



# Ohio Legislative Service Commission

## Bill Analysis

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### **H.B. 51\***

130th General Assembly

(As Reported by H. Finance and Appropriations)

(Excluding appropriations and similar provisions)

**Reps.** McGregor and Patmon, Wachtmann, Amstutz

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## **BILL SUMMARY**

- 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,

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

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.
- Establishes that the Commission is a political subdivision for purposes of the Political Subdivision Sovereign Immunity Law.
- 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.

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## **CONTENT AND OPERATION**

### **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 of Transportation 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 of Transportation was given the authority to exercise the powers of the Ohio Turnpike Commission.

#### **Infrastructure projects and funding**

(R.C. 5537.03, 5537.08, 5537.12, 5537.13, and 5537.21)

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* (rather than *sufficient* as under current law) to pay the cost of maintaining, improving, repairing, constructing, and operating the Ohio turnpike system, and for any reserves for those purposes. 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 any 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. 5537.04 and 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 Transportation Review Advisory Council (TRAC). The TRAC is an appointed council that is chaired by the Director of Transportation 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, 5537.04, 5537.17, and 5537.24)

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.

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**

(R.C. 126.60, 126.601 through 126.605 (repealed))

The bill repeals authority granted in 2011 that allows 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**

#### **Political Subdivision Sovereign Immunity Law**

The bill establishes that the Commission is a political subdivision for purposes of Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.). As a general matter, the Political Subdivision Sovereign Immunity Law establishes the scope of liability for political subdivisions. The law establishes civil liability and immunity for the subdivision and employees based generally on whether the function was governmental or proprietary. 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.

### **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.

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## HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, H. Finance & Appropriations	-----

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