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Bill Analysis

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Amanda Goodman, and other LSC Staff

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DEPARTMENT OF TRANSPORTATION

Ohio Rail Development Commission

- Beginning on October 21, 2025 (or, at an earlier date, if the current chairperson vacates their position), specifies that the Director of Transportation or the Director's designee must serve as the chairperson of the Ohio Rail Development Commission.
- Specifies that when the Director begins serving as the chairperson both of the following occur:
 - The Governor will no longer appoint one member to be the chairperson; but
 - The number of commission members appointed by the Governor to represent the general public increases from one to two, thereby maintaining the current number of members on the Commission.

Regional Transit Authority (RTA) audits

- Eliminates a requirement that the State Auditor annually conduct an audit of the accounts and transactions of one large and two small RTAs.
- Eliminates the associated requirement that the Auditor send a copy of that audit report to the Senate President, Speaker of the House, and Director of Budget Management within 90 days of completion.
- Retains the general requirement that the Auditor audit all RTAs pursuant to the law governing the audit of public agencies.

ODOT design-build authority

- Expands the type of Department of Transportation (ODOT) projects that may be bid as a design-build contract to include projects pertaining to all transportation facilities, which involve all modes of transportation and related facilities, not just highways or bridges as in current law.
- Allows the ODOT Director to reject a best-value bidder for a design-build contract if the Director determines that it is not in the state's best interests.
- After rejecting the best-value bidder, authorizes the Director to accept another bid or to reject all bids and rebid the contract.

Strategic transportation and development analysis

- Requires ODOT, in collaboration with the Department of Development and the Governor's Office of Workforce Transportation, to conduct a statewide study of the Ohio transportation system.
- Specifies that the study analyze various aspects of Ohio's current transportation systems and capacities and forecast future needs and how those needs may be met.

Brent Spence Bridge Corridor Project

- Specifies that all spending related to the Brent Spence Bridge Corridor Project be documented in the Ohio Administrative Knowledge System (OAKS) and visible in the Ohio State and Local Government Expenditure Database.

Indefinite delivery indefinite quantity (IDIQ) contracts

- Authorizes the ODOT Director to enter into indefinite delivery indefinite quality (IDIQ) contracts for up to two projects in FYs 2024 and 2025.
- For IDIQ contracts, requires the Director to prepare bidding documents, establish contract forms, determine contract terms and conditions, develop and implement a work order process, and take any other action necessary to fulfill the Director's duties and obligations related to IDIQ contracts.

Ohio Rail Development Commission

(R.C. 4981.02)

The bill modifies the makeup of the Ohio Rail Development Commission by specifying that on October 21, 2025, or when the current chairperson of the Commission vacates their position before that date, the Director of Transportation or the Director's designee must serve as the chairperson of the Commission. The Director currently serves as a voting member of the Commission, but current law requires the Governor (with the advice and consent of the Senate) to appoint a chairperson. Under the bill, once the Director or the Director's designee becomes chairperson, the Governor must appoint another member of the Commission who represents the general public.

The Commission currently is comprised of 15 members – four nonvoting members from the legislature; two voting members, one appointed by the Senate President and one appointed by the Speaker of the House; the Director of Transportation and the Director of Development Services, both voting members; and seven voting members appointed (with the advice and consent of the Senate) by the Governor. The seven members appointed by the Governor are: (1) a chairperson, (2) a person who represents the interests of a freight rail company, (3) a person who represents the interests of passenger rail service, (4) a person who has expertise in infrastructure financing, (5) a person who represents the interests of organized labor, (6) a person who represents the interests of manufacturers, and (7) a person who represents the general public.

Under the bill, the Governor still will appoint seven members after October 21, 2025 (or on the date that the current chairperson vacates their position), but will appoint two general public members instead of one general public member and one chairperson.

Regional Transit Authority (RTA) audits

(R.C. 5501.09, repealed; R.C. 117.11, not in the bill)

The bill eliminates a requirement that the State Auditor annually conduct an audit of the accounts and transactions of one large and two small RTAs. Accordingly, the bill eliminates the associated requirement that the Auditor send a copy of that audit report to the Senate President, Speaker of the House, and Director of Budget Management within 90 days of completion. Under current law retained by the bill, the Auditor must audit all RTAs pursuant to the law governing the audit of public agencies. However, a copy of that report is not required to be sent to the President, Speaker, and Director.

ODOT design-build authority

(R.C. 5517.011)

The bill expands the type of Department of Transportation (ODOT) projects that can be bid as a design-build contract. A design-build contract combines the design and construction phases of a project under one contract. Generally, the design phase and the construction phase are bid as two separate contracts.

Under current law, the ODOT Director may only use design-build contracts for highway or bridge projects. The bill allows ODOT to enter into design-build contracts for the design and construction of all transportation facilities. Transportation facilities include all publicly owned modes and means of transporting people and goods, including highway, aviation, rail, and port facilities. Transportation facilities also include physical buildings and infrastructure such as garages, district offices, rest areas, and roadside parks.

Regarding competitive bidding for projects, the bill allows the Director to reject a best-value bidder for a design-build contract on the grounds that the contract would not be in the state's best interest. After rejection of the bid, the Director may accept another bid or reject all bids and rebid the contract.

Strategic transportation and development analysis

(Section 203.47)

The bill requires ODOT, in collaboration with the Department of Development and the Governor's Office of Workforce Transformation, to conduct a statewide study of the Ohio transportation system. The study must do all of the following:

1. Analyze statewide and regional demographics;
2. Investigate economic development growth opportunities;
3. Examine current transportation systems and capacities;
4. Forecast passenger and freight travel needs over a 10-, 20-, and 30-year timeframe;
5. Identify current and future transportation links;
6. Evaluate and rank current and potential risks of future system congestion; and

7. Make actionable recommendations for transportation system projects to support statewide economic growth, especially in improving the links between Toledo and Columbus.

ODOT may contract with third parties, as necessary, to execute the study. The bill appropriates \$10 million in FY 2024 for the study.

Brent Spence Bridge Corridor Project

(Section 203.47)

The bill requires ODOT to document all spending related to the Brent Spence Bridge Corridor Project in the Ohio Administrative Knowledge System (OAKS) and made visible in the Ohio State and Local Government Expenditure Database. The Database is maintained by the State Treasurer and the Directors of Budget and Management and Administrative Services and is accessible on their websites. It is designed to track state expenditures and create greater transparency with the public.¹

Indefinite delivery indefinite quantity (IDIQ) contracts

(Section 203.100)

The bill requires the ODOT Director to advertise, seek bids for, and award indefinite delivery indefinite quantity (IDIQ) contracts for up to two projects in FYs 2024 and 2025. An IDIQ contract is a contract for an indefinite quantity, within stated limits, of supplies or services that will be delivered by the awarded bidder over a defined contract period. When entering into IDIQ contracts, the Director must prepare bidding documents, establish contract forms, determine contract terms and conditions, develop and implement a work order process, and take any other action necessary to fulfill the Director's duties and obligations related to IDIQ contracts. The Director must ensure that an IDIQ contract includes the maximum overall value of the contract, which may include an allowable increase of \$100,000 or 5% of the advertised contract value, whichever is less, and the duration of the contract, including a time extension of up to one year if determined appropriate by the Director. The requirements pertaining to IDIQ contracts are an extension of the requirements from previous transportation budgets.

¹ For additional information regarding the Ohio State and Local Government Expenditure Database, see the LSC [Final Analysis for H.B. 110 of the 134th General Assembly \(PDF\)](#), which is available on the General Assembly's website: legislature.ohio.gov.

DEPARTMENT OF PUBLIC SAFETY

Pay ranges for Highway Patrol officers and other employees

- Repeals a requirement that the Director of Administrative Services adopt rules establishing pay range 19 and step value seven in pay range 17 in salary schedule E-1 for exempt state employees.
- Beginning July 1, 2023, assigns lieutenant colonels in the Ohio State Highway Patrol, or their equivalents, to pay range 45 in salary schedule E-2.

Pay ranges for Highway Patrol lieutenants and other employees

(R.C. 124.152 and 5503.031; Section 812.15)

The bill repeals a requirement that the Director of Administrative Services adopt rules to do both of the following:

- Establish pay range 19 in salary schedule E-1, which applies to exempt state employees beginning July 1, 2023;
- Establish step value seven in existing pay range 17 of schedule E-1, applicable to exempt state employees beginning July 1, 2023.

This requirement was established in H.B. 462 of the 134th General Assembly, effective April 3, 2023. Under current law, the rules establishing step value seven in pay range 17 must identify the hourly and annual pay for the step. The pay must be proportionally higher than the hourly and annual pay for step value six. Current law also requires the rules establishing pay range 19 to require an individual be paid a minimum annual salary of \$101,935 up to a maximum annual salary of \$122,465, and to create step values within the range and determine the hourly and annual pay for each step.

Beginning July 1, 2023, the bill also requires lieutenant colonels in the Ohio State Highway Patrol, or their equivalents, be paid in accordance with pay range 45 from schedule E-2 of the exempt employee pay schedule in continuing law. Currently, under H.B. 462 (effective April 3, 2023), they must be paid in accordance with pay range 19 in schedule E-1.

Under continuing law, schedules E-1 and E-2 generally apply to employees who are part of the state job classification plan and who are not considered public employees for purposes of the Public Employees' Collective Bargaining Law.

The bill prohibits the DAS Director from taking any action with respect to the rule adoption requirements repealed by the bill. It also specifies that both the elimination of the rule adoption requirement and the change in Highway Patrol lieutenant colonels' pay take effect July 1, 2023.

The requirement for the DAS Administrator to adopt the pay schedule rules takes effect April 3, 2023, which is before the date the repeal of that requirement and the prohibition against taking action are to take effect (July 1, 2023). Therefore, the effect of the prohibition against the DAS Director adopting the rules is unclear.

LOCAL GOVERNMENT

Cincinnati Southern Railway

- Permits a railway board of trustees (board) created under the Ferguson Act of 1869 to sell a railway or portion of a railway upon approval by the electorate, including when and in what amount the proceeds are to be periodically disbursed to the city.
- Permits a board to establish a trust fund to invest the proceeds of the sale of the railway.
- Clarifies that all net earnings and income under a lease of a municipally owned railway must be paid into the city's treasury to the credit of the sinking fund or bond retirement fund.
- Requires a board to report to the city annually, and to periodically disburse earnings from the fund to the city, in a frequency and amount to be determined by the board in consultation with the fiscal officer of the city, and which must meet the minimum disbursement criteria as determined by the electors.
- Requires the city to spend the proceeds from the trust fund only on the rehabilitation, modernization, or replacement of existing infrastructure improvements, and prohibits the city from using the proceeds to pay for the construction of new infrastructure improvements.
- Prohibits the city from using the proceeds of the trust fund to pay debt service, unlike other revenues from a municipally owned railway.
- Requires members of the board appointed after the bill's effective date to be residents of the municipal corporation that owns the railway.
- Requires the board to administer the trust fund according to the prudent investor standard of care, to retain at least one independent financial advisor, and to adopt policies and objectives for the investment of the trust fund, which must be made public.
- Permits the board to hire staff and retain advisors as appropriate, if reasonably related to the assets and purpose of the trust fund, and requires that they, as well as the cost of administering the trust fund, be paid from the investment earnings of the trust fund.
- Prohibits board members from having conflicts of interest, from borrowing funds or deposits from the board, or from being an indorser, surety, or obligor for moneys loaned by or borrowed from the board.
- Provides that any proceedings pending or in progress on the bill's effective date are deemed to be taken in conformity with the bill's provisions.

The Cincinnati Southern Railway

The bill permits a railway board of trustees (board) created under the Ferguson Act of 1869 to sell a municipally owned railway, upon approval of the electorate, and invest the

proceeds in a trust fund. In practice, the bill applies only to the Cincinnati Southern Railway Board of Trustees.

Background

The City of Cincinnati owns and leases the Cincinnati Southern Railway, the only municipally owned interstate railway in the country. The railway, completed in 1879, begins in Cincinnati and runs south through Lexington (KY), Danville (KY), Somerset (KY), Oneida (TN), Oakdale (TN), and Dayton (TN) before ending in Chattanooga on the southern border of Tennessee. The railway currently is leased to the Cincinnati, New Orleans and Texas Pacific Railway.²

The Cincinnati Southern Railway was authorized by the General Assembly with the passage of the Ferguson Act of 1869 (the “Ferguson Act”).³ The Ferguson Act created the Cincinnati Railway Board of Trustees, which governs the Cincinnati Southern Railway. The board consists of five members, no more than three of whom can be of the same political party, appointed by the Mayor of Cincinnati and approved by the city council. Trustees serve five-year terms, and have no term limits.⁴

The Ferguson Act, as subsequently amended, explains the current process by which the city may sell railway property.⁵

Procedures to sell railway property

The bill creates new procedures to sell railway property, upon approval by the electorate, and repeals the current law sales provisions. These steps are outlined below.

Resolution proposing a sales agreement

(R.C. 746.02(A)(1))

Under the bill, the board may solicit or receive offers for all or any portion of a railway. Then, the board may approve and enter into a sales agreement by adopting a resolution that includes the terms of the proposed sale, including the method to be used to determine the minimum annual amount to be transmitted to the municipal corporation. This annual amount may only be amended upon consultation with the municipality’s fiscal officer. The amount transferred each year must be equal or greater than the amount approved by the electors, if ultimately approved. (See “**Periodic disbursements to the city**,” below, for more details on disbursements under the trust fund).

² See the [Cincinnati Southern Railway’s website](http://cincinnati-southern-railway.org), which is available at cincinnati-southern-railway.org.

³ “An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants” passed May 4, 1869 (66 O. L. p. 80).

⁴ Cincinnati Code of Ordinances Sec. 205-1.

⁵ H.B. 1 of the 100th General Assembly, Am. S.B. 200 of the 98th General Assembly, Am. H.B. 314 of the 102nd General Assembly, S.B. 562 of the 104th General Assembly, and H.B. 69 of the 112th General Assembly.

Resolution setting a date of election

(R.C. 746.02(A)(2) and (B), (C), (D), and (E))

After the board has adopted a resolution with the proposed sale terms, the board may adopt a second resolution setting the date of the election in which the question of approval of the sale is to be submitted to the electors of the municipal corporation, along with the applicable ballot language. The board must then certify this resolution to the legislative authority and fiscal officer of the municipal corporation. The legislative authority, upon receiving a copy of the resolution, must certify the resolution to the board of elections no less than 90 days before the election date specified in the resolution. The board of elections must then submit the resolution for the approval or rejection of the electors of the municipal corporation at the election specified in the resolution.

The bill specifies the applicable ballot language, which includes the terms of the proposed sale, and which specifies that the funds will be used for the purpose of the rehabilitation, modernization, or replacement of existing streets, bridges, municipal buildings, parks and green spaces, site improvements, recreation facilities, improvements for parking purposes, and any other public facilities owned by the municipal corporation, and to pay for the costs of administering the trust fund.

The legislative authority must provide notice of the election, by publishing it in a newspaper of general circulation within the municipal corporation for the two consecutive weeks before the election, and the board of elections must post it on the board of elections' website no later than 30 days before the election, if the board of elections maintains a website.

The notice must state the time and place of the election, and include the terms of the proposed sale, which must include a description of the railway or portion of the railway to be sold, the name of the proposed purchaser, the purchase price to be paid, including the amount and due date of any installments of the purchase price, the purposes for which the proceeds of the sale may be used, and the initial minimum annual amount payable to the municipal corporation.

If the question is approved by a majority of the electors voting on it, the railway board of trustees may proceed to complete the sale. The net proceeds from the sale are deposited into the railway proceeds trust fund established by the bill. If the question is not approved by the electors, the board may not move forward with the sale.

Current railway sale process

(Section 610.50 (repeal of Ohio General Code section 15149, Am. S.B. 200 of the 98th General Assembly (1949), and H.B. 69 of the 112th General Assembly (1977)))

Under the current process repealed by the bill, the proceeds from selling a portion of the railroad must be paid into the treasury of the municipal corporation, to the credit of a sinking fund or bond retirement fund, and must be applied to the reduction of the bonded debt of the municipal corporation until the debt is extinguished. Additionally, current law provides that the railroad may be sold only upon approval of the electorate, the question to be submitted to the electors in the first general election that occurs 40 days after the

announcement of the proposed sale by the board. This requirement does not apply to “property adjacent to the railroad having no major affect, influence, or importance to its operation.”

The bill preserves current law permitting the board to sell “any property, land, right-of-way, or easement which is a part of its line of railway but which is no longer needed, in the opinion of such board, in the operation thereof . . .”⁶ Under the bill, the board continues to be able to sell *unneded* property without requiring approval from the electorate.

Railway proceeds trust fund

(R.C. 746.03(A), 746.06, and 746.07; Section 610.50 (repeal of Ohio General Code section 15149, Am. S.B. 200 of the 98th General Assembly (1949), and H.B. 69 of the 112th General Assembly (1977)))

The bill establishes the railway proceeds trust fund (“trust fund”), to consist of net proceeds from the sale of all or part of a railway, to be administered by board. The sole beneficiary of the trust fund is the municipality that owned the railway or portion of the railway before the sale. Funds in the trust fund are not considered part of the unencumbered balance or revenue of the municipality for the purposes of certifying available revenue for tax levies.⁷

Under current law repealed by the bill, proceeds from the sale of all or part of a railway must be paid to the municipal treasury to the credit of the sinking fund or bond retirement fund, for the purpose of paying on debt service.

The bill clarifies that, under continuing law, all net earnings and income under a lease of a municipally owned railway must still be paid into the municipal treasury to the credit of the sinking fund or bond retirement fund. But under the bill, proceeds from the sale of all or part of a railway may not be used to pay debt service, and instead must be deposited into the trust fund, to be invested as the board determines, the earnings of which are periodically disbursed (see “**Periodic disbursements**,” below). “Debt service” means the principal, interest, and redemption premium payments, and any deposits pertaining thereto, required with respect to bonds.

The municipal corporation must spend the proceeds from the trust fund only on the rehabilitation, modernization, or replacement of existing infrastructure improvements. It is prohibited from using the proceeds to pay for the construction of new infrastructure improvements. Under the bill, “existing infrastructure improvements” is defined as streets, bridges, municipal buildings, parks and green space, site improvements, recreation facilities, improvements for parking purposes, and any other public facilities that are owned by a municipal corporation with a useful life of five or more years.

⁶ Am. H.B. 314 of the 102nd General Assembly (1957).

⁷ See R.C. 5705.35 and 5705.36, not in the bill.

Board duties

(R.C. 746.03(B) and (C) and 746.04)

The bill puts the board in charge of the trust fund, and makes other changes to the board. Under the bill, any board members appointed after the bill's effective date must be residents of the municipal corporation.

The board must manage and administer the trust fund, in accordance with the bill's provisions and with ordinances passed by the legislative authority of the municipal corporation not in conflict with the bill. The investment of the trust fund is not subject to the Uniform Depository Act or any other conflicting provisions of the Revised Code.

The bill permits the board to invest and reinvest the moneys and assets held in the trust fund, holding them to the "prudent investor" standard of care. This standard requires the trustees, when investing, to consider the purposes, terms, distribution requirements, and other circumstances of the trust, exercising reasonable care, skill, and caution, among other things.⁸

The bill also requires the board to retain at least one independent financial advisor to assist it in investing the trust fund. In order to fulfill the board's duties and responsibilities in administering the trust fund, the board may hire managers, administrative staff, agents, attorneys, and employees, and engage advisors, as are appropriate and reasonable in relation to the assets of the trust fund, the purposes of the trust, and the skills and knowledge of the board members. The board must provide for payment of these and other reasonable expenses of administering the trust fund from the investment earnings on the trust fund.

The bill also requires the board, in consultation with the fiscal officer of the municipal corporation, to adopt management and investment policies containing objectives and criteria designed to ensure the trust fund is administered efficiently and self-sustaining, and that the money and assets in the trust fund are not diminished while providing the municipal corporation its periodic disbursements (see "**Periodic disbursements**" below). The policies must address asset allocation targets and ranges, risk factors, asset class benchmarks, eligible investments, time horizons, total return objectives, a strategy for long-term growth of the principal of the trust fund, competitive procurement processes, fees and administrative expenses, and performance evaluation guidelines. The board must make these policies public upon their adoption.

The board also must make an annual report to the fiscal officer of the municipal corporation, in form and content as reasonably requested by the fiscal officer, showing the fiscal transactions of the trust fund for the calendar year, the amounts of accumulated moneys and securities, and the most recent balance sheet showing the financial condition of the fund by means of audited financial statements.

Additionally, the bill prohibits certain conflicts of interest within the board: no board member may have any direct or indirect interest in the gains or profits of any investment made

⁸ See R.C. 5809.02, not in the bill, for a complete description of the prudent investor standard of care.

by the board, and no member, and no person directly or indirectly connected with the board, for self or as an agent or partner of others, may borrow any of the funds or deposits of the board or trust fund, or in any manner use the funds except to make current and necessary payments as authorized by the board. No member or agent of the board may become an Indorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board.

Periodic disbursements

(R.C. 746.05)

The beneficiary of the trust fund is the municipal corporation that owned the railway that was all or partly sold. To this end, the board must periodically, at least annually, disburse a certain amount of proceeds of the trust fund to the municipal corporation.

No later than September 30 each year, the board must certify to the municipal corporation the amount of funds the board will disburse to the municipal corporation over the course of the municipal corporation's immediately following fiscal year. During that year, with such frequency and in such installments as may be determined by the board after consultation with the fiscal officer of the municipal corporation, the board must transmit the certified amount to the municipal corporation.

The amount transferred must be no less than the amount approved by the electors when the electors voted to approve the sale of the railway (see "**Procedures to sell railway property**," above), which must increase each year in the manner set forth in the methodology that was approved by the electors.

The amount must be paid from investment earnings of the trust fund, after the payment of the expenses incurred in administering the trust fund. If there are not sufficient investment earnings in a year to pay the certified amount, the board must pay the remainder of the certified amount from the principal amount of the trust fund.

DEPARTMENT OF TAXATION

Motor fuel tax allowances and refunds

- Continues the 1% fuel dealer and 0.5% retailer shrinkage allowances in effect biennially since 2008, superseding the 3% and 1% allowances in permanent codified law.

Motor fuel tax allowances and refunds

(Section 757.20)

Since FY 2008, each motor fuel dealer that properly files and pays monthly motor fuel excise taxes may deduct from the payment the tax otherwise due on 1% of the fuel the dealer received, minus 0.5% of the fuel sold to retail dealers.⁹ This allowance is to cover the costs of filing the report and to compensate for evaporation, shrinkage, and other “unaccounted for” losses. Under permanent codified law, however, the percentages are 3% and 1%, respectively.¹⁰ But each of the last eight transportation appropriation acts reduced the 3% discount to 1% (minus 0.5% of fuel sold to retail dealers). The bill continues the allowance at the reduced 1% level throughout the FY 2024-2025 biennium.

Retail fuel dealers who have purchased fuel on which the excise tax has been paid may receive a refund to account for evaporation and shrinkage.¹¹ In permanent codified law, the refund equals 1% of the taxes paid on the fuel each semiannual period. But, as with the dealer shrinkage allowance, the retailer refund has been reduced to 0.5% for each fiscal year from 2008 through 2023 by uncodified provisions in the last eight transportation appropriation acts. The act continues the reduced percentage at this level through the FY 2024-2025 biennium.

HISTORY

Action	Date
Introduced	02-15-23

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⁹ Section 757.20 of H.B. 74 of the 134th General Assembly.

¹⁰ R.C. 5735.06(B)(1)(c), not in the bill

¹¹ R.C. 5735.141, not in the bill.