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Bill Analysis

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Version: As Reported by House Finance *

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CORRECTED VERSION

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* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

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Department of Taxation

Motor fuel excise tax

- Increases the per-gallon rates of the motor fuel excise tax and the motor fuel use tax by a total of 10.7¢ for gasoline, and a total of 20¢ for diesel and other fuels, in three annual stages beginning October 1, 2019.

- Extends the taxes to compressed natural gas (CNG) that is held in high-pressure containers at a pressure of at least 2,900 bars and used to propel vehicles on public roads.
- Maintains current revenue distribution proportions and amounts for revenue derived from the first 28¢ of the per-gallon rate.
- Allocates 55% of the revenue from the rate increases to the state (Highway Operating Fund) and 45% to local governments (Gasoline Excise Tax Fund), with the local shares being divided among counties, townships, and municipalities in roughly the same proportions as current law.
- Modifies how new revenue arising from the increase in rates is to be distributed among townships.
- 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.
- Increases the refund for fuel used in transit, school, and county developmental disabilities board buses by the same amounts as the sequential increases in the tax rates.
- Authorizes a full fuel tax refund for fuel used in vehicles that transport people pursuant to a contract with ODOT or a public transit system.
- Requires that the amount deposited to the Motor Fuel Tax Administration Fund be determined by appropriation rather than as a percentage of motor fuel tax receipts.

Sales tax exemption for nonroad use fuel

- Exempts from the sales tax any motor fuel purchased for use by a heavy truck for a purpose other than propelling the truck on roads (e.g., for cargo refrigeration or auxiliary power units).

Transit authority: tax levy and agreements to fund infrastructure

- Authorizes a regional transit authority to levy a tax specifically to fund road and bridge infrastructure projects.
- Requires that, after levying such a tax, a regional transit authority must enter into agreements with counties, municipalities, and townships to fund such projects.
- Establishes the following procedure to implement the infrastructure agreement: (1) the authority must submit the agreement to its integrating committee, (2) the integrating committee must vote to approve or deny the agreement, and (3) if approved, the authority must expend funds only as authorized in the agreement.
- Decreases, from seven to six, the number of votes the District Two integrating committee must have to approve such an infrastructure agreement.

Use of joint ambulance district funds

- Specifically authorizes a joint ambulance district to construct, or enter into a lease-purchase agreement to acquire, buildings or equipment necessary for the district.

Oil and Gas Well Fund revenue

- Reallocates \$5 million of revenue credited to the Oil and Gas Well Fund to fund local government infrastructure projects, township roads, and township and municipal corporation general funds in any fiscal year in which the Fund's balance exceeds \$50 million.

Motor fuel excise tax

(R.C. 5735.01, 5735.011, 5735.05, 5735.051, 5735.053, 5735.142, 5735.27, and 5736.01; Sections 757.20, 757.30, 757.40, 757.50, 757.70, and 812.30)

The motor fuel excise tax is currently levied at the rate of 28¢ per gallon and applies to gasoline, diesel, kerosene (other than K-1 grade), and all other liquid fuels, including liquid natural gas and liquid petroleum gas. Nearly all the revenue is devoted, by constitutional command, solely to road and highway purposes including construction, maintenance, signals and signs and other traffic control systems, various other highway related purposes, and to retiring debt issued for such purposes. A small percentage of the revenue is attributed to tax-paid fuel for boats or other water-going vessels, and that part of the revenue is used for various waterway-related purposes. The tax is paid primarily by wholesale distributors (“dealers”).

Rate

(R.C. 5735.05)

The bill increases the per-gallon tax rate in three annual stages, beginning October 1, 2019, and imposes different rates on gasoline and other motor fuels (including diesel, liquid petroleum gas, liquid natural gas, kerosene, et al.). Once fully phased in on October 1, 2021, the overall rate increase is 10.7¢ per gallon of gasoline and 20¢ per gallon of other motor fuels including, primarily, diesel. The new rates are not indexed for inflation. The phase-in process is described in the table below.

Motor Fuel Excise Tax Rates*		
Application date	Gasoline	Diesel and other fuels
Beginning October 1, 2019	33¢	38¢
Beginning October 1, 2020	36¢	44¢
October 1, 2021, and thereafter	38.7¢	48¢

*All rates expressed in cents-per-gallon.

Motor fuel use tax

The state's motor fuel use tax rate will increase by the same amounts by operation of law. Under current law, the fuel use tax applies to fuel purchased outside Ohio but used within the state by commercial trucks.¹

Addition to tax base

(R.C. 5735.01(JJ), 5735.011, and 5736.01)

The bill extends the tax to compressed natural gas (CNG) that is held in high-pressure containers at a pressure of at least 2,900 bars (i.e., about 2,900 times the atmospheric air pressure at sea level) and used to propel vehicles on public roads or waterways. The tax will apply to gallon equivalents of CNG. The gallon equivalent standard is 126.66 cubic feet or 5.67 pounds. CNG will be taxed at the higher, "other fuels" tax rate prescribed by the bill.

Since the petroleum activity tax (PAT) base is linked to the kinds of fuel subject to the motor fuel tax, the bill expressly excludes CNG from the PAT. Also, adding CNG to the motor fuel excise tax base also removes CNG, by implication, from the commercial activity tax (CAT) base (see R.C. 5751.01(F)(2)(r)). The CAT rate is 0.26% of gross receipts from all transactions throughout the distribution chain.

Revenue distribution

(R.C. 5735.051 and 5735.27)

Revenue generated from the first 28¢ per gallon of the motor fuel excise tax rate will be distributed among state funds and among local governments in the same proportions as under current law. In fiscal year 2018, approximately 56% of the revenue was credited to the Highway Operating Fund (HOF), which is the primary state source of road and highway funding; about 6% was committed to highway debt service; and 2.75% was for transportation-related spending by various state agencies other than the Department of Transportation. About 31.5% of the revenue was distributed by statutory formula among counties, townships, and municipal corporations through the Gasoline Excise Tax Fund. An additional 3.4% of the revenue was devoted to local funding of roads and bridges through the state's local infrastructure program (LTIP) on a grant basis. Some of the revenue initially credited to the HOF has, since 2003, been circulated back to local governments in uncodified law (in the bill, this is in Section 757.30).

Revenue generated from the bill's rate increases – after subtracting amounts issued in refunds, reserved for waterway-related purposes, and for the Motor Fuel Tax Administration Fund – will be divided as follows: 55% to the HOF and 45% to the Gasoline Excise Tax Fund. The additional 2% of total revenue that the bill credits to the HOF before any other transfers would apply only to the revenue derived from the 28¢ portion (see Section 757.10 of the bill).

The local portion of the new motor fuel excise tax revenue will be divided in roughly the same proportions that apply under current law: 42.86% to municipal corporations, 37.14% to counties, and 20% to townships. As under current law, the municipal corporation share is divided proportionally by vehicle registrations and the county share is divided equally among

¹ See, R.C. Chapter 5728, not in the bill.

counties. The township share of the additional revenue would be allocated in such a fashion that each township receives the greater of (1) what it would receive of the additional township share if it were allocated equally among all 1,308 townships, or (2) 70% of what the township would receive if one-half of the additional township share were allocated in proportion to township road mileage and one-half in proportion to township vehicle registrations. (The latter amount is known as the “formula amount” or “large township” share because townships with larger territory or populations tend to receive more than if the revenue were allocated in equal amounts.) Currently, about 48% of the total township share of motor fuel excise tax revenue is allocated under this “greater of” method, the remainder being allocated equally among townships.

As under current law, one-third of any extra amount needed to cover this township allocation is contributed by the HOF, counties’ share, and municipalities’ share (in FY 2018 the extra amount needed was \$6.6 million).

Allowances, discounts, and refunds

(Section 757.20)

Current law governing the motor fuel tax permits each motor fuel dealer that properly files and pays monthly taxes to deduct the tax due on 1% of the fuel the dealer received, minus 0.5% of the fuel sold to retail dealers.² 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.³ But each of the last six transportation appropriation acts reduced the 3% discount to 1% (minus 0.50% of fuel sold to retail dealers) for each year since FY 2008. The bill continues the allowance at the reduced 1% level throughout the FY 2020-2021 biennium.

Current law also grants a refund to retail fuel dealers who have purchased fuel on which the excise tax has been paid to account for evaporation and shrinkage.⁴ 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 2019 by uncodified provisions in the last six transportation appropriation acts. The bill continues the reduced percentage at this level through the FY 2020-2021 biennium.

Transit and school buses

(R.C. 5735.142)

Under current law, transit systems, school districts, and county developmental disability boards are entitled to refunds for a portion of the fuel excise tax that was paid on the fuel used by those entities. Transit systems are refunded 27¢ per gallon of the 28¢ per gallon tax, while

² Section 757.20 of H.B. 26 of the 132nd G.A.

³ R.C. 5735.06(B)(1)(c), not in the bill.

⁴ R.C. 5735.141, not in the bill.

school districts and developmental disability boards are refunded 6¢ per gallon (i.e., the amount by which the tax rate was last increased, between 2003 to 2005).

The bill increases the refund amounts for these entities by the same amount as the increase in the motor fuel excise tax rates. Consequently, both during and after the bill's phase-in of the rate increase, transit systems will continue to absorb only 1¢ per gallon of fuel (after the refund) and school districts and developmental disability boards will continue to absorb only 22¢ per gallon.

Transit contractor refund

(R.C. 5735.142)

The bill creates a new motor fuel refund, similar to those for transit systems, school districts, and developmental disability boards, for fuel used in vehicles used to transport people pursuant to a contract with the Department of Transportation or a public transit authority. But unlike the existing refunds for those systems, the refund would be for the full amount of tax on the fuel. The refund would apply to vehicles that, under such a contract, provide public transit or paratransit services on a scheduled route on a regular and continuing basis within Ohio. The contractor's principal business operations would have to be in Ohio.

Tax Administration Fund

(R.C. 5735.053)

Under current law, 0.275% of motor fuel tax receipts are credited to the Motor Fuel Tax Administration Fund and used to pay the expenses of the Department of Taxation in administering the tax. The bill instead requires that the amount deposited to the Fund be determined by appropriation and transferred to the fund in equal monthly amounts.

Sales tax exemption for nonroad use fuel

(R.C. 5739.02(B)(6); Section 757.80)

The bill creates a new sales tax exemption for motor fuel purchased for use by heavy trucks for a purpose other than propelling the truck on roads (e.g., for cargo refrigeration or auxiliary power units). The exemption applies to fuel used by the same kinds of large trucks that are subject to the motor fuel use tax – i.e., trucks with at least three axles or weighing more than 26,000 pounds and commercial tractors (trucks used to pull semi-trailers). The exemption begins with the first month that begins at least 30 days after the provision's effective date.

Currently, if motor fuel is purchased at retail and it is not taxable under the motor fuel tax (because it is not used to propel vehicles on public roads or waterways), the sales tax generally applies. If the motor fuel excise tax has already been paid on the fuel (typically by the upstream fuel distributor), but the fuel is not used to propel a vehicle on the public highways, the purchaser may obtain a refund of the motor fuel excise tax paid (R.C. 5735.14). But the refund is reduced by the sales tax due on that fuel unless a sales tax exemption applies (e.g., the fuel is used in providing public utility service, such as a railroad). The offset is credited to the General Revenue Fund.

Transit authority: tax levy and agreements to fund infrastructure

(R.C. 164.04, 306.35, 306.70, and 5739.023; Section 703.10)

The bill authorizes a regional transit authority (RTA) to levy a sales tax specifically to fund road and bridge infrastructure projects related to its operations.

Under continuing law, a transit authority may levy a sales tax within its territory. (The tax “piggy-backs” on the state sales tax.) The authority may levy the tax, at a rate of up to 1.5%, to raise general revenue, to fund a regional transportation improvement project (RTIP), or both. The bill adds that, in addition to those purposes, an RTA may also levy a tax for the express purpose of funding road and bridge projects, provided that funding such projects is not the sole purpose of the tax. Projects may involve the construction or maintenance of county, municipal, or township roads and bridges related to the RTA’s provision of service.

Project agreements with local governments

Once an RTA levies a tax specifically for infrastructure projects, the RTA must enter into one or more agreements with counties, municipalities, or townships located within the RTA’s territory to fund the projects. The bill establishes the following procedure to implement such agreements:

1. The transit authority must submit each agreement to the appropriate public works integrating committee;
2. The integrating committee must, on at least an annual basis, review and then either approve or deny those submitted agreements;
3. The integrating committee must notify the transit authority about the approval or denial;
4. If approved, the transit authority may expend the funds, but only as authorized in the agreement.

In addition, the bill specifies that only six members (out of nine) of the District Two integrating committee are required to approve an infrastructure agreement. Generally, seven out of nine members of that committee are required to approve any action.

Tax levy resolution and ballot language

If an RTA proposes a tax that will, in part, fund infrastructure projects, the ballot language proposing the tax must state that information. In that ballot language, and in the resolution proposing the tax, a transit authority may also specify the percentage of tax revenue that will be allocated among a tax levy’s several purposes (i.e., general revenue, RTIPs, and/or infrastructure projects). If a portion of the tax proceeds will be used as general revenue, the resolution and ballot may also specify the percentage of such revenue that will be allocated to specific functions, projects, and other activities of the transit authority.

Application to projects funded by other means

The bill states that its provision authorizing a tax levy specifically for infrastructure projects is not intended to prohibit RTAs that do not levy such a tax from spending general revenue on infrastructure projects, when otherwise authorized by law.

Use of joint ambulance district funds

(R.C. 505.267 and 505.71)

The bill specifically authorizes a joint ambulance district to use its tax revenue to construct, or enter into a lease-purchase agreement to acquire, buildings or equipment necessary for the district.

Under current law, a joint ambulance district may use its funds to “purchase, lease, maintain, and use” buildings and equipment. By comparison, other districts – including joint fire districts, township fire districts, and joint police districts – may use funds for those purposes and also for constructing property or acquiring property through a lease-purchase agreement. The bill extends the ability to use funds for these latter purposes to joint ambulance districts.

Joint ambulance districts may be created by a combination of townships and municipal corporations. The districts are taxing authorities that may levy property taxes and incur debt, similar to those other joint districts.

Oil and Gas Well Fund revenue

(R.C. 321.50, 1509.02, 1509.11, and 5749.02)

Under continuing law, a portion of the revenue from severance taxes on oil and gas and certain oil and gas regulatory assessments and penalties are credited into the state’s oil and Gas Well Fund, which primarily funds the oil and gas regulatory activities of DNR’s Division of Oil and Gas Resources Management (DOGRM). Under the bill, if, at the end of a fiscal year, beginning in FY 2020, the balance of the Fund exceeds \$50 million, \$5 million from the Fund is reallocated to local governments located in areas of the state with active oil and gas production in the Marcellus or Utica shale formations to pay the costs of certain capital improvements or township roads and general township, city, and village purposes. (This “shale region” primarily encompasses the Appalachian region of eastern Ohio.)

Three million of the five million dollars is to be distributed by the Director of OBM at the end of each such fiscal year to counties based on each county’s proportionate shale activity, i.e., the number of producing shale oil and gas wells in the counties compared to the number of all such wells in the state. To assist in this distribution, the bill requires the Chief of DOGRM to certify to the Director each county’s proportionate shale activity by June 15 of each year.

Oil and Gas Well Fund revenue remitted to counties are further apportioned by county treasurers to each local government that receives LGF distributions from the county’s undivided local government fund, in proportion to the amount of such LGF funds received by the subdivision. (Counties, townships, and municipal corporations are the primary recipients of LGF revenue, but other subdivisions such as park districts and fire districts may also receive them.) A subdivision must use money received from the Oil and Gas Well Fund to fund capital improvement projects, i.e., the costs of acquiring, constructing, improving, or planning roads and bridges, sewer and water systems, and landfills and other solid waste disposal facilities.

One million of the five million dollars would be distributed for road maintenance or construction, or acquiring related equipment, by townships in each county in the shale region, as allocated in the county by a committee of the various township trustees. One million dollars

would be distributed to each township and municipal corporation where producing wells are located in the shale region, in proportion to the number of wells, to be used for any lawful township or municipal purpose.

Department of Transportation (ODOT)

Speed limits

- Expands the Director of Transportation's authority to establish variable speed limits to all highways (current law allows variable speed limits only on certain interstate highways).
- Before establishing a variable speed limit on a highway (other than an interstate highway where currently authorized), requires the Director to adopt rules pertaining to variable speed limit criteria and the parameters of any necessary engineering study.
- Requires changes to speed limits established in statute (because the statutory speed limit is either too high or too low for a particular location) to be based on criteria established by an engineering study, as defined by the Director, rather than by specific types of studies as required under current law.
- Makes clarifying changes to the statutory speed limits, including consolidating a repetitive speed limit and creating consistency in the language and terminology.

Overweight vehicles

- Removes the 150-mile radius restriction for travel under a special regional heavy hauling permit, thus allowing vehicles under the permit to travel further distances in excess of standard size and weight restrictions.
- Allows a vehicle fueled solely by compressed natural gas or liquid natural gas to exceed the gross vehicle weight and axle load limits by up to 2,000 pounds on an interstate highway.
- Makes permanent a current temporary exemption from statutory vehicle size and weight limits that applies to towing vehicles that are traveling to or returning from removing a motor vehicle from an emergency on a public highway.

Ohio's Road to Our Future Joint Legislative Study Committee

- Creates the Ohio's Road to Our Future Joint Legislative Study Committee, composed of five members from the Senate and five members from the House of Representatives (three majority members and two minority members from each chamber).
- Requires the Study Committee to review ODOT's sources of revenue, expense mitigation, technology, finance techniques, asset leverage and conditions, and employee demographics.
- Requires the Study Committee to conduct a variety of studies and analyses to assist in the overall review, as described above.

- Requires the Study Committee, by October 1, 2019, to prepare and submit a report and then present the report to the President of the Senate and the Speaker of the House of Representatives.

Eastern Bypass update report

- Requires the Director to submit a report by December 31, 2019 to the President of the Senate and the Speaker of the House of Representatives providing an update on Kentucky's Eastern Bypass Study, details pertaining to the coordination between Ohio and Kentucky, and the next steps necessary for planning and constructing the Eastern Bypass.

Highway construction, maintenance, and snow removal

- Requires ODOT to install devices in construction areas that intentionally slow down traffic, such as arrow boards, channelizing devices, and rumble strips.
- Permits the Director to provide road salt (at the Director's purchase price) to a political subdivision under specified circumstances.
- Permits the Director to remove snow and ice from, and to maintain, repair, improve, or provide lighting on, interstate highways located within a municipal corporation or to reimburse a municipal corporation for such improvements.
- Creates the Catastrophic Snowfall Fund to provide monetary aid for street maintenance costs for municipal corporations that receive 18 or more inches of snow in one event.
- Transfers \$250,000 to the Fund each fiscal year for 2020 and 2021, from the Highway Operating Fund, after certification from the Office of Budget and Management.
- Authorizes money in the Roadwork Development Fund to be used by the Development Services Agency for the construction and maintenance of public roads that provide or improve access to tourism attractions.
- Prohibits ODOT from closing any rest areas from July 1, 2019 through June 30, 2021.

State audits

- Requires the State Auditor to audit the accounts and transactions of ODOT and any regional transit authority annually, rather than biennially, as in current law.
- Requires ODOT and each regional transit authority to submit a copy of the Auditor's annual audit to the Governor, the presiding officers of each house of the General Assembly, and the Director of Budget and Management by 90 days after receiving the annual audit.

Court proceedings

- Specifies that the Director need not produce, for evidence in a court, an original electronic record, plan, drawing, or other document (in addition to an exemption for nonelectronic original items, as in current law).

- Eliminates the presumed authorization to depose the Director in all pending lawsuits. (Currently, the Director may be deposed in all such suits as long as the deposition takes place at the Director's office.)

Indefinite delivery indefinite quantity (IDIQ) contracts

- Authorizes the Director to enter into IDIQ contracts for not more than two projects in fiscal years 2020 and 2021.
- For purposes of 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.

Speed limits

(R.C. 4511.21)

Variable speed limits

The bill makes several changes to the Ohio speeding law. First, the bill expands the Director's authority to establish variable speed limits to **all** highways. A variable speed limit is a highway speed limit that can vary from the normal speed limit depending on conditions such as time of day or weather. Under current law, the Director can only establish a variable speed limit on all or portions of Interstate 670, Interstate 275, and Interstate 90 (between Interstate 71 and the Pennsylvania border).

Under the bill, before the Director may establish a variable speed limit on any highway beyond those permitted by current law, the Director must adopt rules to:

1. Specify the criteria the Director will use to establish variable speed limits, based on the criteria permitted under current law (for example, time of day, weather conditions, or traffic incidents); and
2. Define the parameters of any engineering study that is used to determine when variable speed limits are appropriate.

Other speed limit changes

In addition to variable speed limits, when ODOT or a local authority seeks to alter a speed limit established in statute, the bill requires the change be based on criteria established by an engineering study, as defined by the Director. Current law requires changes to statutory speed limits to be based on either a "geometric and traffic characteristic study" or an "engineering and traffic investigation." Current law neither defines the study or the investigation nor specifies the differences, if any, between the two concepts. Thus, the bill standardizes the method of determining whether a change in the statutory speed limit is appropriate for a particular location. Under current law, unchanged by the bill, the Director or a local authority with the Director's approval may raise or lower a speed limit if local conditions make the current speed limit either greater or less than is reasonable or safe.

Finally, the bill makes clarifying changes to the statutory speed limits. The changes include consolidating a repetitive speed limit and creating consistency in the language and terminology.

Special regional heavy hauling permit

(R.C. 4513.34)

The bill removes the mileage restriction for a special regional heavy hauling permit. Under current law, a person may apply in writing to the Director (if traveling on state highways) or to a local authority (if traveling on highways within the authority's jurisdiction) for a special regional heavy hauling permit. The permit allows the applicant to drive a vehicle or combination of vehicles that exceed the standard size or weight restrictions on any highway under the jurisdiction of the authority granting the permit, except highways that cannot bear the excess weight of the vehicle or vehicles. The permit restricts the permit holder to highways that are within 150 miles from the applicant's point of origin. The Director or local authority must issue a special regional heavy hauling permit to any applicant, provided the applicant pays the established fee for the permit.

The bill removes the 150-mile-radius restriction for a special regional heavy hauling permit. Thus, permittees may travel greater distances with vehicles that exceed standard size and weight restrictions.

CNG and LNG vehicle axle weight and load limits

(R.C. 5577.044)

The bill allows a vehicle fueled solely by compressed natural gas (CNG) or liquid natural gas (LNG) to exceed the gross vehicle weight and axle load limits by up to 2,000 pounds on an interstate highway. This change makes Ohio law consistent with federal law.

Current law allows a driver to operate a CNG or LNG vehicle that exceeds the standard gross vehicle weight and axle load limits on any road except for an interstate highway and a highway, road, or bridge that is subject to reduced maximum weights.

Size and weight exemptions for towing vehicles

(R.C. 5577.15)

The bill makes permanent a temporary exemption from statutory vehicle size and weight limits that applies to certain towing vehicles – ones that are traveling to and returning from removing a motor vehicle from an emergency on a public highway. Specifically, those size and weight limitations do not apply in any of the following circumstances:

1. When a person is engaged in the initial towing or removal of a wrecked or disabled motor vehicle from the site of an emergency on a public highway to the nearest storage facility or qualified repair facility;
2. When the person is en route to the site of an emergency on a public highway to tow a wrecked or disabled motor vehicle; or

3. When the person is returning from delivering a wrecked or disabled motor vehicle to the nearest storage facility or qualified repair facility after removing the motor vehicle from the site of an emergency on a public highway.

Prior to the temporary exemption (which is scheduled to expire on June 30, 2019), the law only provided an exemption from the statutory vehicle size and weight limits for a towing vehicle while the vehicle was engaged in the scenario in (1), but not the scenarios in (2) or (3). Thus, a towing vehicle was exempt while towing the wrecked or disabled vehicle, but not while traveling to the emergency or returning back to its “home” location.

Ohio’s Road to Our Future Joint Legislative Study Committee

(Section 755.20)

The bill creates the Ohio’s Road to Our Future Joint Legislative Study Committee consisting of the following ten members:

1. Five Senate members, appointed by the President of the Senate (three majority party members and two minority party members – the President must appoint one of those members to be a co-chairperson); and
2. Five House of Representative members appointed by the Speaker (three majority party members and two minority party members – the Speaker must appoint one of those members to be a co-chairperson).

ODOT must provide the Study Committee with any administrative assistance the Study Committee requests.

Purpose and duties of the Study Committee

The purpose of the Study Committee is to review all of the following as they pertain to ODOT:

1. Alternative sources of revenue;
2. Expense mitigation;
3. Evolving technology;
4. Exploration of innovative finance techniques;
5. Asset leverage and conditions;
6. The demographics of employees within ODOT.

To accomplish the purpose of the Study Committee, the Study Committee must conduct all of the following:

1. An analysis of the future needs of ODOT and the state’s infrastructure, including local infrastructure;
2. An analysis of all ODOT personnel, with an emphasis on future retirements and possible attrition. The analysis must include a list of technology that will provide greater efficiency for ODOT;

3. A cost-benefit analysis of leasing vehicles versus purchasing vehicles weighing more than 12,000 pounds gross vehicle weight;
4. A cost-benefit analysis of leasing versus purchasing construction equipment that has a lifespan of five years or more;
5. A review of evolving technology and its incorporation into the traditional engineering and infrastructure solutions, as applied to planning, capacity enhancement, risk management, system operations, safety, and system reliability;
6. An analysis of ODOT's debt policies, structures, and practices;
7. An analysis of methods for leveraging state assets, including cell towers, light poles, rights-of-way, rest areas, buildings, and garages. The analysis must include the methods ODOT is currently using to leverage its assets and whether there are any impediments to that leveraging, such as restrictions in advertising, constraints in renting spaces, or other impediments;
8. An analysis of all ODOT- maintained transportation systems. The analysis must include all of the following:
 - An inventory of the structure ratings versus ODOT's target ratings;
 - The urban, rural, general, and priority pavement condition ratings versus ODOT's target ratings; and
 - A cost analysis of the funds that are necessary to maintain, improve, and expand the current transportation system under ODOT's jurisdiction.
9. An analysis of using a vehicle-miles-traveled approach to transportation funding in Ohio and the feasibility of starting a pilot program or fully using the vehicle-miles-traveled approach in Ohio;
10. A review of ODOT's functions and whether those functions accomplish and further ODOT's mission.

Submission of Study Committee's report

The Study Committee, by October 1, 2019, must complete a report of its findings. After completion, the Study Committee must present the report to the Speaker of the House and the President of the Senate. Once the report is presented, the Study Committee ceases to exist.

Eastern Bypass update report

(Section 755.60)

The bill requires the Director to submit a report to the President of the Senate and the Speaker of the House of Representatives by December 31, 2019. The report must provide a commentary on the State of Kentucky's Department of Transportation's (KDOT) study pertaining to the Eastern Bypass. Additionally, the report must detail the extent ODOT assisted and coordinated with KDOT on the study, including the information ODOT provided KDOT. Finally the report must include details on the next steps ODOT is taking or needs to take to coordinate with KDOT to plan and construct the Eastern Bypass.

Rumble strips in construction areas

(R.C. 5517.07)

The bill requires ODOT to install the following in construction zones if not already present: signs and other traffic control devices, including arrow boards, channelizing devices, temporary raise pavement markers, portable changeable message signs, temporary traffic barriers, screens, and rumble strips. Placement and usage of the signs and devices must conform to ODOT's Manual of Uniform Traffic Control Devices. The requirement codifies current ODOT practices for traffic control in construction zones.

Excess road salt

(R.C. 5501.41)

The bill permits the Director to provide road salt to a political subdivision if all of the following apply:

1. The Director has excess road salt;
2. The political subdivision is unable to acquire road salt; and
3. The political subdivision is in an emergency situation.

The bill requires the Director to seek reimbursement for any road salt provided to a political subdivision for the same price at which the Director purchased the road salt. Current law permits the Director to remove snow and ice from state highways (including state highways within a municipal corporation, if the Director receives prior consent from the municipal corporation's legislative authority). Otherwise, each political subdivision is responsible for snow and ice removal in its respective jurisdiction (i.e., a board of county commissioners is responsible for county roads, a board of township trustees is responsible for township roads, etc.).

Maintenance of interstate highways

(Section 203.70)

The bill permits the Director to remove snow and ice from and to maintain, repair, improve, or provide lighting on interstate highways located within the boundaries of a municipal corporation in order to meet federal highway requirements. Additionally, if there is a written agreement between the Director and the legislative authority of the municipal corporation, ODOT may reimburse that municipal corporation for all or part of the costs incurred by the municipal corporation in making the described improvements to the interstate highways in their boundaries. This permissive authority is an extension of the authority granted to the Director in 2017 in H.B. 26 (the prior transportation budget).

Catastrophic Snowfall Fund

(Sections 203.110 and 755.40)

The bill creates the Catastrophic Snowfall Fund to provide monetary aid for street maintenance costs for municipal corporations that receive 18 or more inches of snow in one event. The Director must establish procedures for implementing the program and distributing

money from the Fund to the recipient municipal corporations. The procedures must include all of the following:

1. An application process;
2. A system for verifying the amount of snow the applicant received;
3. A process to determine how much money the applicant has spent on street maintenance costs for that year so far.

Once an applicant municipal corporation has been approved for aid through the program, the Director must pay the municipal corporation for one-half of that municipal corporation's maintenance costs for that year, up to \$100,000.

Each fiscal year for 2020 and 2021, the Department of Transportation must certify to the Office of Budget and Management \$250,000 in available funding in the Highway Operating Fund to be transferred to the Catastrophic Snowfall Fund. OBM must then transfer that amount to the Catastrophic Snowfall Fund for the Department to distribute in aid through the program.

Roadwork Development Fund

(R.C. 122.14)

The bill authorizes the Development Services Agency to use money from the Roadwork Development Fund for the construction, reconstruction, maintenance, or repair of public roads that provide or improve access to tourism attractions. The overall purpose of the Fund is to make road improvements associated with retaining and attracting business for Ohio. Current law specifies that the Fund may be used towards public roads that provide access to a public airport or are located within a public airport. The money in the Fund comes from the Highway Operating Fund.

Moratorium on closing rest stops

(Section 755.30)

The bill prohibits ODOT from closing rest areas under its jurisdiction from July 1, 2019 through June 30, 2021.

State audits

(R.C. 5501.09)

The bill requires the State Auditor to audit the accounts and transactions of ODOT and each regional transit authority at least once a year. The audit must be unannounced. ODOT and each regional transit authority must then submit a copy of the annual audit to the Governor, the presiding officers of each house of the General Assembly, and the Director of Budget and Management within 90 days after receiving the annual audit. Under current law, the State Auditor must make a biennial audit of ODOT that includes examining (1) ODOT's methods, accuracy, and legality of the accounts, financial reports, records, files, and reports, (2) whether

the laws, rules, ordinances, and orders pertaining to ODOT have been observed, and (3) whether ODOT has complied with the requirements and rules of the State Auditor.⁵

Court proceedings

(R.C. 5501.21)

Currently, ODOT may produce, in lieu of an original, a copy of a **paper** record, plan, drawing, or other document (“document”) as evidence in a court, as long as the copy is stamped with ODOT’s seal. Under the bill, ODOT may also produce, in lieu of an original, a copy of an **electronic** document that is stamped with ODOT’s seal.

Additionally, under current law, any party to any pending lawsuit may depose the Director as long as the deposition takes place in the Director’s office. The bill eliminates the presumed authorization that the Director may be a deponent in **any** lawsuit, relevant to the Director or not. (The bill does not prohibit the Director from being deposed – it merely removes this broad grant of authority.)

Indefinite delivery indefinite quantity (IDIQ) contracts

(Section 203.100)

The bill requires the Director to advertise, seek bids for, and award IDIQ contracts for not more than two projects in fiscal years 2020 and 2021. 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. For purposes of entering into IDIQ contracts, the Director is required 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. 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.

Department of Public Safety (DPS)

Registration taxes and fees

- Imposes an additional \$200 registration fee on a plug-in electric motor vehicle and an additional \$100 registration fee on a hybrid motor vehicle.
- Requires the Registrar of Motor Vehicles to transmit the registration fees for plug-in electric and hybrid motor vehicles to the State Treasurer; requires the Treasurer to credit 55% of that amount to the Highway Operating Fund, and 45% to be divided among municipal corporations, counties, and townships.

⁵ R.C. 117.11, not in the bill.

- Defines “plug-in electric motor vehicle” as a passenger car powered wholly by a battery cell energy system that can be recharged by plugging the vehicle into any external source of electricity.
- Defines “hybrid motor vehicle” as a passenger car powered by an internal propulsion system consisting of both (1) a combustion engine, and (2) a battery cell energy system that cannot be recharged by plugging into an external source of electricity, but can be recharged by other vehicle mechanisms that capture and store electric energy.
- Authorizes municipal corporations and townships to levy an additional \$5 motor vehicle registration tax.
- Requires the Registrar to increase the deputy registrar service fee from \$3.50 to \$5.

Single license plate requirement

- Requires a motor vehicle to display only one license plate, generally on the rear of the vehicle, rather than two license plates as required under current law.

Low-speed electric scooters

- Permits the operation of a low-speed electric scooter (a device that weighs less than 100 pounds, has handlebars, and is propelled by an electric motor or human power, and can go up to 20 mph on a paved level surface) on public streets, highways, sidewalks, paths, and bicycle-only areas.
- States that low-speed electric scooters are not vehicles and, as such, exempts them from state registration, title, insurance, and certain traffic and equipment law requirements.
- Requires a low-speed electric scooter and its operator to generally follow the traffic law requirements that by their nature are applicable to them.
- Prohibits any person under 16 from using a low-speed electric scooter, and prohibits any person from operating a scooter at more than 15 mph.
- Requires a low-speed electric scooter operator to yield to pedestrians at all times, to give an audible signal when overtaking and passing a pedestrian, and to have specified lighting when using the scooter at night.
- Makes failure to comply with the low-speed electric scooter law a minor misdemeanor and a predicate motor vehicle offense.

Hearing protection while operating a motorcycle

- Permits a person to wear earphones or earplugs for hearing protection while operating a motorcycle.

Skateboards

- Prohibits a person riding on a skateboard from attaching the skateboard or himself or herself to a moving vehicle.

Peer-to-peer car sharing

- Authorizes private motor vehicle rentals between vehicle owners and other licensed drivers through a peer-to-peer car sharing program and peer-to-peer car sharing agreements.
- Establishes requirements and responsibilities that apply to a peer-to-peer car sharing program pertaining to information that must be gathered from participants in the program, the disclosures that must be made to participants, and procedures when a safety recall is issued on a participating motor vehicle.
- Establishes specific automobile insurance and liability requirements for both the peer-to-peer car sharing program and participants in the program.
- Considers a peer-to-peer car sharing program a vendor for purposes of collecting and remitting sales taxes.
- Requires the Registrar, in consultation with the Department of Insurance, to adopt rules establishing administrative penalties for violations related to the peer-to-peer car sharing and other aspects of the program.

Traffic law photo-monitoring devices

- Grants municipal and county courts original and exclusive jurisdiction over every civil action concerning a traffic law violation within the court's territory, including those civil actions involving a traffic law photo-monitoring device ("traffic camera").
- Eliminates the administrative hearing process for a civil traffic law violation involving a traffic camera, which is presided over by a hearing officer.
- Requires all filings, affidavits, and forms concerning a civil traffic law violation involving a traffic camera to be handled by the municipal or county court with jurisdiction over the civil action.
- Specifies that the court with jurisdiction must require a local authority bringing a civil action concerning a traffic law violation involving a traffic camera to make an advance deposit of all filing fees and court costs, except for violations in a school zone.
- Requires the court to retain the advance deposit regardless of which party prevails in the civil action.
- Requires local authorities that operate traffic cameras to report information on traffic fines on an annual basis with the Tax Commissioner.
- Requires the reports to detail only the traffic fines collected rather than all of the traffic fines billed.
- Requires the reports to specify the amount of traffic camera fines collected on violations in school zones.

- Reduces Local Government Fund (LGF) payments to all local authorities that collect fines from operating traffic cameras regardless of whether a local authority is complying with the state’s traffic camera laws.
- Ceases LGF payments to local authorities that fail to comply with the bill’s reporting requirements for the duration of noncompliance.
- Reimburses local authorities for the portion of LGF reductions attributed to traffic camera fines collected on violations in school zones.
- Requires LGF money withheld from a local authority to be earmarked for use by ODOT “to enhance public safety” on roads and highways within the same transportation district.
- Prohibits a township from using traffic cameras on interstate highways.
- Makes clarifying changes to the texting-while-driving and distracted driving law.

Emergency medical personnel background checks

- Requires the State Board of Emergency Medical, Fire, and Transportation Services to participate in the Retained Applicant Fingerprint Database and Continuous Record Monitoring Service for any EMR, EMT, AEMT, or paramedic certified by the Board.
- Requires all individuals certified or applying for certification as an EMR, EMT, AEMT, or paramedic to submit one complete set of fingerprints to the Superintendent of the Bureau of Criminal Identification for a background check.
- Requires DPS to pay any associated fees for individuals submitting fingerprints for the database, except for applicants seeking certification by reciprocity.

Other changes

- Clarifies that a commercial driver’s license (CDL) holder, who (1) is operating **any** motor vehicle (commercial or not), (2) is arrested for a violation of the law governing operating a vehicle while impaired (OVI), and (3) refuses an officer’s request to submit to a drug or alcohol test, will be disqualified from driving a commercial motor vehicle.
- Makes clarifying changes to the texting-while-driving and distracted driving law.

Registration taxes and fees

Electric and hybrid vehicle registration fees

(R.C. 4503.10, 4503.103, and 4501.01)

The bill imposes an additional \$200 registration fee on a plug-in electric motor vehicle and an additional \$100 registration fee on a hybrid motor vehicle.

Under the bill a “plug-in electric motor vehicle” is a passenger car powered wholly by a battery cell energy system that can be recharged by plugging the vehicle into any external source of electricity. A “hybrid motor vehicle” is a passenger car powered by an internal

propulsion system consisting of both (1) a combustion engine, and (2) a battery cell energy system that cannot be recharged by plugging into an external source of electricity, but can be recharged by other vehicle mechanisms that capture and store electric energy.

The Registrar is required to transmit all money arising from the fees to the State Treasurer. The Treasurer is required to divide the money in the same manner as revenue attributable to the bill's increase in the motor fuel tax rate (see discussion on motor fuel tax, above) – 55% of that amount into the Highway Operating Fund, and 45% among municipal corporations, counties, and townships.

Under current law, the owner or lessor of a plug-in electric or hybrid passenger car pays \$34.50 in state registration taxes and fees (\$20 registration tax, \$11 BMV fee; \$3.50 deputy registrar fee), plus up to \$25 in permissive local registration taxes. The \$20 registration tax is deposited into the Auto Registration Distribution Fund and primarily distributed back to counties, municipal corporations, and townships for local highway and bridge projects.

In sum, under the bill, the owner or lessor of an electric motor vehicle would pay \$234.50 in state registration fees and taxes, and the owner or lessor of a hybrid motor vehicle would pay \$134.50 in state registration fees and taxes.

Permissive municipal and township motor vehicle registration tax

(R.C. 4501.031, 4501.042, 4501.043, 4504.10, 4504.173, 4504.181, and 4504.201)

The bill authorizes municipal corporations and townships to levy and retain an additional \$5 motor vehicle registration tax on motor vehicles registered in the municipal corporation or the unincorporated area of the township. (The authorization is similar to the additional \$5 motor vehicle registration tax on motor vehicles that may be levied in counties as enacted in H.B. 26 of the 132nd General Assembly.)

A municipal corporation may levy the tax through an ordinance, resolution, or any other measure specified in its charter, but the tax is subject to referendum. A board of township trustees may levy the tax by first holding two public hearings, then providing public notice of those hearings in a newspaper of general circulation, and last by adopting a resolution levying the tax. The township tax is also subject to referendum.

The additional \$5 tax may only be used for specified purposes. For municipal corporations, the tax may be used for enforcing and administering the tax, and paying the following: (1) costs associated with public roads, highways, bridges, and viaducts, (2) the costs associated with street and traffic signs, markers, and signals, (3) debt service obligations, and (4) costs for similar purposes. For townships, the tax may be used for enforcing and administering the tax, and paying the following: (1) costs associated with township roads, bridges, and culverts, (2) the costs associated with street and traffic signs, markers, and signals, (3) the cost of purchasing road machinery and equipment, and (4) the cost of certain railroad crossings.

Under current law, unchanged by the bill, municipal corporations, townships, and counties may establish a combination of local motor vehicle permissive registration taxes up to \$25 per taxing district. The taxes authorized under the bill increase the maximum amount of local permissive taxes that may be levied per taxing district to \$30.

Deputy registrar service fee

(R.C. 4503.038)

The bill increases the deputy registrar service fee from \$3.50 to \$5. Under current law, the Registrar has the authority to establish, by rule, the deputy registrar service fee, which compensates deputy registrars for performing certain transactions on behalf of the Registrar (e.g., issuing driver's licenses and vehicle registrations). The fee may not exceed \$5.25. Under the bill the Registrar must increase the fee to \$5, but is not authorized to increase it beyond that amount.

Single license plate requirement

(R.C. 4503.19, 4503.193, 4503.21, 4503.23, and 4549.10)

The bill changes Ohio's current requirement that most motor vehicles, including passenger vehicles, display two license plates (one on the front and one on the rear) to a single license plate requirement for all motor vehicles. Generally, the single license plate must be displayed on the rear of the motor vehicle. Commercial tractors, however, are required to display the license plate on the front of the motor vehicle.

When issuing a single license plate, the Registrar and each deputy registrar must collect a fee of \$6.50, which is the same cost for a single license plate under current law. (The cost is \$7.50 for two license plates under current law.)

As a result of the single license plate requirement, the bill removes any criminal penalties for failing to display two license plates on a motor vehicle. Failing to properly display the single license plate, however, is a minor misdemeanor and a strict liability offense. The bill also standardizes the single license plate requirement for state-owned motor vehicles and requires manufacturer or dealer-owned motor vehicles to display a single placard, rather than two as under current law.

The bill does not affect any of the following in any substantive way:

1. Motorcycles, motorized bicycles, trailers, semi-trailers, apportioned vehicles under the International Registration Plan, manufactured homes, mobile homes, and historical motor vehicles, all of which are issued only one license plate under current law.
2. School buses, which are not issued license plates, but must display identifying numbers issued by the Superintendent of the State Highway Patrol.

The bill specifies that the display of a single current license plate and a validation sticker on the motor vehicle (in the placement required based on the type of motor vehicle) sufficiently indicates that the motor vehicle is registered in Ohio. As such, any reference in Ohio law to "license plates," a "set of license plates," "registration plates," or "validation stickers" should be considered a reference to the single license plate and single validation sticker.

Low-speed electric scooters

(R.C. 4501.01, 4509.01, 4511.01, 4511.514, and 4511.68)

The bill establishes requirements for the operation of a low-speed electric scooter, which is a device that weighs less than 100 pounds, has handlebars, and is propelled by an

electric motor or human power, and can go up to 20 mph on a paved level surface. The bill exempts low-speed electric scooters from the definition of “vehicle”; as such, low-speed electric scooters are exempt from state registration, title, insurance, and certain traffic and equipment law requirements.

The bill requires a low-speed electric scooter operator to generally follow the traffic law requirements that are by their nature applicable. The bill also establishes several specific requirements and prohibitions: (1) an operator must yield the right-of-way to all pedestrians, (2) an operator must give an audible signal before overtaking or passing a pedestrian, (3) an operator may not operate a low-speed electric scooter at night unless accompanied by proper lighting gear, (4) an operator may not operate a low-speed electric scooter at more than 15 mph, and (5) an operator must be 16 years or older.

A violation of the above requirements is a minor misdemeanor. If within one year of the offense the offender has been convicted of or pleaded guilty to one predicate motor vehicle offense, the offender is guilty of a fourth degree misdemeanor. If within one year of the offense, the offender has been convicted of two or more predicate motor vehicle offenses, the offender is guilty of a third degree misdemeanor.

Hearing protection while operating a motorcycle

(R.C. 4511.84)

The bill permits a person to wear earphones or earplugs for hearing protection while the person is operating a motorcycle. Under current law, a person is prohibited from wearing earphones over, or earplugs in, both ears while operating any motor vehicle, including a motorcycle, except in specified circumstances.

With regard to the current general prohibition, the law is unclear about both of the following:

1. Whether “earphones” includes devices that provide hearing protection, and
2. Whether “earplugs” includes devices that provide entertainment.

The bill clarifies that **both** earphones and earplugs include devices that provide the user either entertainment (radio programs, music, etc.) or hearing protection. As such, under the bill, a person operating a motor vehicle is prohibited from wearing earphones or earplugs, in both ears, for **either** hearing protection or for entertainment purposes. However, a person operating a motorcycle has the limited, permitted exception of wearing earphones or earplugs for hearing protection.

Additionally, the bill updates the meaning of earphones and earplugs to reflect new wireless technologies and live, rather than prerecorded, entertainment.

Current exceptions

Under current law, unchanged by the bill, the prohibition against using earphones and earplugs while operating a motor vehicle does not apply to any of the following:

1. Any person wearing a hearing aid;
2. Law enforcement personnel while on duty;

3. Fire department personnel and emergency medical service personnel while on duty;
4. Any person engaged in the operation of equipment for use in the maintenance or repair of any highway; and
5. Any person engaged in the operation of refuse collection equipment.

Penalties

Current law, unchanged by the bill, specifies that wearing earphones or earplugs while operating a motor vehicle, unless a person falls under one of the exceptions, is a minor misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to one additional predicate motor vehicle or traffic offense, the offender is guilty of a fourth degree misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle offenses, the offender is guilty of a third degree misdemeanor. In any instance, the offense is considered a strict liability offense.

Skateboards

(R.C. 4511.54)

The bill prohibits a person riding on a skateboard from attaching the skateboard or himself or herself to a moving vehicle, streetcar, or trackless trolley. Additionally, the bill prohibits the operator of a moving vehicle, streetcar, or trackless trolley from knowingly permitting a person riding on a skateboard from attaching the skateboard or himself or herself to the vehicle, streetcar, or trackless trolley. Current law applies the same prohibition to individuals riding bicycles, coasters, roller skates, sleds, or toy vehicles.

Penalty

The bill specifies that whoever violates the prohibition is guilty of a minor misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to one additional predicate motor vehicle or traffic offense, the offender is guilty of a fourth degree misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle offenses, the offender is guilty of a third degree misdemeanor.

Peer-to-peer car sharing

(R.C. 3944.01, 3944.02, 3944.03, 3944.04, 3944.05, 3944.06, 3944.07, 3944.08, 3944.09, 3944.10, 4516.01, 4516.02, 4516.03, 4516.04, 4516.05, 4516.06, and 4516.07; Section 757.60)

The bill authorizes private motor vehicle rentals between vehicle owners and other licensed drivers in what is known as “peer-to-peer car sharing.” The vehicle owners and licensed drivers are connected through a peer-to-peer car sharing program, which is the person operating a business platform to enable vehicle sharing for financial consideration. The service is in some ways similar to Airbnb, but for motor vehicles.

Basic parameters of the program

The bill outlines basic requirements for a peer-to-peer car sharing program operating in Ohio, particularly related to the automobile insurance requirements that apply when a shared

vehicle is being operated by the shared vehicle driver, rather than by the shared vehicle owner. As part of the basic requirements for operation, a peer-to-peer program must collect information from any participant in the program, such as name, address, driver's license number and state of issuance, insurance information, and verification of current vehicle registration. The program is not permitted to allow a peer-to-peer car sharing program agreement through its platform if the person operating the shared vehicle does not have a valid driver's license or if the shared vehicle is not properly registered and insured.

The contract at the center of the peer-to-peer car sharing arrangement is the peer-to-peer car sharing agreement. A peer-to-peer car sharing program, a shared vehicle owner, and the shared vehicle driver are all parties to the agreement. The agreement sets forth the parameters of peer-to-peer car sharing, including the location(s) for drop-off and pick-up of the vehicle, the date and time for drop-off and pick-up, whether the time the shared vehicle owner spends delivering the vehicle is paid, and the daily rate, fees, and any insurance costs for the insurance provided by the program (see "**Insurance**" below). In addition to the basic parameters, as a part of the agreement, the program must make a variety of disclosures, including any right of the program to seek indemnification from the shared vehicle owner or the shared vehicle driver, any insurance coverage or lack of insurance coverage that might occur based on whether the car sharing period is in effect or whose insurance is being used at the time, and emergency contact information.

The bill specifies that the program is responsible for any equipment, including GPS or program-specific equipment that facilitates peer-to-peer car sharing, that is installed in the vehicle, unless the shared vehicle driver causes damage to the equipment. The program is also responsible, as a vendor, for collecting and remitting any sales taxes required by law. The shared vehicle driver is responsible for keeping up with recall repairs on the shared vehicle, and informing the program if the owner receives notice about a recall, so that the shared vehicle can be brought back to the owner for the repair.

Penalties and concession agreements

The bill requires the Registrar, in consultation with the Department of Insurance, to adopt rules establishing administrative penalties for any violations of the requirements established for the program, the shared vehicle owner, or the shared vehicle driver. Additionally, the rules must establish requirements pertaining to concession agreements that must be established with an airport operator before a peer-to-peer car sharing can occur within three miles of the airport.

Insurance

Assumption of liability; no vicarious liability

Under the bill, a peer-to-peer car sharing program assumes the liability of a shared vehicle owner for any death, bodily injury, or property damage to a third party or an uninsured or underinsured motorist, or personal injury losses proximately caused by the operation of a shared vehicle during the car sharing period. The amount of liability must be stated in the peer-to-peer car sharing program agreement and cannot be less than the following, which are the minimum amounts required under the Proof of Financial Responsibility Law:

1. \$25,000 because of bodily injury to or death of one person in any one accident;

2. \$50,000 because of bodily injury or death of two or more persons in any one accident;
and
3. \$25,000 because of injury to property of others in any one accident.

The assumption of liability does not apply if the shared vehicle owner made an intentional or fraudulent material misrepresentation to the peer-to-peer car sharing program regarding the vehicle owner's automobile insurance policy or the type or condition of the shared vehicle.

In addition, the bill exempts both a peer-to-peer car sharing program and a shared vehicle owner from vicarious liability for harm arising from the use, operation, or possession of the vehicle during the car sharing period.

Automobile insurance

The bill requires a peer-to-peer car sharing program to ensure that, during each car sharing period, the shared vehicle owner and shared vehicle driver are each covered by a primary policy of automobile insurance that recognizes their status as a shared vehicle owner or shared vehicle driver and provides coverage for the operation of the shared vehicle during the car sharing period. The policy must be the primary policy during each car sharing period and be maintained in the same liability amounts specified above – the minimum amounts required under the Proof of Financial Responsibility Law. The insurance requirement may be satisfied by any of the following or combination thereof:

1. An automobile insurance policy that is maintained by the shared vehicle owner;
2. An automobile insurance policy that is maintained by the shared vehicle driver;
3. An automobile insurance policy that is maintained by the peer-to-peer car sharing program.

If the owner or driver of a shared vehicle does not provide the required minimum coverage, the bill provides that insurance maintained by the peer-to-peer car sharing program must provide such coverage beginning with the first dollar of the claim and must defend the claim. The program's policy cannot require the driver's policy to first deny a claim. The bill further specifies that to meet its requirements, an automobile insurance policy must be purchased from one of two sources: (1) an insurer authorized to do business in Ohio or (2) a surplus lines insurer with a credit rating of not less than "A-" from an insurance rating agency if the insurance is obtained through a surplus lines broker.

To permit the program to provide this minimum coverage, the bill grants a peer-to-peer car sharing program an insurable interest in a shared vehicle during the car sharing period. However, this does not require the program to provide insurance to the shared vehicle owner or driver.

The bill declares that a policy that meets the bill's insurance requirements satisfies Ohio's proof of financial responsibility requirements for motor vehicles.

Driver duties

Under the bill, a shared vehicle driver must carry proof of satisfactory insurance either physically or on an electronic wireless communications device during the car sharing period. In

the event of an accident, the driver must provide this insurance information to all parties claiming an interest in the insurance, other insurers, and upon request of a peace officer or State Highway Patrol trooper. If the officer or trooper makes such a request, the driver must also disclose to all parties whether the driver was driving as a shared vehicle driver at the time of the accident.

Insurance does not limit liability or ability to seek indemnification

The bill specifies that nothing in its provisions does either of the following:

1. Limits the liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program that results in death, bodily injury, or property damage as a proximate result of the operation of a shared vehicle through the peer-to-peer car sharing program; or
2. Limits the ability of the peer-to-peer car sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program proximately resulting from a breach of the terms and conditions of the car sharing program agreement.

Insurers may exclude or limit coverage

The bill allows an insurer to exclude coverage of any claim under a shared vehicle owner's personal automobile insurance policy. The bill further specifies that nothing in its provisions invalidates or limits any policy's exclusions.

While the bill allows an insurer to exclude coverage of car sharing claims, it prohibits an insurer from cancelling or failing to renew a shared vehicle owner's policy solely because the covered vehicle has been made available for sharing through a peer-to-peer car sharing program. The prohibition does not apply, however, if the shared vehicle owner fails to provide complete and accurate information about the use of the shared vehicle as requested by the insurer during the application or renewal process.

An insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy has a right to seek contribution against the insurer of the peer-to-peer car sharing program if the claim meets both of the following conditions:

1. The claim was made against the shared vehicle owner or the shared vehicle driver for death, bodily injury, or property damage that occurred during the car sharing period; and
2. Coverage was excluded under the terms of the insurer's policy.

The bill also allows an insurer to limit the number of vehicles made available for sharing through a peer-to-peer car sharing program that it will insure on a single policy.

Notifications, record keeping, and disclosures

When a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program, and before the owner makes the vehicle available for use through the program, the program must notify the owner that any lien against the shared vehicle may violate the terms of the owner's contract with the lienholder.

The bill requires a peer-to-peer car sharing program to collect and verify records – and maintain these records for at least two years – pertaining to the use of a vehicle, including all of the following:

1. The number of times a shared vehicle was used through the program;
2. Fees paid by the shared vehicle driver;
3. Revenues received by the shared vehicle owner.

The program must provide the records upon request to the shared vehicle owner, the shared vehicle owner’s insurer, or the shared vehicle driver’s insurer to facilitate the investigation of a claim.

Traffic law photo-monitoring devices

(R.C. 1901.18, 1901.20, 1907.02, 1907.031, 4511.092, 4511.093, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 4511.204, 4511.205, 4511.991, 5547.502, 5747.51, and 5747.53; repeals 4511.0915)

Court jurisdiction over civil traffic law violations

The Ohio Constitution gives the General Assembly the authority to both create courts that are inferior to the Ohio Supreme Court and to determine the power and jurisdiction of those courts (Ohio Constitution Article IV, Section 1 and 18.) The Ohio Supreme Court addressed the issue of court jurisdiction in relation to civil actions concerning traffic law violations in the 2014 case, *Walker vs. City of Toledo* (143 Ohio St.3d 420, 39 N.E.3d 474 (2014)). In that case, the Court determined that a municipal court does not have *exclusive* jurisdiction over misdemeanor cases or the violation of any ordinance of a municipal corporation, including civil traffic law violations involving a traffic law photo-monitoring device (“traffic camera”). Thus, the Court held that “Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, in furtherance of [civil traffic law violation] ordinances, that must be exhausted before offenders or the municipality can pursue judicial remedies.”

The bill expressly grants both a municipal court and a county court original and exclusive jurisdiction over *every* civil action concerning a violation of a state traffic law or a municipal traffic ordinance within the court’s jurisdictional territory. Such a violation includes, but is not limited to, a traffic law violation recorded by a traffic camera.

Under current law, a municipal court has general jurisdiction over misdemeanor cases and the violation of any ordinance of a municipal corporation within the court’s territory. A county court has general jurisdiction over all misdemeanor cases. The misdemeanor cases for both a municipal and a county court include criminal actions concerning a violation of a state traffic law or a municipal traffic ordinance, except for certain parking violations. Current law, enacted after *Walker v. City of Toledo*, excludes from both a municipal and a county court’s jurisdiction civil violations based on evidence recorded by a traffic camera. That jurisdiction is instead granted to a hearing officer and the civil violation is adjudicated through an administrative process, with the municipal and county court hearing appeals of those cases.

Hearing officer administrative process

The bill eliminates the process in current law that requires a hearing officer to conduct an administrative hearing when a person contests a ticket for a civil traffic law violation that is based on a recording by a traffic camera. Rather than contesting a ticket in an administrative hearing, the bill requires the person to contest it in either the municipal or county court with jurisdiction over the civil action. The bill makes conforming changes throughout the laws governing traffic cameras to require the court with jurisdiction to handle the filings, affidavits, and forms associated with such civil actions.

Court costs and filing fees

The bill requires a local authority (a municipal corporation, county, or township) to file a certified copy of a ticket charging a registered vehicle owner with a civil traffic law violation based on a recording from a traffic camera with the municipal or county court that has jurisdiction over the civil action. Additionally, when the local authority files the certified copy of the ticket, the municipal or county court with jurisdiction must require that local authority to provide an advance deposit of all applicable court costs and fees for the civil action, except for tickets issued for school zone violations. Generally, the court retains the advance deposit, regardless of which party prevails in the civil action. In most of those civil actions, the court is not permitted to charge a registered owner or the driver who committed the violation any court costs or fees. If a registered owner or driver contests the ticket and does not prevail in the civil action heard by the court, that owner or driver is only responsible for paying the amount of the required civil penalty. For school zone violations, however, the losing party (either the local authority or the owner of driver) is responsible for paying the court costs and fees.

Traffic camera reports and penalties

The bill repeals and replaces provisions in current law that establish reporting requirements for local authorities operating traffic cameras and that penalize them for not complying with the law governing their use of traffic cameras by offsetting their Local Government Fund (LGF) distributions. The bill's replacement provisions are similar to current law in some respects but change the reporting requirements, revise the conditions under which LGF distributions are offset, provide for the return of offset money attributed to traffic camera fines collected on school zone violations, and earmark the offset money for a new state fund for traffic safety.

Ohio's traffic camera laws authorize the use of traffic cameras by local authorities subject to a number of specified conditions, including that a law enforcement officer be present where a traffic camera is installed, that signs are posted to inform motorists of the camera's presence, that a safety study be conducted before a camera is installed, and that a public information campaign be undertaken to inform motorists of proposed cameras.

Reporting requirements

The bill requires every local authority that operates a traffic camera during a fiscal year to file a report with the Tax Commissioner by the following July 31 showing (1) a detailed statement of the civil fines collected from drivers for violations of local ordinances based on evidence recorded by a traffic camera, (2) a statement of the gross amount of traffic camera fines collected during that period, and (3) a statement of the gross amount of traffic camera

finest collected during that period for violations that occurred in school zones. (The bill specifies that the “gross amount” includes the entire amount paid by drivers.) Such a report is required regardless of whether the local authority complied with the state traffic camera laws.

In contrast, current law requires quarterly, rather than annual, reporting, and requires the report to be filed with the Auditor of State. If a local authority has not been complying with the traffic camera law, it must report all traffic camera fines that are *billed* to drivers rather than the fines that are *collected* from them. Current law does not differentiate between traffic camera fines for violations in school zones and other traffic camera fines. If a local authority has been complying with the traffic camera law, current law does not require it to report traffic camera fines; instead, the local authority must file only a statement affirming its compliance.

LGF offsets

The bill modifies the existing law that reduces LGF distributions to local authorities that operate traffic cameras. As under existing law, LGF payments are to be reduced by the amount of fines reported to have resulted from using traffic cameras, and the payments are suspended entirely if a local authority using traffic cameras does not file the report. But unlike existing law, the bill reduces LGF payments even for local authorities complying with the requirements of having an officer present, posting signs, and conducting safety studies and public information campaigns. Also, the bill’s reduction in LGF payments is based on reported fine collections rather than reported fine billings, consistent with the bill’s change in how fines are to be reported. Finally, the bill provides for a refund to local authorities for the portion of withheld LGF payments attributed to traffic camera fines on violations that occurred in school zones, on the condition that the refunded amounts are used for school safety purposes.

Under continuing law, 1.66% of general revenue tax receipts are credited monthly to the LGF to provide revenue to political subdivisions and other local taxing units. (R.C. 131.51(B), not in the bill.) About 92% of that money is divided between the undivided local government funds of each county and distributed to the county and subdivisions in that county under a formula either prescribed in state law or adopted by the county budget commission; most of the remaining money is distributed directly to municipal corporations that levied a municipal income tax in 2006. Distributions are made monthly. (In the current biennium the direct municipal distributions were pre-empted by various other distributions by H.B. 49 of the 132nd G.A.)

Under the bill, each of the 12 monthly LGF payments following the annual traffic camera fine report would be reduced by one-twelfth of the gross amount of fines collected by a local authority in the preceding fiscal year. If the local authority is a municipal corporation receiving direct LGF payments, the offset is first deducted from the direct payment and, if necessary to cover the whole offset, from the municipality’s share of distributions made through the county undivided LGF. For other local authorities, the offset is deducted from their respective shares of the county undivided LGF.

Local authorities that reported traffic camera fines for violations in school zones would then receive a payment equal to one-twelfth of the gross amount of those fines. The bill requires that this refunded amount be used for school safety purposes.

If a local authority operating traffic cameras fails to report its traffic camera fines as the bill requires, all LGF payments to that subdivision are suspended until the report is filed. Once the report is filed, the next twelve LGF payments are then reduced to account for the amount of fines reported.

The total amount offset or withheld from local authorities for their fines or failure to report, minus any amount refunded to local authorities based on fines for school zone violations, would be credited to the Ohio Highway and Transportation Safety Fund, which the bill creates. The fund would be divided into separate accounts – one for each transportation district in which a local authority operating traffic cameras is located. The Department of Transportation must use the fund “to enhance public safety on public roads and highways” within the transportation district from which the LGF funds were withheld. Under current law, any LGF amount that is offset or withheld from a local authority is distributed among other subdivisions and taxing units in the county.

Use of traffic cameras on interstate highways

The bill prohibits a township law enforcement officer or any other township representative from using a traffic camera on interstate highways.⁶ Current law authorizes a local authority, which includes townships, to utilize a traffic camera for the purpose of detecting specific traffic violations (failure to comply with a red signal at a traffic light and the applicable speed limit), subject to statutory conditions.⁷ The statutory conditions under current law, however, do not limit the use of traffic cameras to specific highways or prevent the use of the traffic cameras on interstate highways.

Emergency medical personnel background checks

(R.C. 4765.302 and 109.5721, not in the bill)

The bill requires the State Board of Emergency Medical, Fire, and Transportation Services to participate in the Retained Applicant Fingerprint Database and Continuous Record Monitoring Service for any emergency medical responder (EMR), emergency medical technician (EMT), advanced emergency medical technician (AEMT), or paramedic certified by the Board. The Superintendent of the Bureau of Criminal Identification (BCI) collects and stores fingerprints in the database of employees or volunteers and then notifies participants when an individual has been arrested for, convicted of, or pleaded guilty to any offense. BCI conducts both initial and continuous background checks on employees and volunteers via the database and service.

Under the bill, each individual seeking initial certification or certification renewal as an EMR, EMT, AEMT, or paramedic must submit one complete set of fingerprints for background check purposes to the Superintendent, unless the individual is already enrolled in the Continuous Record Monitoring Service. The individual must be fingerprinted at a location approved by the Board. DPS will pay the initial or annual fee charged for background checks. However, an individual seeking certification by reciprocity must pay the initial background

⁶ R.C. 4511.093(C).

⁷ R.C. 4511.092(K) and (L) and 4511.093.

check fee and fee for enrollment in the database. Additionally, an individual seeking certification by reciprocity must ask that the Superintendent request the individual's records from the Federal Bureau of Investigation.

Under the bill, the Board is permitted to adopt rules establishing the standards and procedures for the provision of the background criminal records checks. The results from the background criminal records checks and the reports containing those results are not considered public records.

Implied consent for CDL holders

(R.C. 4506.17)

Currently, a person is disqualified from operating a commercial motor vehicle if all of the following apply:

1. The person holds a commercial driver's license (CDL) or commercial temporary instruction permit (CDL permit) or the person operates a commercial motor vehicle that requires a CDL or CDL permit;
2. The person is arrested for violating the law governing operating a vehicle while impaired (OVI); and
3. The person refuses to submit to a blood, urine, or breath test despite being deemed to have consented under the implied consent statute.

Although R.C. Chapter 4506 requires the Registrar of Motor Vehicles to disqualify a CDL holder if the holder refuses to comply with a request for a blood, breath, or urine test under Ohio's implied consent statute, several lower courts have found that CDL holders may only be disqualified if the holder is operating a commercial motor vehicle at the time of arrest. *Lachowski v. Petit*, Portage C.P. No. 2018-CV-430; *Vaughn v. Petit*, Franklin C.P. No. 18CV007834. These decisions create uncertainty regarding the disqualification of a CDL holder who refuses to submit to a test while driving a **noncommercial** vehicle.

Consequently, the bill clarifies that refusal to submit to a test (when arrested for OVI) leads to disqualification when a CDL holder is driving **any** type of motor vehicle, not just a commercial motor vehicle.

Relatedly, the U.S. Supreme Court has found that the implementation of implied consent laws that impose a **civil** penalty, such as license disqualification, on motorists who refuse to comply with a request for a blood, breath, or urine test is constitutional. *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2165 (2016), citing *McNeely v. Missouri*, 133 S. Ct. 1552 (2013).

Texting-while-driving and distracted driving corrective changes

(R.C. 4511.204, 4511.205, and 4511.991)

The bill makes several clarifying changes to the texting-while-driving and distracted driving law.

First, the bill amends the texting-while-driving section that addresses allied offenses of similar conduct. Current law provides that the prosecution of the state texting-while-driving offense does not preclude a separate prosecution for a violation of a substantially equivalent

municipal ordinance for the same conduct, but it states that the offenses are allied offenses of similar import. When an offender's conduct can be construed to constitute two or more allied offenses of similar import, the offender may be **charged with all** of the offenses, but prior to the conviction stage, the offenses merge and the offender may be **convicted of only one**. But, current law related to texting while driving, as enacted in H.B. 95 of the 132nd General Assembly, states: "However, if an offender is convicted of or pleads guilty to a violation **and is also convicted** of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import"

Thus, current law implies that a person may be **convicted of both** offenses, which is inconsistent with the underlying concept of allied offenses. The bill clarifies that there may only be one conviction. The bill makes a similar change in the provision regarding minors violating both the state prohibition on using phones while driving and a substantially equivalent municipal ordinance.

Second, in the distracted driving law, the bill changes "Subject to Traffic Rule 13" to "Subject to the mandatory appearance requirements of Traffic Rule 13." This clarifies that driving distracted, while violating certain offenses for which a court appearance is mandatory, would still require the offender to appear in court per Traffic Rule 13 (an offender is generally allowed to pay the fine and not appear in court).

Third, the bill makes corrective changes to clarify small inconsistencies in the definition of "distracted" in the distracted driving law.

Local Government

- Clarifies that a majority vote of each legislative authority of the political subdivisions that form or comprise a regional transit authority is needed to approve the following:
 - Creating a regional transit authority;
 - Amending the resolution or ordinance creating a regional transit authority to include additional entities;
 - Modifying the transit authority membership;
 - The dissolution of the transit authority.
- Authorizes an officer or employee of a county, township, or municipal corporation to simultaneously hold the public position and serve as a member or officer of the board of trustees of a transportation improvement district.
- Specifies that, notwithstanding Ohio common law or any contrary statute, the simultaneous holding of those positions does not constitute the holding of incompatible offices or employment.
- Specifies that the financial or contractual relationship between a county, township, or municipal corporation and a transportation improvement district is permissible and

does not constitute an unlawful interest in a public contract by an officer or employee of a county, township, or municipal corporation.

- Authorizes a port authority to take certain actions regarding the towing of motor vehicles.
- Eliminates the requirement that contracts between a port authority and a contractor be executed in triplicate, thus eliminating the need for the contract to be carbon copied.

Majority vote for regional transit authority

(R.C. 306.32, 306.321, and 306.54)

Generally, the political subdivision legislative authorities that form a regional transit authority are required to vote to take various actions. Current law does not explicitly state whether a majority or unanimous vote of each political subdivision legislative authority is necessary for the following:

1. Creating the regional transit authority;
2. Amending the resolution or ordinance creating a transit authority to include additional entities;
3. Modifying the transit authority membership;
4. The dissolution of the transit authority.

The bill explicitly states that a majority (not unanimous) vote of each political subdivision legislative authority is necessary for these four actions.

Transportation improvement district simultaneous office holding

(R.C. 3.112)

The bill provides that an elected official or employee of a county, township, or municipal corporation may simultaneously serve in that position and as a member or officer of the board of trustees of a transportation improvement district (TID). The simultaneous holding of the two positions does not constitute the simultaneous holding of incompatible offices, despite Ohio common law or any Ohio statute indicating anything to the contrary.

The bill specifies that a financial or contractual relationship between the county, township, or municipal corporation and the TID is permissible and does not constitute an unlawful interest in a public contract by an elected official or employee of a county, township, or municipal corporation; Ohio law prohibits public officials from having an interest in a contract entered into by the official's political subdivision.⁸

Ohio common law prohibits the simultaneous holding of two public offices or employment when the two are determined to be "incompatible." The Ohio Attorney General makes these determinations by Opinions of the Attorney General using a common law test that

⁸ R.C. 2921.42, not in the bill.

in part examines impermissible conflicts of interest between the two positions and other state, local, or federal laws that apply to prohibit the simultaneous holding of positions. The Attorney General recently issued an opinion finding a county commissioner and member of the board of trustees of a TID incompatible.⁹ The Attorney General addressed scenarios where the commissioner is a voting trustee of the TID appointed by the board of county commissioners or a nonvoting trustee of the TID appointed by the Speaker of the House of Representatives or President of the Senate.

The Attorney General concluded that the voting TID trustee is incompatible because the commissioner, as a trustee of the TID, is subordinate to the board of county commissioners because of the commissioners' appointment authority. The nonvoting TID trustee is incompatible because impermissible conflicts of interest result from the TID trustee's conflicting interest as a commissioner. The Attorney General noted these conflicts specifically arise from: (1) the board of county commissioners providing funds to the TID and the commissioner's possible bias, as a TID trustee, toward providing TID funds to county areas rather than areas outside the commissioner's county, (2) the authority of the TID to enter into contracts in which a commissioner is prohibited from having a direct or indirect concern, and (3) the authority of the TID to accept grants or loans from the county. Sometimes the potential for conflict may be remote and the Attorney General may find the conflict can be sufficiently avoided or eliminated. However, the Attorney General determined that the potential for conflict between the positions of county commissioner and member of a TID¹⁰ is not remote or speculative and cannot be avoided.

The bill reflects the policy of the General Assembly to allow the simultaneous holding of the positions despite one position being subordinate to the other and despite conflicts of interest that cannot be reconciled. The issues identified by the Attorney General remain but are permissible under the bill because the General Assembly is statutorily condoning the simultaneous holding of the positions regardless of these issues.¹¹

Despite this provision of the bill, a municipal corporation or a chartered county, through its home-rule authority to self-govern, likely can decide to disallow the simultaneous holding of these positions for its elected officials or employees.¹²

⁹ 2018 Op. Att'y Gen. No. 2018-024.

¹⁰ There is no Attorney General determination for a township trustee or municipal legislative authority member serving simultaneously on a TID, but to the extent those positions may pose similar conflicts, an analogous outcome may be anticipated.

¹¹ See, for example, 2009 Op. Att'y Gen. No. 2009-005 (although conflicts of interest may exist between the positions of member of a city legislative authority and member of the governing board of a community improvement corporation that has been designated under R.C. 1724.10 as the agency of the city, "the General Assembly has legislatively sanctioned a person serving in both positions at the same time" under R.C. 1724.10(A)).

¹² Ohio Const. art. XVIII, sec. 3 and art. X, sec. 3.

Finally, because the bill includes employees, which the Attorney General's opinion did not address, there could be: (1) a violation of Ohio's Little Hatch Act,¹³ (2) a possible breach of contract if the employee is subject to a collective bargaining agreement, and (3) to the extent any person is paid through federal grant money received by a TID, a violation of the federal Hatch Act.¹⁴ Although the amendment attempts to "notwithstanding" common law and any contrary statute, it is questionable whether the General Assembly may enact legislation that violates provisions of the Ohio Constitution or federal law.

Port authority

Towing authorization

(R.C. 4505.101, 4513.60, 4513.601, 4513.61, 4513.62, 4513.63, 4513.64, 4513.65, 4513.66, and 4513.69)

The bill authorizes a port authority's police department to take certain actions regarding towing motor vehicles – currently, entities such as county sheriffs and municipal police departments may take these actions, but not port authority police departments.

Specifically, under the bill, a port authority police department may order into storage the following vehicles within the port authority's jurisdiction: (1) an abandoned junk motor vehicle, (2) a vehicle that has come into the port authority police department's possession, (3) a vehicle that has been left on public streets or other public property for more than 48 hours or on private property without the property owner's permission for more than for hours, and (4) a vehicle that has been in an accident.

The bill also requires a port authority police department to comply with all existing law regarding the towing of motor vehicles, such as maintaining proper records of motor vehicles stored by the port authority police department.

Additionally, under current law, a towing service is required to notify the appropriate law enforcement agency about a vehicle that comes into the entity's possession after the vehicle is towed from a private tow-away zone. The bill requires notice to be given to a port authority police department if the tow occurs within the port authority's jurisdiction.

Carbon copies

(R.C. 4582.12 and 4582.31)

The bill eliminates the requirement that contracts for the construction of a building, structure, or other improvement exceeding \$150,000 entered into between a port authority and a contractor be executed in triplicate, thus eliminating the need for the contract to be carbon copied.

¹³ R.C. 124.57, not in the bill.

¹⁴ 5 U.S.C. § 7321 *et. seq.*

Other Provisions

- Requires an entity – that receives funding as a result of the Transportation Budget bill (H.B. 62) – to post regular updates on that entity’s website regarding how the funding is being used.
- Exempts an individual who provides services for or on behalf of a motor carrier transporting property from coverage under Ohio’s Workers’ Compensation Law, Unemployment Compensation Law, Overtime Law, and Minimum Wage Law if specified conditions apply to the individual.
- Allows the motor carrier to elect coverage under those laws for an individual who satisfies the bill’s conditions.
- Eliminates the exemption to the Opened Container Law that allows a person to possess an open container of alcohol in or on a stationary vehicle that is not being operated in a traffic lane and is in an outdoor refreshment area.
- When a board of county commissioners expends appropriate funds for social services in the county, authorizes the county to use those funds as local matching funds for county transit systems.
- Authorizes the Superintendent of Public Instruction to contract with any county transit system or regional transit authority to provide pupil transportation services.
- Changes from 2% to 6% the amount of financial assistance the Public Works Commission may allocate to local subdivisions for capital improvements related to public emergencies.

Website updates for transportation funds

(Section 755.50)

The bill requires any agency or entity, including a local government entity, that receives funding as a result of the Transportation Budget bill (H.B. 62), to update that agency or entity’s website with regular updates regarding how the funds are being used. The updates may include information concerning how much money is spent, when the money is spent, on what projects the money is spent, and similar information that demonstrates the use of the funds.

Motor carrier independent contractor agreements

(R.C. 4111.03, 4111.14, 4121.01, 4123.01, and 4141.01, with conforming changes in R.C. 119.14 and 1349.61; Section 741.10)

The bill exempts an individual to whom all of the following conditions apply from coverage under Ohio’s Workers’ Compensation Law, Unemployment Compensation Law, Overtime Law, and Minimum Wage Law:

- The individual is the operator of a vehicle or vessel providing services for or on behalf of a motor carrier transporting property (“motor carrier” generally refers to a person

engaged in the business of transporting persons or property by motor vehicle for hire or compensation).

- All of the following factors apply to the individual:
 - The individual owns the equipment that is used in performing the services for or on behalf of the carrier, or the individual leases the equipment under a bona fide lease agreement that is not a temporary replacement lease agreement.
 - The individual is responsible for supplying the necessary personal services to operate the equipment used to provide the service.
 - The compensation paid to the individual is based on factors related to work performed and not solely on the basis of the hours or time expended.
 - The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.
 - The individual enters into a written contract with the carrier for whom the individual is performing the services that describes the relationship between the individual and the carrier to be that of an independent contractor and not that of an employee.
 - The individual is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the individual may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.
 - The individual is responsible for any economic loss or economic gain from the arrangement with the carrier.

The bill's exemption does not apply to any claim or cause of action pending under the laws listed above on the provision's effective date. Additionally, the bill allows a motor carrier to elect coverage under any of the laws listed above for an individual who is otherwise exempt under the bill.

Currently, Ohio courts use different tests to determine whether an individual performing services for another is "employed by" or an "employee of" the other for purposes of the laws amended by the bill. Although the tests vary, the determination is generally based on how much direction and control the "employer" has over the individual performing the services. The following list summarizes the tests currently used under each law amended by the bill:

- Workers' compensation – whether the employer reserves the right to control the manner or means of doing the work (workers' compensation has a separate test for individuals in the construction industry).¹⁵

¹⁵ *Gillum v. Industrial Comm.*, 141 Ohio St. 373, 374 (1943). See also *Bostic v. Connor*, 37 Ohio St.3d 144 (1988).

- Unemployment compensation – a 20-factor test similar to the “common law test” used by the Internal Revenue Service to determine whether a person is an independent contractor under the federal income tax and federal unemployment tax laws.¹⁶
- Minimum wage and overtime – an “economic realities” test¹⁷ that is used to determine an individual’s employment status under the federal minimum wage and overtime laws.

Ohio’s minimum wage was established by an amendment to the Ohio Constitution¹⁸ (“Section 34a”). Section 34a states that “employee” and “independent contractor” have the same meanings as in the federal Fair Labor Standards Act.¹⁹ Determining employee status is often fact-specific, and whether an individual who satisfies the bill’s requirements for the exemption would also satisfy the economic realities test used in minimum wage determinations would be determined based on the facts involved. It is not clear whether the bill’s test is narrower than the economic realities test. Section 34a stipulates that the section must be liberally construed in favor of its purposes. The section specifies that laws “may be passed to implement and create additional remedies, increase the minimum wage rate, and extend the coverage of the section, but in no manner restricting any provision of the section.” The bill’s exclusion of certain individuals providing services to motor carriers from the definition of employee for purposes of the Minimum Wage Law could potentially be viewed as a restriction on Section 34a.²⁰

Opened container of alcohol exemption

(R.C. 4301.62)

The bill eliminates the exemption to the Opened Container Law that allows a person to possess an opened container of beer or intoxicating liquor in or on a motor vehicle within a designated outdoor refreshment area (DORA) when the vehicle is stationary and is not being operated in a lane of vehicular traffic. A DORA is a designated area created by a municipal corporation or township in which a person may purchase beer or intoxicating liquor from a designated liquor permit holder and walk around outdoors.

The current exemption is not in compliance with the federal opened container law requirement. As a result, the state is subject to both limitations on the use of some federal transportation funds and to additional procedural requirements. The bill’s elimination of this exemption makes Ohio’s law compliant with the federal law.

¹⁶ R.C. 4141.01(B)(2)(k) and Ohio Administrative Code 4141-3-05.

¹⁷ See *Donovan v. Brandal*, 736 F.2d 1114 (6th Cir. 1984) and *Solis v. Cascom, Inc.*, 2011 U.S. Dist. LEXIS 122573, case No. 3:09-cv-257 (S.D. Ohio 2011).

¹⁸ Ohio Const., art. II, sec. 34a.

¹⁹ 29 United States Code 201 *et seq.*

²⁰ R.C. 4111.14.

Transit authority and social service matching funds; pupil transportation services

(R.C. 306.051 and 3327.012)

Under the bill, if a board of county commissioners appropriates and expends funds for social services (defined as services for senior citizens, persons with developmental disabilities, etc.), those funds may be used as a local match for state and federal funds to be used for the county's transit system. The funds may be used to match in this manner only if doing so does not jeopardize the state or county's eligibility to receive federal funds generally.

Additionally, funds raised by a county tax levy may be used for the local-matching purpose described above only if usage of the funds is consistent with the purpose for which the tax was levied.

As for pupil transportation, under current law, the Superintendent of Public Instruction may contract with any firm, person, or board of education to provide pupil transportation services. The bill adds a county transit system and a regional transit authority to the list of entities with which the Superintendent may contract to provide pupil transportation services.

Allocation of public improvement funds for emergency purposes

(R.C. 164.08)

The bill revises the formula for allocating a portion of the net proceeds of general obligations issued for public infrastructure capital improvements under the State Capital Improvement Program. Under the bill, the Director of the Public Works Commission may distribute 6%, increased from 2%, of the net proceeds to local subdivisions for capital improvements necessary for the immediate preservation of public health, safety, and welfare. In the past, qualified projects have included repairs related to floods, sinkholes, bridge collapses, and other emergency road and bridge-related problems.²¹

Note on Effective Dates

(Sections 812.10 and 812.20)

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum under the Ohio Constitution and takes effect on the 91st day after the bill is filed with the Secretary of State (barring the filing of a referendum petition).

Article II, Section 1d of the Ohio Constitution states that "appropriations for the current expenses of state government and state institutions" and "[l]aws providing for tax levies" go into immediate effect and are not subject to the referendum. The bill includes a statement that an appropriation of money under the bill is not subject to the referendum if a contemplated

²¹ Public Works Commission, "Emergency Program" available at: <http://www.pwc.state.oh.us/Emergency.html>, last accessed March 1, 2019.

expenditure is wholly to meet a current expense within the meaning of the Ohio Constitution and R.C. 1.471. However, the appropriation is subject to the referendum if a contemplated expenditure wholly or partly does not meet a current expense within the meaning of those provisions.

History

Action	Date
Introduced	02-12-19
Reported, H. Finance	---
