



Ohio Contractors Association

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Ohio Senate Transportation Committee
Interested Party Testimony for HB 74
Christopher L. Runyan, President
March 18, 2021

Chair Kunze, Vice Chair Reineke, Ranking Minority Member Antonio, and members of the Senate Transportation Committee, thank you for the opportunity to provide testimony on HB 74, the transportation budget bill.

My name is Chris Runyan, and I am the President of the Ohio Contractors Association (OCA). By way of background, OCA is the trade association for the heavy/highway construction industry. Our membership consists of more than 200 contractors and 250 companies and organizations that provide materials and services that support the horizontal construction industry. Our members perform most of the highway construction needs for Ohio's state and local government entities. The men and women you see constructing roadways, building bridges, and replacing water and sewer systems, those individuals are our members.

On behalf of those members, thank you for your continued support for funding Ohio's extensive transportation infrastructure system needs. The funding increase provided in the last transportation spending bill has been vital in allowing ODOT and local governments to continue to maintain the condition of the economic backbone of this state and the viability of Ohio's highway construction industry. For our members, the capital funding provided by the transportation budget bill means jobs for the more than 17,000 Ohioans employed in the heavy/highway construction industry.

While we are supportive of the funding provided in the bill, we do have concerns with three provisions added to the substitute bill that we would like addressed. The first concerns proposed increases to force account limits for local governments. Raising force account limits takes work away from private sector contractors and their workforce while expanding the projects local governments can perform without competitive bidding. Simply put, it expands government to the detriment of private construction businesses and taxpayer dollars.

Awarding public improvement through a competitive bidding process is a cornerstone for providing best value and lowest price. It demands efficient operations, reasonable material costs, and innovative strategies. The private sector is more efficient than government and better able to satisfy the goals inherent in the competitive bid process.

The private-sector construction industry relies on highway and bridge projects from all levels of government to sustain good paying jobs, entice the work force of tomorrow to

adopt construction as a viable career choice and produce an outcome that will enhance the quality of life for those who use Ohio's roads and bridges. The maintenance forces of Ohio's local governments have a role to play in maintaining the highways and bridges under their charge. However, there is a notable distinction between maintaining and constructing. Recognizing that distinction, the line is clearly crossed with increases of this magnitude. We respectfully ask that these provisions be removed.

Another concern deals with the language in proposed ORC 5525.26 that would purportedly address perceived bias in the selection of pavement types used in ODOT projects. Historically, OCA does not get involved in disputes regarding pavement types. We have members performing both asphalt and concrete paving and normally take a neutral position when similar debates have arisen. However, because the language included in HB 74 goes beyond pavement selection and impacts the competitive bidding process in general, we can no longer stand on the sidelines.

We respectfully disagree with the implied notion that there is a bias in the current process. Our perspective is the opposite, the current process used by ODOT to select pavements has been long studied and debated and continuously reviewed by all parties involved. ODOT is always open to input on its process and to imply otherwise is simply not fair or accurate.

The underlying intent of the amendment is to "encourage competition among contractors" and prohibit "the adoption of any requirements or guidelines that favor a single type of highway pavement" in the bidding process. This language will likely serve to increase costs as contractors will be forced to examine pavement options, whether feasible or not, which will increase the time and resources needed to adequately prepare a bid. This is brought about by the notion that the contractor, based on cost considerations, is the ultimate decision maker for the pavement selection. This is not a role the contracting community wants or should have. While this might not be the intent, we believe the language will be interpreted in that manner by a specific pavement type advocate given the obtuse verbiage used.

If there is a need to make changes to the pavement selection process – though I am not sure we agree that there is a need - we recommend exploring bidding options such as Value Engineering or Alternative Bidding instead of making broad changes to the competitive bidding process. Value Engineering allows a contractor to propose cost saving options after a project is awarded. If accepted, the contractor and ODOT would share the cost savings. While not currently available for pavements, doing so on a limited basis would be worth exploring. Alternative Bidding allows contractors to bid a project using one of two options that achieve equivalent results. The contractors would select the design they feel is most cost effective for their operations. Using these innovative contracting methods would be a more prudent approach than a statutorily mandated requirement, in our opinion. We respectfully ask that this provision be removed from the bill.

Lastly, an amendment has been added to mandate a price adjustment for reinforcing bar, or rebar. At one time, rebar was subject to a price adjustment formula in ODOT contracts. However, in 2010 when all price adjustment clauses were being reviewed, OCA members petitioned ODOT to have rebar removed from the list. The risk of price volatility was offset by the need to track material and intermingled production sources. It is much more complex to track tens-of-thousands of individual rebars than to track large bridge beams. There were challenges in identifying independent market comparison costs as well. I would also point out that the proposed amendment language recognizes an increase in payment when the cost of rebar goes up, but, as with any price adjustment, there is no acknowledgement for the pay-back when the price of rebar drops. We recommend that the provision be removed from the bill.

While these three issues may seem inconsequential to the overall spending plan, their inclusion will only exacerbate the implications of declining infrastructure spending levels. As Director Marchbanks shared in his testimony to this Committee, the reductions in traffic from March-November of 2020 resulted in a nearly \$200 million reduction in funding for the 2020-2021 biennium. With some assistance from the federal government and slowly rebounding traffic volumes, the budget before you anticipates a reduction of \$174 million and \$159 million in fiscal years 2022 and 2023, respectively.

While the pandemic and resulting dramatic traffic declines could not have been foreseen, their occurrence does bring to light the shortcomings of a fixed motor fuel use tax system for funding transportation needs. With vehicle fuel efficiency increases and the prominence of electric and hybrid vehicles, the buying power of the motor fuel tax is eroding. We encourage continued consideration of fees for non-petroleum-powered vehicles and further discussion of a vehicle-miles-traveled model for generating revenue. Considerations of these issues will have significant impacts on how ODOT and local government entities will be able to meet their roadway and infrastructure system demands.

I would be remiss if I did not convey our support for changes to Ohio's distracted driving laws. Keeping folks that work in the heavy/highway construction industry safe is of paramount importance. OCA fully supported the language in the as-introduced version of HB 74 making distracted driving a primary offense. While distractions create dangerous situations under normal driving conditions, the prospect of a crash occurring when driving distracted is amplified in construction zones. A driver's situational awareness should be heightened not reduced because of merging construction traffic, narrowed lanes and shoulders, speed reductions, irregular traffic patterns, and uneven surface conditions often found in work zones. Being distracted magnifies these hazards and threatens the lives of motorists and the workers. Our goal must be to get every employee home to their families each night. We will continue to advocate for legislation making distracted driving a primary offense and would double fines for violations in construction zones just as they are for those speeding in construction zones.

Thank you again for the opportunity to provide testimony on HB 74. We respectfully request your support for removing the force account revisions, the language regarding pavement selection and rebar price adjustments. As ODOT and other public entities are seeing decreased infrastructure funding, now is not the time to complicate the bidding process or grow government entities by granting them authority to perform projects better completed by the private sector. Thank you for your continued support for funding Ohio's infrastructure needs. I am happy to answer any questions you may have.