actual cost" to mean only those costs that are eligible for reimbursement in accordance with Part 645 of Title 23 of the Code of Federal Regulations – which concerns utility facilities on Federal-aid direct Federal projects.

Confidentiality of investigations of incidents on rail fixed guideway systems of transit agencies

(R.C. 5501.55)

The bill makes a report of an investigation conducted by either a transit agency operating a rail fixed guideway system, or by a contractor acting on behalf of a transit agency operating such a system, confidential and not subject to disclosure under the Public Records Law. A rail fixed guideway system refers to a transit service that uses heavy rail, commuter rail, or light rail.

Confidentiality of the details of the "engineer's estimate" for highway construction projects

(R.C. 5525.15)

Before the Department of Transportation takes bids on a highway construction project, it develops its own estimate, called the "engineer's estimate," of the cost of the project. Ordinarily bids that exceed 105% of the engineer's estimate are rejected. (An exception is made for projects in which federal funds are involved if the Director determines that the winning bid is nonetheless fair and reasonable, the federal government imposes regulation on prices charged for construction service, and the successful bidder certifies that its bid does not exceed the maximum permitted by federal regulation.) If no acceptable bid is made, the Department may readvertise the work at the original estimate, or the estimate may be amended and the project readvertised.

Under existing law, if the Director of Transportation provides that the engineer's estimate is to be confidential, it must remain so until after bids on the project have been received. The total amount of the estimate is then published. When the engineer's

estimate is confidential, the estimate of cost of any particular item of work that the project involves is also confidential and must not be revealed until after the bids have been opened and published.

Under the bill, if the engineer's estimate is to be confidential, the total amount of the estimate must remain confidential until after the bids have been opened (rather than received). However, the engineer's estimate of cost of any particular item of work involved in the project and the unit price components of the project are to remain confidential and are not to be regarded as public records.

Agreements by ODOT with the federal government concerning the review of environmentally related documents

(Section 755.10)

The bill allows the Director of Transportation to enter into agreements with the United States or any U.S. department or agency solely for the purpose of dedicating staff to the expeditious and timely review of environmentally related documents submitted by ODOT, as necessary for the approval of federal permits. Such an agreement may include provisions for advance payment by ODOT for labor and all other identifiable costs of providing services by the United States or any U.S. department or agency as may be estimated by the United States or the department or agency. The bill specifically includes the U.S. Army Corps of Engineers, the U.S. Forest Service, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service as federal agencies with which the Director may enter into agreements but does not limit the Director's authority to those agencies. 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 U.S. department or agency, and the circumstances giving rise to the agreement.

Non-interstate highway vehicle weight limit tolerances

(R.C. 5577.042)

The bill makes four separate changes to the current provision establishing a 7.5% weight tolerance for certain vehicles operating under specified conditions on non-interstate highways.

(1) The bill extends the availability of the weight tolerance to two new types of vehicles: (a) a vehicle transporting hot mix asphalt material from the place where the material is first mixed to the paving site where the material is discharged and (b) a surface mining vehicle transporting minerals (sand, gravel, clay, certain stone, ore, or other material excavated from natural deposits on or in the earth, but not coal or peat)

from the place where the minerals are removed from the earth or the surface of the land to the first place where the minerals are transferred from the vehicle.

(2) For the application of the weight tolerance to farm trucks transporting farm commodities, the bill adds manure, turf, sod, and silage to the list of qualifying farm commodities that currently includes livestock, bulk milk, corn, soybeans, tobacco, and wheat.

(3) The bill extends the current application of the weight tolerance for a log truck transporting timber to a "forest product" truck transporting logs, chips, sawdust, mulch, bark, pulpwood, biomass, and firewood.

(4) The bill specifies that if a vehicle to which the weight tolerance applies is operated within the weight tolerance and under any specified conditions for the type of vehicle, the vehicle will not be subject to any penalty for a wheel or axle limit violation. As under current law, a vehicle that is operated over the weight tolerance is subject to the applicable criminal penalty for violating the weight limits and civil liability for damages to roads.

Creation of the Joint Legislative Task Force on Department of Transportation Funding

(Section 757.20)

The bill creates the Joint Legislative Task Force on Department of Transportation Funding and charges it with examining the funding needs of the Department. Not later than December 15, 2011 the Task Force must issue a report of its findings and recommendations, at which time it will cease to exist. The Task Force is to consist of three members of the House Finance and Appropriations Committee (two of them appointed by the Speaker of the House and one by the House Minority Leader) and three members of the Senate Highways and Transportation Committee (two of them appointed by the President of the Senate and one by the Senate Minority Leader).

DEPARTMENT OF PUBLIC SAFETY

- Eliminates the \$20 late fee that is imposed if a driver's or commercial driver's license is renewed more than seven days after its expiration date.
- Exempts farm trucks and farm buses from the \$20 motor vehicle registration late fee and requires the waiver of that late fee in any case involving the registration of a motor vehicle that is used on a seasonal basis upon proof of such seasonal use.

- Allows the clerk of the court of common pleas to compete for the award of a deputy registrar contract in any county with a population of 40,000 or more.
- Allows a county auditor who is designated to act as a deputy registrar and the clerk of a court of common pleas to allocate their deputy registrar duties and certificate of title duties and fees between them.
- Requires a clerk of the court of common pleas to inform the Registrar of Motor Vehicles if space is available at an office of the clerk that could be occupied by a deputy registrar and, subject to the approval of the Registrar, permits a clerk and deputy registrar to occupy a common location where neither is an occupant.
- Establishes a five-year construction equipment auction license to be administered by the Registrar of Motor Vehicles in the same manner as a motor vehicle dealer license, including eligibility standards, application procedures (including a \$7,500 fee), standards for a licensee to sell equipment and motor vehicles at auction, and penalties for violating the standards and related prohibitions.
- Requires every person who applies for a new or renewal driver's or commercial driver's license, temporary instruction permit, motorcycle operator's license or endorsement, or identification card to be furnished with a form for listing contact persons for inclusion in the next of kin database of the Bureau of Motor Vehicles.
- Permits the operator of a motorcycle to back the motorcycle into an angled parking space.
- Codifies existing limitations and restrictions that apply to the operation of a motorcycle by a person who holds a motorcycle temporary instruction permit.
- Requires the Registrar of Motor Vehicles to enable all electronic motor vehicle dealers to file applications for certificates of title on behalf of purchasers of motor vehicles electronically directly through the Registrar.
- Removes obsolete language relating to the State Highway Safety Fund, the Highway Improvement Bond Retirement Fund, and bonds issued pursuant to Article VIII, Section 2g of the Ohio Constitution.
- Authorizes the Director of Public Safety and the Registrar of Motor Vehicles to apply for, allocate, disburse, and account for grants from federal, state, or private sources.
- Requires the Registrar of Motor Vehicles to establish a program to permit the registration of apportionable motor vehicles over the Internet no later than

December 31, 2011, and requires the program to provide an option for the payment of all registration taxes and fees by use of a financial transaction device.

- Allows the \$5 contribution that a person pays when obtaining "Share the Road" license plates to be used to create and distribute bicycle safety education materials rather than just to distribute a booklet on proper methods and procedures of riding bicycles on the streets and highways.
- Requires the contributions the Registrar of Motor Vehicles collects from persons who obtain "Teen Driver Education" license plates to be deposited into the existing License Plate Contribution Fund.
- Requires that a manufacturer's payment to the Director of Public Safety for certifying its immobilizing or disabling device be credited to the existing state Indigent Drivers Alcohol Treatment Fund rather than to the Drivers' Treatment and Intervention Fund.
- Requires the Department of Public Safety to participate in receiving notifications through the Bureau of Criminal Identification and Investigation's (BCII) Retained Applicant Fingerprint Database of the arrest or conviction of licensed private investigators and security guard providers.
- Makes permanent a provision of temporary law requiring 50¢ of a \$2 portion of the \$5 fee that a motor vehicle dealer pays for a certificate of title to be deposited into the Title Defect Recision Fund, rather than requiring the entire \$2 portion to be deposited into the Automated Title Processing Fund.

Elimination of the late fee for driver's license renewals

(R.C. 4506.08 and 4507.23)

The bill eliminates the \$20 late fee, which took effect on October 1, 2009, that is imposed on motorists who do not renew their driver's licenses or commercial driver's licenses within seven days after their licenses expire. The fee may be waived for any good cause shown if the application is accompanied by supporting evidence that the Registrar requires. A deputy registrar who collects the late fee retains 50¢ of the \$20; the rest of the amount is credited to the State Highway Safety Fund.

Motor vehicle registration late fee

(R.C. 4503.04)

The bill exempts farm trucks and farm buses from the \$20 motor vehicle registration late fee and requires the waiver of that late fee in any case involving the registration of a motor vehicle that is used on a seasonal basis if sufficient proof of such seasonal use accompanies the vehicle registration application.

Performance of vehicle registration and titling functions

(R.C. 4503.03, 4503.031, and 4503.037)

Allowing the clerk of the court of common pleas to compete for the award of a deputy registrar contract

Existing law authorizes the Registrar of Motor Vehicles to designate the county auditor as a deputy registrar in any county of the state. Where this is done in a county with a population of 40,000 or less according to the last federal census, no other person need then be designated to act as a deputy registrar in the county. Existing law also authorizes the Registrar to designate a clerk of a court of common pleas as a deputy registrar in any county with a population of 40,000 or less according to the last federal census. The bill provides that if the population of a county is 40,000 or more, the clerk of a court of common pleas may compete for a deputy registrar contract in the county along with any other applicants for the award of a deputy registrar contract.

Allowing a county auditor and clerk of a court of common pleas to allocate motor vehicle-related duties between them

Notwithstanding any laws to the contrary and subject to the approval of the Registrar of Motor Vehicles and the board of county commissioners, the bill authorizes a county auditor who is designated to act as a deputy registrar and the clerk of the court of common pleas of the same county to enter into a memorandum of understanding for the allocation of their deputy registrar and certificate of title duties between them. Such a memorandum may also provide for the allocation of any fees that they retain.

Colocation of an office of the clerk of the court of common pleas and a deputy registrar

Under existing law, if the Registrar of Motor Vehicles determines that space is available at a deputy registrar's office, the clerk of the court of common pleas in the county where the deputy is located must be given the opportunity to use the space for the purpose of carrying out the clerk's duties related to the titling of motor vehicles. Each clerk of the court of common pleas using such space must remit to the deputy a

rental fee equal to the percentage of space occupied by the clerk in the deputy's office multiplied by the rental fee or mortgage cost paid for the entire deputy registrar's office plus a pro rata share of all utility costs.

Similarly, the bill provides that if a clerk of the court of common pleas determines that space is available at a location where the clerk has an office, the clerk must inform the Registrar about it. After giving due consideration to the locations of the existing deputy registrar offices in the county, the Registrar must inform the appropriate deputy registrars, if any, of the available space. A deputy registrar who moves into the available space must pay a rental fee to the clerk that is computed in the same way as the rental fee is currently computed for space that a clerk of court occupies in a deputy's office. If no existing deputy wishes to utilize the available space, the Registrar must inform all persons who express an interest to the Registrar in becoming a deputy registrar in the county of the space if it continues to be available.

The bill also provides that a clerk and a deputy registrar may both elect to occupy space at a common location which neither of them occupies. Any such arrangement is subject to the approval of the Registrar, who must give due consideration to all issues and aspects of the proposed arrangement, including security and service to the public.

Construction equipment auction license

(R.C. 4517.01, 4517.02, 4517.16, 4517.17, 4517.171, 4517.18, and 4517.33)

Overview

The bill establishes a five-year construction equipment auction license to be administered by the Registrar of Motor Vehicles in the same general manner as motor vehicle dealer licenses. The license allows a person to sell, at auction, "large construction or transportation equipment" (vehicles having a gross vehicle weight rating of more than 10,000 pounds, including road rollers, traction engines, power shovels, power cranes, commercial cars and trucks, or farm trucks, and other similar vehicles obtained primarily from the construction, mining, transportation, or farming industries). Under limited conditions, a licensee also is able to sell smaller motor vehicles. The bill establishes that a person who has a construction equipment auction license is not in violation of the general prohibition against selling used motor vehicles without a license issued by the Registrar.

Eligibility

To be eligible for a construction equipment auction license, a person must:

(1) Maintain a primary permanent auction site in Ohio that is at least 90 acres in size and also maintain over 60,000 square feet of total facility space;

(2) Be engaged primarily in the business of selling large construction and transportation equipment at auction;

(3) Receive more than \$1 million in gross annual sales in Ohio; and

(4) Derive not more than 10% of the person's gross annual sales revenue from the sale of motor vehicles having a gross vehicle weight rating of 10,000 pounds or less to buyers domiciled or having their principal place of business in Ohio.

Licensing

The bill establishes procedures governing the application for the license and also gives the Registrar rule-making authority governing the application process and the regulation of construction equipment auction sales and licensees. The license fee is \$7,500 (deposited into the State Bureau of Motor Vehicles Fund) and the license expires five years after it is issued, unless it is revoked before that time.

The bill requires the Registrar to deny or revoke a license if the person: (1) is not eligible for the license, (2) has made any false statement of a material fact in the application, (3) is of bad business repute or has habitually defaulted on financial obligations, (4) has been guilty of a fraudulent act in connection with auctions, vehicles, or equipment, (5) is insolvent, or (6) is of insufficient financial responsibility related to payment of judgments against the applicant because of construction equipment auction business transactions. A person who has been denied a license or has a license revoked may appeal to the Motor Vehicle Dealers Board.

When the Registrar grants an application, the licensee must keep the license (or a certified copy) posted in a conspicuous place in each place of its business. Also, the licensee's business records must be open for reasonable inspection by the Registrar.

Conditions for operation

When the licensee holds an auction, the licensee must have title present for all vehicles being sold. In order to verify eligibility requirements related to sales revenue, the bill requires a licensee to file with the Bureau of Motor Vehicles on an annual basis a certification stating the gross proceeds generated from auctions held at the auction site during the prior calendar year and the gross proceeds generated from the sale of motor vehicles having a gross vehicle weight rating of 10,000 pounds or less during the year.

Special restrictions apply when a construction equipment auctioneer sells a motor vehicle with a gross vehicle weight of 10,000 pounds or less. For those vehicles,

the auctioneer specifically must comply with titling, sales tax, and commercial activity tax provisions in the same manner as a motor vehicle dealer, including transferring title to the licensee's name prior to the auction. The bill exempts licensees from certain motor vehicle dealer provisions when selling motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, including requirements related to an established place of business, provisions related to salespersons and wholesalers, and motor vehicle show provisions.

Prohibitions

The bill contains a general prohibition against engaging in the business of auctioning large construction or transportation equipment unless a person is a construction equipment auctioneer (a construction equipment licensee who also holds an auctioneer's license) or is licensed as a motor vehicle auction owner and uses a licensed auctioneer. Violation of this is a minor misdemeanor with a mandatory \$100 fine, and on subsequent offenses it is a first degree misdemeanor with a mandatory \$1,000 fine.

Additionally, the bill specifically prohibits a construction equipment auction licensee from doing any of the following:

(1) Selling vehicles with a manufacturer's statement of origin only unless authorized by the vehicle manufacturer;

(2) Holding any additional motor vehicle dealer licenses issued by this state at the same time as holding a construction equipment auction license;

(3) Selling at auction a motor vehicle having a gross vehicle weight rating of 10,000 pounds or less unless the motor vehicle owner also sells large construction or transportation equipment through the construction equipment auction licensee;

(4) Holding more than seven auctions per year at the permanent auction site, at which large construction or transportation equipment is offered for sale.

A violation of these provisions is a minor misdemeanor on a first offense and a fourth degree misdemeanor on subsequent offenses. In addition, a court is required to impose a fine of up to \$10,000.

BMV next of kin database

(R.C. 4501.81)

The bill requires every person who applies to the Registrar of Motor Vehicles or a deputy registrar for a new or renewal driver's or commercial driver's license, temporary

instruction permit, motorcycle operator's license or endorsement, or identification card to be furnished with a next of kin information form on which the applicant may list the name, address, telephone number, and relationship to the applicant of at least one contact person for inclusion in the next of kin database of the Bureau of Motor Vehicles (BMV). The contact person is the person whom the applicant wishes to be contacted if the applicant is involved in a motor vehicle accident or emergency situation and the applicant dies or is seriously injured or rendered unconscious and is unable to communicate with the contact person.

The form must inform the applicant that, after completing the form, the applicant may return the form to the Registrar or any deputy registrar, who will accept it without charge. The form also must contain (1) an address to which the completed form may be mailed, and (2) instructions whereby the applicant may furnish the information to the Registrar via the Internet. The bill requires the BMV to adopt a rule specifying the contents of the form.

The bill stands in contrast to the current Revised Code provision, which provides that an individual holding a valid Ohio driver's or commercial driver's license, temporary instruction permit, or identification card (holders of motorcycle operator's licenses and endorsements are not included) must "be afforded the opportunity to list" emergency contact persons for inclusion in the BMV next of kin database.

Angle parking by a motorcycle

(R.C. 4511.69)

Current law regulates the parking of motor vehicles on public streets and highways. For example, every vehicle that is stopped or parked upon a roadway where there is an adjacent curb must be stopped or parked with the right-hand wheels of the vehicle parallel with and not more than 12 inches from the right-hand curb, if possible. Local authorities may permit angle parking on any roadway under their jurisdiction, except that angle parking is not permitted on a state route within a municipal corporation unless an unoccupied roadway width of not less than 25 feet is available for free-moving traffic.

Current law also prohibits any vehicle or trackless trolley from being stopped or parked on a road or highway with the vehicle or trackless trolley facing in a direction other than the direction of travel on that side of the road or highway. The bill permits the operator of a motorcycle to back the motorcycle into an angled parking space so that when it is parked it is facing in a direction other than the direction of travel on the side of the road or highway.

Motorcycle operation under a temporary instruction permit

(R.C. 4507.05 and 4511.53)

Current law permits the Registrar of Motor Vehicles or a deputy registrar, upon receiving from any person an application for a temporary instruction permit and temporary instruction permit identification card to operate a motorcycle, to issue such a permit and identification card entitling the applicant, while having the permit and identification card in the applicant's immediate possession, to drive a motorcycle under restrictions determined by the Registrar. Currently, these restrictions are not codified.

The bill codifies these restrictions by prohibiting any person from operating a motorcycle with a valid temporary instruction permit and temporary instruction permit identification card issued by the Registrar unless the person, at the time of such operation, is wearing on the person's head a protective helmet that conforms with rules adopted by the Director of Public Safety. In addition, the bill prohibits any person from operating a motorcycle with such a permit and identification card in any of the following circumstances: (1) at any time when lighted lights are required by current law, such as between sunset and sunrise, (2) while carrying a passenger, and (3) on any limited access highway.

Application for a certificate of title by an electronic motor vehicle dealer

(R.C. 4505.06)

The bill requires the Registrar of Motor Vehicles, not later than 60 days after the effective date of the act, to enable all electronic motor vehicle dealers to file applications for certificates of title on behalf of purchasers of motor vehicles electronically directly through the Registrar, not through a third party.

Bonds issued pursuant to Article VIII, Section 2g of the Ohio Constitution

(R.C. 4501.06)

The bill removes obsolete language that provides that before money in the State Highway Safety Fund may be expended for enforcing and paying the expenses of administering the laws governing motor vehicle registration and operation, the Commissioners of the Sinking Fund must certify that there is sufficient money to the credit of the Highway Improvement Bond Retirement Fund to pay all the interest, principal, and charges for retiring bonds issued pursuant to Article VIII, Section 2g of the Ohio Constitution. Section 2g permits the issuance of up to \$500 million of bonds for highway construction and requires the entire debt to be discharged not later than 1989.

Director of Public Safety and Registrar of Motor Vehicles grant authority

(R.C. 4501.02 and 5502.011)

The bill specifically authorizes both the Director of Public Safety and the Registrar of Motor Vehicles to apply for, allocate, disburse, and account for grants from federal, state, or private sources.

Registration of apportionable motor vehicles

(R.C. 4503.62)

The bill requires the Registrar of Motor Vehicles to adopt rules under the Administrative Procedure Act to establish a program to permit the registration of apportionable vehicles over the Internet no later than December 31, 2011. It also allows the program to provide for the registration of nonapportionable commercial vehicles over the Internet. The Internet Registration Program must provide an option for registrants to pay all registration taxes and fees by use of a "financial transaction device" (for example, a credit card or debit card). If the Director of Public Safety approves, the Registrar may contract with a third party to accept and process payments on behalf of the Bureau of Motor Vehicles, but all fees associated with making payment by such a device must be borne by the applicant for registration.

An "apportionable" vehicle is a truck or bus covered by the International Registration Plan – a registration reciprocity agreement among the states of the United States, the District of Columbia, and the provinces of Canada that provides for the payment of license fees on the basis of fleet distance operated in the various jurisdictions.

Uses of "Share the Road" license plate contributions

(R.C. 4503.521)

"Share the Road" license plates are issued to any applicant who pays a contribution of \$5 for the plates. Under the bill, the money may be used for creating and distributing safety education materials, rather than for the narrower purpose, specified in current law, of publishing and distributing a booklet that instructs bicycle riders on the methods and procedures of riding bicycles on the roads and streets of Ohio in a confident, legal, and safe manner.

"Teen Driver Education" license plates

(R.C. 4503.94, 4501.14, and 4501.21)

The bill requires the contributions the Registrar of Motor Vehicles collects from persons who obtain "Teen Driver Education" license plates to be deposited into the existing License Plate Contribution Fund instead of the Teen Driver Education License Plate Fund. The bill then eliminates the latter fund but continues to require that the Registrar pay the contributions to the Michelle's Leading Star Foundation to fund the rental, lease, or purchase of the simulated driving curriculum of the Foundation by boards of education of city, exempted village, local, and joint vocational school districts.

Deposit of immobilizing and disabling device certification payments

(R.C. 4510.43)

The bill requires that a manufacturer's payment to the Director of Public Safety for certifying its immobilizing or disabling ignition interlock device be credited to the existing state Indigent Drivers Alcohol Treatment Fund rather than to the Drivers' Treatment and Intervention Fund, which no longer exists.

Public Safety participation in the Retained Applicant Fingerprint Database for licensed private investigators and security guards

(R.C. 4749.031)

The bill requires the Department of Public Safety to participate in the continuous record monitoring service of the Bureau of Criminal Identification and Investigation's (BCII) Retained Applicant Fingerprint Database in regard to records of the arrest or conviction of licensed private investigators and security guard providers. To obtain a license, private investigators and security guard providers must submit to a criminal records check and may not have been convicted of a felony within the last 20 years or any offense involving moral turpitude.

The Retained Applicant Fingerprint Database is a database maintained by the Superintendent of BCII of fingerprints of individuals on whom BCII has conducted criminal records checks for the purpose of determining eligibility for employment with or licensure by a public office. Under this program, when the Superintendent receives information that an individual whose name is in the database has been arrested for or convicted of any offense, the Superintendent must notify any participating public office, in this case the Department of Public Safety, that employs or licenses that individual of the arrest or conviction. Under the guidelines of the Retained Applicant Fingerprint Database, the public office may use that information solely to determine the individual's

eligibility for continued employment or licensure; the information otherwise is confidential.

The bill requires license applicants, at the time of making an initial or renewal application, to pay any initial or annual fee established by the BCII for the continuous record monitoring service.

Distribution of certificate of title fees

(R.C. 4505.09)

The bill makes permanent a provision of uncodified law that currently modifies the distribution of certificate of title fees that are collected from motor vehicle dealers that is set forth in codified law.

Specifically, under codified law, a licensed motor vehicle dealer is required to pay a \$5 fee to the clerk of the court of common pleas to obtain a certificate of title to a motor vehicle for resale. Of that \$5 fee, \$2 is distributed to the Registrar of Motor Vehicles for deposit into the Automated Title Processing Fund, to be used to implement and maintain an automated title processing system. However, under uncodified law, until July 1, 2011 the \$2 amount is split into two parts: \$1.50, which the Registrar deposits into the Automated Title Processing Fund, and a separate fee of 50¢, which the Registrar deposits into the existing Title Defect Recision Fund. The Title Defect Recision Fund consists of money that motor vehicle dealers are required to pay to the Attorney General, dependent in part upon the balance in the fund.¹ The fund is used solely to provide restitution to retail purchasers of motor vehicles who are unable to obtain a certificate of title from a dealer and so suffer damages. Under the bill, the temporary distribution of the \$2 fee becomes permanent.

PUBLIC WORKS COMMISSION

- Provides that the District One (Cuyahoga County) Public Works Integrating Committee is to include two members appointed by either the Board of County Commissioners or the Chief Executive Officer of Cuyahoga County, rather than just by the Board.
- Revises the formula for allocating, in each year of the State Capital Improvements Program, the proceeds of obligations issued under Article VIII, Section 2p of the Ohio Constitution for public infrastructure capital improvements.

¹ R.C. 4505.181, not in the bill.

Cuyahoga County Public Works Integrating Committee membership

(R.C. 164.04)

Existing law provides that the seven-member district public works integrating committee for District One (Cuyahoga County) includes two members appointed by the Board of County Commissioners. In view of the change in the structure of government that took place in Cuyahoga County on January 1, 2011, the bill provides instead for two members appointed by the Board of County Commissioners (to account for a member of the committee who was appointed before January 1 and is still serving on the Board) or by the Chief Executive Officer of the county (to account for a member appointed after January 1).

State Capital Improvements Program

(R.C. 164.08; Sections 209.20, 209.21, 209.30, 209.40, and 209.50)

The bill revises the formula for allocating, in each program year, the proceeds of obligations issued under Article VIII, Section 2p of the Ohio Constitution for public infrastructure capital improvements, as follows:

(1) Increases, from \$12 million to \$15 million, the amount that must first be allocated to villages, and to townships with populations in the unincorporated areas of the township of less than 5,000, for capital improvements;

(2) Increases, from \$2.5 million to \$3 million, the amount that may next be allocated to local subdivisions for capital improvement projects the Director of the Ohio Public Works Commission believes are "necessary for the immediate preservation of the health, safety, and welfare" of the citizens of those local subdivisions.

DEPARTMENT OF DEVELOPMENT

- Expands the list of alternative fuels to which the Department of Development's Alternative Fuel Transportation Grant Program may apply.

Additional "alternative fuels" to which the Department of Development's Alternative Fuel Transportation Grant Program may apply

(R.C. 122.075)

The bill adds to the list of "alternative fuels" to which the Department of Development's Alternative Fuel Transportation Grant Program may apply to include all the kinds of alternative fuels to which the Fleet Management Program of the Department of Administrative Services applies. In effect, this means adding the following alternative fuels to the Department of Development's grant program: natural gas, liquefied petroleum gas, hydrogen, any power source (including electricity), and any other fuel that the United States Department of Energy determines by final rule to be substantially not petroleum and that yields substantial energy security and environmental benefits.

Under the Alternative Fuel Transportation Grant Program, the Director of Development is authorized to make grants to businesses, nonprofit organizations, public school systems, or local governments to (1) purchase and install alternative fuel refueling or distribution facilities and terminals, (2) purchase and use alternative fuel, and (3) pay the costs of educational and promotional materials and activities intended for prospective alternative fuel consumers, fuel marketers, and others in order to increase the availability and use of alternative fuel. At present the only kinds of alternative fuels to which the program applies are blended biodiesel, blended gasoline, and compressed air used in air-compression driven engines.

Under the bill, the Department of Development's grant program is expanded to include all the kinds of alternative fuels to which the Fleet Management Program of the Department of Administrative Services applies. Under the Fleet Management Program, DAS is required to ensure that all new motor vehicles purchased or leased by the state for use by a state agency are capable of using an alternative fuel except where emergency or exigent circumstances exist and except where doing so cannot be done economically or would not meet the energy conservation and exhaust emissions criteria described in DAS rules. Moreover, all motor vehicles owned or leased by the state that are capable of using an alternative fuel must use an alternative fuel if it is reasonably available at a reasonable price. The specific alternative fuels to which the Fleet Management Program applies are "E85 blend fuel"; compressed air; blended biodiesel; natural gas; liquefied petroleum gas; hydrogen; any power source, including electricity; and any other fuel that the United States Department of Energy determines by final rule to be substantially not petroleum and that yields substantial energy security and environmental benefits.

MISCELLANEOUS

- Eliminates fees paid to the Public Utilities Commission of Ohio for shipments, exceeding a certain quantity, of nuclear materials.
- Permits the Speaker of the House of Representatives and the Senate President (respectively) to designate the vice-chairpersons of the finance committees to serve on the Controlling Board instead of the chairpersons.
- Eliminates a provision of current "Buy Ohio" purchasing preference, which deems that there is sufficient competition to prevent an excessive price or the acquiring of a disproportionately inferior product if there are two or more qualified bids that offer products that have been produced or mined in Ohio.
- Increases the threshold at which a port authority must open construction work to competitive bidding from \$25,000 at present to the greater of \$100,000 or, beginning on January 1, 2012, \$100,000 as adjusted for inflation every two years.
- Requires that, to the extent possible, federal money received for fiscal stabilization and recovery purposes be used to encourage the purchase of supplies and services from Ohio companies and stimulate job growth and retention.
- Allows an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device to be located in the front windshield of a passenger car or commercial car as an exception to the general prohibition against the display of material on the windshield.
- Exempts from the commercial activity tax certain in-kind exchanges of petroleum products between motor fuel dealers.
- Extends for the 2012-2013 fiscal biennium the motor fuel prompt payment and shrinkage allowances for distributors and retail dealers of motor fuel applicable to FY 2008-2011 (1% and 0.5%, respectively).
- Conveys state land to the city of Massillon.
- Revises what constitutes an outdoor performing arts center for purposes of on-premises consumption of wine by reducing the required acreage of such a center.

Elimination of fees for the shipment of nuclear materials

(R.C. 4905.801 (repealed); conforming changes in R.C. 4163.07 and 4905.802 (renumbered 4905.801))

The bill eliminates fees currently required to be paid to the Public Utilities Commission of Ohio (PUCO) for the shipment of nuclear materials meeting or exceeding the federal highway route controlled quantity. This quantity is calculated based on values of radioactive units of certain isotopes; it varies based on the form and class of radioactive material.² Current law requires the shipper of such a shipment (motor carrier or rail) to provide notice and pay a fee before transporting the shipment into Ohio. The bill does not alter the notice requirement, but eliminates the fees, which are currently:

- \$2,500 per shipment by a motor carrier;
- \$4,500 for the first casket by rail.

These fees are currently deposited into the Radioactive Waste Transportation Fund, which fund is to be used for various purposes relating to the shipments described above (such as local escort expenses and training of emergency response providers), as determined by the PUCO. The bill does not eliminate the fund, as fines for violating the notice requirement described above are also credited to the fund. These fines can be up to ten times as much as the fees being eliminated by the bill.

Controlling Board membership

(R.C. 127.12)

The bill permits the vice-chairpersons of the House Finance and Appropriations and Senate Finance Committees to serve on the Controlling Board. Current law requires the *chairpersons* of those committees to serve on the Board. The bill permits the Speaker of the House of Representatives and the Senate President (respectively) to designate the vice-chairperson to serve instead of the chairperson.

Buy Ohio

(R.C. 125.11)

In regard to the general preference for Ohio products in competitively bid purchase contracts of the state that are made by the Department of Administrative

² 49 C.F.R. 173.403 and 173.435.

Services (or other state agencies that follow DAS purchasing), the bill eliminates a provision of current law deeming "that there is sufficient competition to prevent an excessive price for the product or the acquiring of a disproportionately inferior product" if there are two or more qualified bids that offer products that have been produced or mined in this state.

Port authority competitive bid threshold

(R.C. 4582.12 and 4582.31)

The bill increases the contract amount for the construction by a port authority of a building, structure, or other improvement above which the port authority must utilize competitive bidding. At present the threshold amount is \$25,000. Under the bill, it is to be \$100,000 or, commencing January 1, 2012, \$100,000 plus an amount based on the average increase for the prior two years in the Producer Price Index for Material and Supply Inputs for New Nonresidential Construction as determined by the United States Bureau of Labor Statistics. The inflation adjustment is to be made by the Director of Commerce on January 1 of every even-numbered year.

Use of federal money for fiscal stabilization and recovery purposes

(Section 755.50)

The bill requires that, to the extent permitted by federal law, federal money received by the state for fiscal stabilization and recovery purposes must be used in accordance with the preferences for products and services made or performed in the United States and Ohio established under the "Buy Ohio" and "Buy American" programs in continuing law.

Installation of certain electronic devices in a car's front windshield

(R.C. 4513.24)

Existing law generally prohibits the display of material on the front windshield of a motor vehicle other than a bus but exempts a sign, poster, or decal that is not more than four inches in height and six inches in width that is located in the *lower* left-hand or right-hand corner of the windshield. The bill provides that the prohibition does not apply to a person who is driving a passenger car or a commercial car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if the device does not restrict the vehicle operator's sight lines to the road and highway signs and signals. In addition, in the case of a passenger car, the device must not conceal the vehicle identification number. In the case of a commercial car, the

device must be mounted not more than six inches below the upper edge of the windshield and outside the area swept by the vehicle's windshield wipers.

CAT exemption for receipts from motor fuel exchanges

(R.C. 5751.01; Section 757.10)

The bill exempts certain in-kind exchanges of petroleum products between motor fuel dealers from the commercial activity tax. Under existing law, the commercial activity tax is levied on a business' annual taxable gross receipts. Businesses with annual taxable gross receipts between \$150,000 and \$1 million pay an annual minimum tax of \$150; businesses with over \$1 million in annual gross receipts pay the \$150 minimum tax plus 0.26% of the gross receipts exceeding \$1 million.

Generally, a business' annual "gross receipts" equals the total amount realized by the business during the tax year, without deduction for the cost of goods sold or other expenses, from activities that contribute to the production of the business' gross income.

Under the bill, gross receipts from certain described exchanges of petroleum products between licensed motor fuel dealers are not taxable gross receipts. To qualify, the exchanging motor fuel dealers must each agree that neither will receive monetary compensation for the value of the exchanged products except to compensate for differences in the location or grade of the products. In addition, delivery of the petroleum products must occur at a refinery, terminal, pipeline, or marine vessel. Amounts that a motor fuel dealer does receive as compensation for differences in the location or grade of exchanged products continue to be taxable gross receipts. Certain fees arising from an exchange, such as pipelines security fees or handling, lubricity, dye, and additive injections fees, also remain taxable.

The exemption applies retrospectively to any tax year beginning on or after July 1, 2005, which is the original inception date of the commercial activity tax. The bill states that the amendment "is intended to clarify" existing law.

Motor fuel excise tax: continuation of current evaporation and shrinkage allowance

(Section 755.30)

Under existing law, a motor fuel excise tax of 28¢ per gallon is imposed on motor fuel dealers. The codified law governing the motor fuel excise tax³ provides that a motor fuel dealer filing a complete and timely monthly tax report with payment is

³ R.C. 5735.06.

entitled to deduct the tax due for 3% of the fuel gallonage the dealer received, minus 1% of the fuel gallonage sold to retail dealers. This deduction is to cover the costs of filing the report and to account for evaporation, shrinkage, and other losses. The last two transportation appropriations acts reduced the 3.0% deduction for fiscal years 2008 through 2011 to 1.0% (minus 0.50% of gallonage sold to retail dealers). The bill extends for the 2012-2013 fiscal 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 two transportation appropriations acts reduced the refund percentage to 0.50% for fiscal years 2008 through 2011. The bill extends for the 2012-2013 fiscal biennium the uncodified 0.5% retail dealer shrinkage refund of the taxes paid on the fuel received by a retail dealer.

City of Massillon land conveyance

(Section 753.10)

The bill authorizes the Governor to execute a deed in the name of the state conveying to the city of Massillon ("grantee"), and its successors and assigns, all of the state's right, title, and interest in 8.622 acres of real estate located in the city of Massillon, Stark County, and which is part of a 40-acre tract that was conveyed to the Ohio Youth Commission.

The grantee must pay \$15,000 to the state at closing in consideration for the conveyance plus the costs of the conveyance. The consideration derives from a mutual agreement between the state and the grantee through an executed offer to purchase.

The grantee also must do all of the following:

- (1) Construct and maintain, at the grantee's sole expense, a detention basin on the real estate;
- (2) Permit the state to discharge water into the detention basin; and
- (3) Maintain or relocate the state's existing storm sewer connections.

The real estate must be sold as an entire tract and not in parcels. Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General,

⁴ R.C. 5735.141.

must prepare a deed to the real estate. The deed must state the consideration and the conditions, and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Stark County Recorder and must pay the recordation costs.

Authority to make the conveyance described above expires one year after the effective date of the section of law in which it is expressed.

Wine at outdoor performing arts centers

(R.C. 4301.62)

The bill revises what constitutes an outdoor performing arts center for purposes of on-premises consumption of wine by reducing the required acreage of such a center. For purposes of an existing statute that allows a person, under specified circumstances, to have in the person's possession on a D-2 liquor permit premises an opened or unopened container of wine that was not purchased from the D-2 permit holder if the premises for which the D-2 permit is issued is an outdoor performing arts center, the bill specifies that an outdoor performing arts center is a center that is located on not less than 150 acres, rather than not less than 800 acres as in existing law, and that is open for performances from April 1 to October 31 of each year. The bill retains the following additional conditions:

- (1) The person is attending an orchestral performance; and
- (2) The D-2 permit holder grants permission for the possession and consumption of wine in certain predesignated areas of the premises during the period for which the D-2 permit is issued.

A D-2 liquor permit may be issued under existing law to allow retail sale of wine or mixed beverages by individual glass or in containers for on- or off-premises consumption.

HISTORY

ACTION	DATE
Introduced	02-22-11
Reported, H. Finance & Appropriations	03-09-11

H0114-RH-129.docx/jc:ks

