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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 338  
134<sup>th</sup> General Assembly

## Final Analysis

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**Primary Sponsor:** Rep. Hoops

**Effective Date:** August 31, 2022; appropriations effective June 1, 2022

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### SUMMARY

#### Motorcycle safety and education programs

- Allows a private motorcycle safety and education program to use a final end-of-course skills exam that is different from the Department of Public Safety (DPS) final exam, provided their exam meets or exceeds the DPS requirements.
- Exempts a private program's instructors from the DPS instructor training, provided the instructor is trained by a third party and the training meets or exceeds DPS training.
- Requires the Director of DPS to evaluate all private programs (in addition to the state's program, Motorcycle Ohio) every two years, including inspecting their facilities, equipment, training course, curriculum, and procedures used in the instruction courses.
- Authorizes the Director to suspend or revoke the authorization for a private program that fails to maintain the curriculum, standards, and any other requirements specified during its initial authorization.
- Requires the following fees:
  - \$400 (one-time) for initial authorization of a private motorcycle safety and education program that is authorized after August 31, 2022;
  - \$50 (one-time) for initial certification of a private program instructor; and
  - \$175 (every two years) for the two-year evaluation of a program by DPS.
- Requires the tuition fees collected for Motorcycle Ohio to be deposited into the existing Motorcycle Safety and Education Fund.

#### BMV fees

- Renames a fee that the Registrar of Motor Vehicles is authorized to establish and charge for the use of electronic, digital, online, or similar programs that provide Bureau of Motor Vehicles (BMV) services as a "convenience fee."

- Specifies that a convenience fee may be itemized separately from all other BMV taxes and fees.
- Requires all convenience fees collected by the Registrar to be deposited into the existing Public Safety – Highway Purposes Fund.
- Prohibits the Registrar or deputy registrar from charging a convenience fee for a new program if a convenience fee is already authorized for the specific BMV service provided by that program.
- Authorizes a motor vehicle seller (in a noncasual sale) to pass along the cost of the convenience fee to a motor vehicle buyer.
- Authorizes the Director of DPS, through rules, to establish fees that a third party authorized to administer the driver’s license skills test may charge applicants.
- Expressly authorizes the third party to charge a fee for the administration of the skills test if the Director does not adopt rules establishing the amount of the fee, but prohibits the fee from exceeding the cost to administer the skills test.
- Corrects an inconsistency in prior law pertaining to the deputy registrar fee charged for a driver’s license in which that fee was combined with the vision-screening fee.

### **CDL temporary instruction permit knowledge test waiver**

- Requires the Registrar to adopt rules authorizing the waiver of the knowledge test, which is generally required for obtaining a commercial driver’s license (CDL) temporary instruction permit, for specified current and former military service members, in accordance with the federal regulations that authorize the waiver.
- Corrects an outdated reference to federal law related to the waiver of the skills test for specified current and former military service members who apply for a CDL.

### **Regional Transit Authorities**

- Allows a regional transit authority (RTA) to issue revenue bonds supported by the proceeds of the RTA’s sales tax.
- Expands the scope of activities available to an RTA with territory that includes a county with a population of at least 1.3 million, i.e., the Central Ohio Transit Authority (COTA).

### **Toll violations between states**

- Allows the Governor or the Governor’s designee, in consultation with the Director of DPS, to enter into reciprocal agreements with other states regarding the enforcement of motor vehicle toll violations.
- Specifies that the agreement must include, as one enforcement mechanism for toll violations, the refusal of an application for or refusal of the transfer of a motor vehicle registration.

## **Brent Spence Bridge Project**

- Authorizes the Director of Transportation to award design/build contracts up to a total of \$1.5 billion with respect to an Ohio River bridge project (i.e., the Brent Spence Bridge Project).
- Requires the Director to apply to the Controlling Board if the contracts will exceed the \$1.5 billion threshold.
- Authorizes the Director to compensate not more than three bidders for preparation of a responsive preliminary design concept for the project.
- Specifies that the contracting authority granted by the act is for purposes of applying for federal funding, and that any subsequent awards of that funding would need approval by the General Assembly for specific appropriations.

## **Appropriations**

- Makes operating appropriations for the departments of Natural Resources, Public Safety, Veterans Services, Transportation, and the Ohio History Connection.
- Modifies the funding source for the Lorain Pier Planning Project to GRF from debt-backed funding sources.

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## **DETAILED ANALYSIS**

### **Motorcycle safety and education programs**

The act makes several changes to the laws related to motorcycle safety and education programs that are offered by the state and by private organizations and corporations. In Ohio, the Director of Public Safety may authorize a private organization or corporation to offer a nationally-recognized motorcycle safety and education program (“private program”). Each private program operates as an alternative to the program created and offered by the Department of Public Safety (DPS), which is known as Motorcycle Ohio.<sup>1</sup> Prior law was silent regarding whether a private program must use the same instructor certification, instructor training, or a final skills examination required by the Director for Motorcycle Ohio.

The act expressly allows the private program to use a final end-of-course skills exam that is different from the final exam offered by DPS, provided the exam meets or exceeds the requirements of the DPS exam.<sup>2</sup> It also exempts a private program’s instructor from the DPS instructor-training curriculum, if the instructor:

1. Has been trained by the authorized private program and the training meets or exceeds the DPS training curriculum; and

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<sup>1</sup> R.C. 4508.08(A)(2)(a).

<sup>2</sup> R.C. 4508.08(H).

2. Has met all other DPS certification requirements (e.g., criminal background checks).<sup>3</sup>

The act additionally requires the Director to evaluate all private programs every two years (in addition to the already-established biennial evaluations of Motorcycle Ohio). The evaluation must include an inspection of a program's facilities, equipment, training course, curriculum, and any procedures used in the instruction courses. If a private program fails to maintain the curriculum, standards, and any other requirements specified during its initial authorization, the Director may suspend or revoke the program's authorization (in accordance with rules adopted under the Administrative Procedures Act).<sup>4</sup>

### **Authorization, certification, and evaluation fees**

The act requires the Director to charge the following fees:

1. For any private program authorized after August 31, 2022, a one-time \$400 fee for the initial authorization;
2. A one-time \$50 fee for the initial state certification of an instructor of a private program;
3. An ongoing \$175 fee due at the time of the two-year program evaluation, as described above.<sup>5</sup>

The fees must be deposited into the existing Motorcycle Safety and Education Fund. The act additionally requires all tuition fees collected from participants in Motorcycle Ohio to be deposited into that fund. The fund also contains a portion of all motorcycle registration taxes and is used to pay the costs of administering Motorcycle Ohio.<sup>6</sup>

## **BMV fees**

### **Convenience fee**

Under continuing law, the Registrar of Motor Vehicles may develop and implement (or allow a deputy registrar to implement) one or more programs that enhance the convenience and availability of the Bureau of Motor Vehicles' (BMV) services through electronic means (e.g., kiosks or similar self-serve options). The act expands the electronic program concept to include the use of any program that utilizes digital, online, or similar technology to provide a BMV service.

Under continuing law, if the Registrar implements the programs, the Registrar must establish the amount of any fee charged to customers for the benefit of using those programs. The act specifies that the fee is a "convenience fee" and declares that the convenience fee is separate from all other authorized taxes and fees and may be itemized separately. However,

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<sup>3</sup> R.C. 4508.08(I).

<sup>4</sup> R.C. 4508.08(C).

<sup>5</sup> R.C. 4508.08(J).

<sup>6</sup> R.C. 4501.13 and 4508.08(J).

the act prohibits the Registrar or deputy registrar from charging a convenience fee for an electronic/digital/online program if the particular BMV service provided by the program already includes a similar type of fee. A motor vehicle seller in a noncasual sale (e.g., a motor vehicle dealer) may pass along the cost of the convenience fee to the motor vehicle buyer.

Any convenience fee collected by the Registrar must be deposited into the existing Public Safety – Highway Purposes Fund, while a deputy registrar may retain it to cover the cost of providing the program.<sup>7</sup>

### **Fees for third party driver’s tests**

The act authorizes the Director of DPS to adopt rules (in accordance with the Administrative Procedures Act) establishing reasonable fees that a third party authorized to administer the motor vehicle driver’s license skills test may charge for the administration of that test. If the Director does not adopt rules establishing the amount of the fees, a third party may charge applicants a fee for the administration of the test. However, that fee may not exceed the cost to administer the skills test.<sup>8</sup>

### **Driver’s license vision test fee and deputy registrar fee**

The act corrects an inconsistency from prior law pertaining to the deputy registrar fee charged for a standard 4-year driver’s license. Specifically, the act corrects a reference to a \$6.25 fee that combined the deputy registrar fee with the vision-screening fee, but did not account for the increase to the deputy registrar fee, authorized by the 133<sup>rd</sup> General Assembly.<sup>9</sup> The prior reference presumed a \$2.75 vision-screening fee plus the prior \$3.50 deputy registrar fee, instead of a \$2.75 vision-screening fee plus the currently required \$5 deputy registrar fee. The act makes the same corrective change for the 8-year standard driver’s license fees as well, but doubled.<sup>10</sup>

### **CDL temporary instruction permit knowledge test waiver**

The act requires the Registrar to adopt rules authorizing the waiver of the knowledge test that is generally required for obtaining a commercial driver’s license (CDL) temporary instruction permit for specified current and former military service members. The waiver is limited to a military service member applicant if all of the following apply during the year preceding the application for the permit:

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<sup>7</sup> R.C. 4501.025.

<sup>8</sup> R.C. 4507.112(C).

<sup>9</sup> R.C. 4503.038, not in the act. Am. Sub. H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>10</sup> R.C. 4507.24(A)(1) and (2).

1. The applicant has been regularly employed in a federally specified position within the military;<sup>11</sup>
2. The applicant has been operating a vehicle that is representative of the commercial motor vehicle that the applicant intends to operate;
3. The applicant has not simultaneously held more than one civilian license;
4. The applicant has not had any license suspended, revoked, or cancelled;
5. The applicant has not been convicted of an offense that would disqualify the applicant from obtaining a CDL;
6. The applicant has not been convicted of a serious traffic violation; and
7. The applicant has not been convicted of a military, state, or local motor vehicle traffic law in connection with an accident or an accident in which the applicant was at fault.<sup>12</sup>

The waiver does not apply to a U.S. Reserve Technician. Federal regulations authorize a waiver of the knowledge test if any applicant meets all of the above conditions.<sup>13</sup> Similarly, federal law and state law authorize a waiver of the skills test for specified current and former military service members. The act corrects an outdated reference to the federal regulations related to that skills test waiver.<sup>14</sup>

## **Regional transit authority**

The act makes two changes to the law governing regional transit authorities (RTAs). First, it allows an RTA to issue revenue bonds supported by the proceeds of the RTA's sales tax. Second, it expands the scope of activities available to an RTA when its territory includes a county with a population of at least 1.3 million.

### **Issuance of revenue bonds**

Under continuing law, an RTA may raise money by issuing revenue bonds, levying a sales tax of up to 1.5%, or both. However, under prior law, an RTA's revenue bonds could be secured only by fees, charges, or other revenue from a transit facility, or by the RTA's allocation of a sales tax levied by a county.

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<sup>11</sup> The federally specified positions are any of the following: Motor Transport Operator (88M, Army); PATRIOT Launching Station Operator (14T, Army); Fueller (92F, Army); Vehicle Operator (2T1, Air Force); Fueller (2F0, Air Force); Pavement and Construction Equipment Operator (3E2, Air Force); Motor Vehicle Operator (3531, Marine Corps); and Equipment Operator (E.O., Navy).

<sup>12</sup> R.C. 4506.06(C).

<sup>13</sup> [49 Code of Federal Regulations part 383.77](#).

<sup>14</sup> R.C. 4506.09(D)(1)(a).

The act specifically allows the RTA to issue revenue bonds that are backed by the proceeds of the RTA's own sales tax. If an RTA elects to secure revenue bonds with its sales tax proceeds, the RTA cannot repeal the tax while the bonds are outstanding.<sup>15</sup>

### **COTA scope of activities**

The act also expands the scope of activities of an RTA with territory that includes a county with a population of at least 1.3 million. The Central Ohio Transit Authority (COTA) is the only RTA that currently meets this criterion.

In addition to existing powers available to all RTAs, the act allows COTA to do the following:

- Acquire, lease, and construct property in furtherance of “transit-oriented development activities” that provide, promote, or enhance transportation, economic development, housing, recreation, education, governmental operations, culture, or research within COTA's jurisdiction;
- Spend sales tax revenue and other revenue on demand-responsive transportation (e.g., “dial-a-ride”), subscription services, right-of-way improvements, utilities, and communications infrastructure that does not otherwise constitute a “transit facility,” or on other nontransit facility infrastructure that has received state or federal funding;
- Dedicate sales tax revenue to fund the construction or maintenance of roads, bridges, greenways, pathways, bikeways, or pedestrian underpasses or overpasses that would not otherwise constitute a “transit facility.”

For the latter type of projects, the act requires that the project be related to the COTA's provision of service, that COTA enter into agreements for such projects with the local governments in its jurisdiction, and that COTA receive approval from the applicable metropolitan planning organization.<sup>16</sup>

### **Toll violations between states**

The act authorizes the Governor, or the Governor's designee, in consultation with the Director of DPS, to enter into reciprocal agreements with other states regarding the enforcement of motor vehicle toll violations. If entered into, the agreements must pertain to any public toll transportation facility, but may also encompass private toll transportation facilities as well.<sup>17</sup> Additionally, any agreement must include the following:

1. That all out-of-state drivers must be given the same benefits, privileges, and exemptions that a state provides to its in-state drivers regarding the enforcement of tolls;

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<sup>15</sup> R.C. 306.37.

<sup>16</sup> R.C. 306.354.

<sup>17</sup> A “private toll transportation facility” is any person or business entity engaged in collecting or charging tolls on a toll bridge that was previously owned by a municipal corporation. R.C. 5501.441(A).

2. That refusal of an application for motor vehicle registration or transfer of motor vehicle registration must be one of the enforcement mechanisms for toll violations under the agreement; and
3. That any notice sent regarding the toll violations or their enforcement may be sent electronically.<sup>18</sup>

A similar enforcement mechanism exists for toll violations committed by an Ohio resident on the Ohio Turnpike. Specifically, the Ohio Turnpike and Infrastructure Commission may notify the Registrar if an Ohio driver refuses to pay a toll owed by that person, and the Registrar must refuse to accept, renew, or transfer that person's application for motor vehicle registration until the toll is paid.<sup>19</sup> Other states often have similar laws for their residents, as well. However, it is sometimes difficult to enforce toll violations committed by out-of-state drivers if those drivers ignore the toll invoices and there is no additional enforcement mechanism in place. Agreements between states to enforce toll violations committed by their residents in another state may potentially reduce those violations.<sup>20</sup>

## **Brent Spence Bridge Project**

The act authorizes the Director of Transportation to award design/build contracts of up to a total of \$1.5 billion with respect to an Ohio River bridge project (i.e., the Brent Spence Bridge Project). The project may include both of the following:

1. The replacement, addition, improvement, or rehabilitation of a bridge or system of bridges over the Ohio River; and
2. The replacement, addition, improvement or rehabilitation of roadways providing for the ingress to and egress from the bridge or system of bridges over the Ohio River within Ohio and any adjoining state.

In comparison, the Director has a threshold of \$1 billion for purposes of other combined design/build construction contracts. If the Director will exceed the \$1.5 billion threshold for the Ohio River bridge project, the Director must apply to the Controlling Board for that additional contracting authority. The Controlling Board may approve the request at its discretion. The Director also may compensate up to three bidders for their responsive preliminary design concept. The compensation for the design concept may not exceed the cost to develop that concept.

The contracting authority granted by the act is for purposes of the Ohio Department of Transportation applying for federal funding to assist with the Brent Spence Bridge Project. Any

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<sup>18</sup> R.C. 5501.441.

<sup>19</sup> R.C. 5537.041(C), not in the act.

<sup>20</sup> ["Out-of-State Toll Scofflaws Vex State Authorities."](#) Elaine S. Povich. The PEW Charitable Trusts. September 7, 2021. Accessed on May 17, 2022.



subsequent awards of that funding still need approval by the General Assembly for the specific appropriations.<sup>21</sup>

## Appropriations

The act makes the following appropriations:

H.B. 338 appropriations			
Agency	Amount	FY	Purpose
Natural Resources <sup>22</sup>	\$365,000	2022	<ul style="list-style-type: none"> <li>▪ \$350,000 to support the Bradfield Community Center;</li> <li>▪ \$15,000 to support the Lorain Pier Planning Project.</li> </ul>
Public Safety <sup>23</sup>	\$1,000,000	2022	To provide grants to Jewish community organizations for emergency security upgrades.
Transportation <sup>24</sup>	\$690,898,581	2023	Provides federal funding for public transit and highway construction projects.
Veterans Services <sup>25</sup>	\$750,000	2022	To issue grants to the Veterans of Foreign Wars Emergency Repair Program.
Ohio History Connection <sup>26</sup>	\$500,000	2023	To fund activities of the Ohio Commission for the U.S. Semiquincentennial.

The act also modifies funding for the Lorain Pier Planning Project, first authorized in [S.B. 310](#) of the 133<sup>rd</sup> General Assembly (2019-2020) and renewed by [H.B. 687](#) of the 134<sup>th</sup> General Assembly, the recently enacted capital appropriations act. The act changes the source of funding to GRF from debt-backed funds. Both acts are available on the General Assembly website, [legislature.ohio.gov](http://legislature.ohio.gov).<sup>27</sup>

<sup>21</sup> R.C. 5517.011.

<sup>22</sup> Section 6.

<sup>23</sup> Section 7.

<sup>24</sup> Section 8.

<sup>25</sup> Section 9.

<sup>26</sup> Section 10.

<sup>27</sup> Sections 3 and 6.

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## HISTORY

Action	Date
Introduced	06-07-21
Reported, H. Transportation & Public Safety	11-16-21
Passed House (90-1)	12-09-21
Reported, S. Transportation	05-18-22
Passed Senate (30-1)	05-18-22
House concurred in Senate Amendments (76-11)	05-18-22

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