



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 53

131st General Assembly  
(As Introduced)

(Excluding appropriations and similar provisions)

Rep. Grossman

## TABLE OF CONTENTS

<b>DEPARTMENT OF PUBLIC SAFETY</b> .....	2
Commercial driver's licenses (CDLs).....	6
CDL skills test examiners .....	6
CDL skills test requirement waivers.....	8
Reciprocity with other states.....	9
CDL temporary instruction permits .....	10
Endorsements and restrictions for CDLs and CDL permits.....	10
General provisions .....	10
For CDLs.....	10
For CDL temporary instruction permits .....	11
New prohibitions related to CDLs .....	12
Medical examinations.....	12
Other provisions .....	13
Definitional changes.....	13
Driver's licenses and driver training schools.....	14
Testing for driver's licenses .....	14
Driver education course or driver training course .....	14
Road and maneuverability tests; use of a driving simulator .....	15
Advanced driver skills course in lieu of the road and maneuverability tests .....	15
Driver education and driver training for persons under 18 years of age .....	16
Restrictions applicable to probationary driver's license holders .....	16
Hours of operation.....	16
Motor vehicle occupants.....	17
Moving violations.....	17
Driver training schools.....	18
Definition .....	18
Penalty for operating a driver training school without a valid license .....	18
Driver training instructor probationary license.....	18

\* This version removes an incorrect description regarding the use of certain certificate of title fees.

Driver training instructor licenses, generally .....	19
Penalty for acting as a driver training instructor without a valid license .....	19
Suspension of a driver training school or driver training instructor license .....	19
Payment for certificates of completion .....	20
Actions against persons who violate driver training school requirements.....	20
The offense of "distracted driving" .....	21
Driver Education Fund.....	22
Definitions .....	22
Transferring the registration of a trailer or semitrailer .....	23
Changes to Department of Public Safety fund allocations .....	23
Deposit of specified fees in the State Bureau of Motor Vehicles Fund.....	23
Penalties and the Private Investigator and Security Guard Provider Fund.....	24
Unidentified Public Safety Receipts Fund.....	24
State Highway Safety Fund.....	24
Law Enforcement Reimbursement, Motor Vehicle Dealers Board, and Financial Responsibility Compliance funds.....	25
Elimination of the MARCS Operations Fund.....	25
Elimination of the Highway Obligations Bond Retirement Fund .....	26
Security, Investigations, and Policing Fund .....	26
<b>DEPARTMENT OF TRANSPORTATION .....</b>	<b>26</b>
Rail Development Commission elimination and transfer of duties to ODOT .....	29
ODOT Division of Freight .....	29
Organization of the Division .....	30
Repealed provisions of current law .....	31
State rail safety oversight program.....	31
Administration of the federal Public Transportation Safety Program .....	31
Requirements related to state rail safety oversight .....	32
Local construction cost match .....	33
Indefinite delivery indefinite quantity (IDIQ) contracts.....	34
Construction manager general contractor pilot project .....	34
ODOT assumption of duties .....	35
Transportation Review Advisory Council meetings.....	36
Agreements related to federal permits .....	36
<b>DEPARTMENT OF TAXATION .....</b>	<b>36</b>
Continuation of the motor fuel evaporation and shrinkage allowance .....	37
Motor vehicle fuel tax distribution .....	37
<b>MISCELLANEOUS .....</b>	<b>38</b>
Required use of alternative fuel by state motor vehicles.....	38

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## DEPARTMENT OF PUBLIC SAFETY

### Commercial driver's licenses (CDLs)

- Modifies the requirements applicable to CDL skills test examiners who are not employed by the Department of Public Safety or the Highway Patrol as follows:



- Requires criminal background checks;
  - Requires test examiners to maintain a bond as determined by the Director of Public Safety sufficient to pay retesting costs in the event test examiners are involved in fraudulent testing;
  - Requires test examiners to pass a prescribed training course and be certified by the state as qualified;
  - Requires test examiners to use designated test routes;
  - Requires test examiners to submit a schedule of skills test appointments to the Director not later than two business days prior to each test;
  - Requires that certain records be available at the principal place of business;
  - Prohibits a driver training school examiner from testing an applicant that the examiner trained;
  - Requires test examiners to conduct complete skills tests on a minimum of 32 different individuals per calendar year.
- Modifies the circumstances in which the Director of Public Safety may authorize a waiver of CDL skills test.
  - Establishes interstate reciprocity for CDL skills testing.
  - Generally requires the Registrar of Motor Vehicles to provide conviction and disqualification records to state and federal officials.
  - Requires a minimum of 14 days between issuance of a CDL temporary instruction permit and eligibility for taking a skills test.
  - Revises the endorsements and restrictions for CDL holders and establishes endorsements and restrictions for CDL permits.
  - Prohibits employers from knowingly permitting or authorizing a driver to do either of the following:



--Operate a commercial motor vehicle without a CDL bearing the proper class or endorsement for the vehicle; or

--Operate a commercial motor vehicle in violation of any restrictions on the driver's CDL.

- Prohibits any person under the age of 21 who possesses a CDL or CDL permit from operating a commercial motor vehicle in interstate commerce.
- Specifies that only a medical examiner who is listed on the national registry of certified medical examiners established by the federal Motor Carrier Safety Administration may perform a physical examination for purposes of a CDL application.
- Generally establishes a gross vehicle weight standard for operating commercial motor vehicles and combination vehicles, in addition to a gross vehicle weight rating, and in so doing allows enforcement of commercial motor vehicle laws based on actual vehicle weight.
- Includes specified out-of-state traffic violations and a violation of any state or local law prohibiting using a handheld mobile telephone in the definition of a "serious traffic offense."

### **Driver's licenses and driver training schools**

- Requires every applicant for an initial driver's license, irrespective of age, to present evidence of having successfully completed an approved driver education or driver training course.
- Permits the Director of Public Safety to require every applicant for an initial driver's license to demonstrate the ability to exercise ordinary and reasonable control while operating a motor vehicle by using a driving simulator prior to taking the current road and maneuverability tests.
- Permits driver training schools to offer an advanced driver skills course, and permits an applicant for a driver's license who has successfully completed such a course to request a waiver of the current road and maneuverability tests.
- Increases from eight to ten the number of hours of actual behind-the-wheel instruction conducted on public roads required for all beginning drivers of noncommercial motor vehicles who are under 18 years of age.



- Generally prohibits all probationary driver's license holders from operating a motor vehicle between midnight and 6 a.m. unless the holder is accompanied by a parent or guardian.
- Generally prohibits the holder of a probationary driver's license from operating a motor vehicle with more than one person who is not a family member occupying the vehicle unless the holder is accompanied by a parent, guardian, or custodian.
- Requires, for a specified period of time, a person who holds a probationary driver's license, who pleads guilty to a moving violation, and who has not attained the age of 18 years to be accompanied by the holder's parent or guardian when operating a motor vehicle.
- Creates a 180-day probationary driver training instructor license for persons who obtain their initial instructor license, and requires persons who obtain the probationary license to pass an assessment in order to be issued a driver training instructor license.
- Permits the Director of Public Safety, in certain circumstances, to suspend a driver training instructor license or a driver training school license, and provides for an opportunity for a hearing regarding the suspension.
- Permits the Attorney General, a county prosecuting attorney, or a city law director, upon complaint of the Director of Public Safety, to bring an action against any person who violates any Revised Code provision governing driver training schools or any applicable rule.

### **Distracted driving**

- Creates the offense of "distracted driving," but limits application and prosecution of the offense to persons who also commit a moving violation or a vehicular homicide offense at the same time as the distracted driving offense.

### **Transferring the registration of a trailer or semitrailer**

- Specifies that a permanent trailer or semitrailer registration is nontransferrable, rather than any multi-year trailer or semitrailer registration as under current law.

### **Changes to Department of Public Safety fund allocations**

- Requires a \$3 portion of each fee collected from the sale of lists containing driver's license and motor vehicle registration and title information that are credited to five separate funds to be credited instead to the existing State Bureau of Motor Vehicles Fund.



- Eliminates the Homeland Security Fund and the Investigations Fund.
- Requires the revenue from civil penalties imposed under the Private Investigator/Security Service Law to be deposited into the Private Investigator and Security Guard Provider Fund.
- Requires all investment earnings of the Unidentified Public Safety Receipts Fund to be credited not to that fund as in current law but instead to the existing State Bureau of Motor Vehicles Fund.
- Requires certain commercial motor vehicle registration taxes that currently are deposited into the Highway Operating Fund and the Highway Obligations Bond Retirement Fund to be deposited instead into the State Highway Safety Fund.
- Eliminates the Law Enforcement Reimbursement Fund, the Motor Vehicle Dealers Board Fund, and the Financial Responsibility Compliance Fund, and requires all of the fees or portions of fees deposited into the funds to be deposited instead into the existing State Bureau of Motor Vehicles Fund.
- Eliminates the MARCS (multi-agency radio communications system) Operations Fund.
- Eliminates the Highway Obligations Bond Retirement Fund, and eliminates obsolete related language that relates to certain highway bonds that no longer are outstanding.
- Removes coordinating homeland security activities as one of the purposes for which money in the Security, Investigations, and Policing Fund may be used.

## **Commercial driver's licenses (CDLs)**

(R.C. 4506.01, 4506.03, 4506.05, 4506.06, 4506.07, 4506.071, 4506.09, 4506.10, 4506.12, 4506.13, 4506.15, 4506.16, 4506.17, 4506.20, and 4506.21)

### **CDL skills test examiners**

(R.C. 4506.09)

The bill expands the requirements applicable to CDL skills test examiners who are not employed by the Department of Public Safety (DPS) or the Highway Patrol. Under current law, the Director of Public Safety may allow the administration of the CDL skills test by another party. In order for another party to conduct CDL skills tests,



that party must enter into an agreement with the Director that: (1) allows for random examinations, inspections, and audits of the other party without prior notice, (2) requires annual on-site inspections of the other party, (3) requires all examiners to meet the same qualification and training standards as the DPS examiners, (4) requires review of the test administered by the other party, and (5) reserves the right of the state to take action against the other party for failure to comply with the applicable requirements or contract terms.

The bill specifies that such an agreement also must:

(1) Allow random examinations, inspections, and audits to be either overt or covert;

(2) Require a criminal background check for each examiner employed by the other party;

(3) Require the other party, unless the other party is a governmental entity, to maintain a bond in an amount determined by the Director for purposes of retesting drivers in case the other party or its skills examiners are involved in fraudulent activities related to skills testing;

(4) Require the other party to use only skills test examiners who have successfully completed a CDL examiner training course prescribed by the Director and who are certified by the state as qualified examiners;

(5) Require the other party to use designated road test routes that are approved by the Director;

(6) Require the other party to submit a schedule of skills test appointments to the Director not later than two business days prior to each skills test;

(7) Require the other party to maintain copies of the following records at its principal place of business: the other party's CDL skills testing program certificate, each examiner's certificate of authorization to administer skills tests, each completed skills test scoring sheet for the current year and the last two years, a complete list of approved test routes, and a complete and accurate copy of each examiner's training record;

(8) If the other party is also a driver training school, prohibit the other party's skills test examiners from administering skills tests to applicants that the examiner personally trained;

(9) Require each skills test examiner to administer a complete skills test to a minimum of 32 different individuals per calendar year; and



(10) Allow the state to take remedial action against the skills test examiners employed by the other party for failure to comply with the applicable requirements or contract terms.

### **CDL skills test requirement waivers**

(R.C. 4506.09)

The bill modifies the circumstances under which the Director of Public Safety may issue waivers of the skills test requirement, which generally must be fulfilled in order to obtain a CDL. First, the bill eliminates the existing requirement that the Director adopt rules for the purpose of issuing a waiver to persons who: meet certain requirements and who have previously taken and passed a skills test in another state; are employed in a job that requires the operation of a commercial motor vehicle and who have previously taken and passed a skills test in another state; or are employed in a job that requires the operation of a commercial motor vehicle and who have regularly operated a vehicle similar to the vehicle for which the CDL is being sought for at least two years immediately preceding the application. This requirement is replaced by a provision of the bill that generally grants reciprocity to a person domiciled in Ohio who passed the skills test in another state (see below).

Second, the bill modifies the existing requirement that the Director adopt rules for the purpose of issuing a waiver to certain CDL applicants with prior experience operating a commercial motor vehicle in the military. Under current law, the Director must adopt rules for the purpose of authorizing a skills test waiver for an applicant who:

(1) Has been a member or uniformed employee of the armed forces of the United States or their reserve components, including the Ohio National Guard or the national guard of any other state;

(2) Is or was regularly employed in a military position requiring the operation of a commercial motor vehicle;

(3) Regularly operated a vehicle representative of the vehicle the applicant operates or expects to operate for at least the preceding two years or the two years preceding separation from the military;

(4) Has not committed certain motor vehicle offenses; and

(5) Has not had their license suspended, revoked, or canceled.





The bill modifies the first two requirements of that waiver, by requiring that the applicant is active duty military personnel, a member of the military reserves, a member of the national guard, or active duty U.S. Coast Guard personnel and that the applicant operates a commercial motor vehicle for military purposes. The bill also specifies that U.S. reserve technicians are not eligible for the waiver.

### **Reciprocity with other states**

(R.C. 4506.01, 4506.09, 4506.13, and 4506.21)

The bill specifies that a person who has successfully completed CDL training in Ohio but who seeks a CDL in another state where the person is domiciled may schedule an appointment to take the skills test in Ohio and must pay the appropriate appointment fee. For purposes of the CDL law, under the bill, "domiciled" means having a true, fixed, principal, and permanent residence to which an individual intends to return. Upon the person's completion of the skills test, the Registrar of Motor Vehicles must electronically transmit the applicant's results to the state where the person is domiciled. If a person who is domiciled in Ohio takes a skills test in another state, the Registrar must accept the results of the skills test from the other state. If the person passed the other state's skills test and meets all of the other licensing requirements, the Registrar or a deputy registrar must issue a CDL to that person.

The bill also requires that the Registrar, to the extent permitted by federal and state law, provide conviction and disqualification records from the CDL information system regarding a CDL holder or commercial motor vehicle operator to other states, the Secretary of the U.S. Department of Transportation, the CDL holder or commercial motor vehicle operator referenced in the records, and a motor carrier that is a current or prospective employer of the CDL holder or commercial motor vehicle operator referenced in the records. The records must be provided within ten days of the date of the conviction or disqualification if it occurred in Ohio or within ten days of the receipt of conviction or disqualification information from another state.

Further, the bill requires that within ten days of the final judgment of a conviction of the holder of an out-of-state CDL or CDL permit in any type of vehicle, or the conviction of the holder of an out-of-state noncommercial driver's license who was operating a commercial vehicle, for a violation of state law or a local ordinance or resolution related to traffic control, other than a parking violation, the Registrar must notify the driver licensing authority in the holder's state or jurisdiction of licensure. For purposes of this requirement, a judgment of conviction is not final until it is entered into the court journal by the clerk of courts. Under current law, the Registrar must only provide the notice with regard to a conviction for traffic violations committed in a commercial motor vehicle.



## **CDL temporary instruction permits**

(R.C. 4506.03, 4506.06, and 4506.09)

The bill clarifies that a CDL temporary instruction permit is a prerequisite to the initial issuance of a CDL or the upgrade of a CDL if the upgrade requires a skills test. Further, under the bill, while holding a CDL permit, the holder may only operate a commercial motor vehicle so long as the person is accompanied by a person who holds a valid CDL and all necessary endorsements for the type of vehicle being driven and who has the permit holder under observation and direct supervision. These requirements are in addition to the current law requirements that the CDL holder who accompanies the CDL permit holder occupies a seat beside the permit holder for purposes of giving instruction and that the permit holder have the permit in their possession. The bill also specifies that no applicant is eligible to take the CDL skills test for purposes of obtaining a CDL until at least 14 days have elapsed since the initial issuance of the CDL permit.

## **Endorsements and restrictions for CDLs and CDL permits**

(R.C. 4506.12)

### **General provisions**

The bill specifies that the operation of a commercial motor vehicle in violation of a CDL restriction is a first degree misdemeanor. Current law, unchanged by the bill, specifies that the operation of a commercial motor vehicle without a required endorsement is a first degree misdemeanor. Under the bill, both offenses are strict liability offenses.

### **For CDLs**

The bill eliminates the following CDL endorsements that exist under current law:

(1) P1--authorizes the driver to drive class A vehicles designed for fewer than 16 passengers, including the driver, and all lesser classes of vehicles without restriction as to the designed passenger capacity of the vehicle;

(2) P2--authorizes the driver to drive class A or B vehicles designed for fewer than 16 passengers, including the driver, and all lesser classes of vehicles without restriction as to the designed passenger capacity of the vehicle; and

(3) P4--restricts the driver to driving class C school buses designed to transport fewer than 16 passengers including the driver.



The bill also establishes the following new restrictions that may be imposed on a CDL, in addition to those established under current law:

- (1) E--restricts the driver to vehicles equipped with an automatic transmission;
- (2) M--restricts the driver from operating class A passenger vehicles;
- (3) N--restricts the driver from operating class A and B passenger vehicles;
- (4) O--restricts the driver from operating tractor-trailer commercial motor vehicles; and
- (5) Z--restricts the driver to vehicles not equipped with full air brakes.

**For CDL temporary instruction permits**

The bill establishes the following endorsements for CDL permits and specifies that a permit holder may not be issued any other endorsement:

(1) N--authorizes the permit holder to drive tank vehicles; however, the permit holder may only operate empty tank vehicles and cannot operate any tank vehicle that previously contained hazardous materials that have not been purged from the vehicle.

(2) P--authorizes the permit holder to drive vehicles designed to transport sixteen or more passengers, including the driver; however, the permit holder may not carry passengers.

(3) S--authorizes the permit holder to drive school buses transporting children; however, the permit holder may not operate a school bus with passengers.

The bill establishes the following restrictions applicable to CDL permits:

- (1) K--restricts the driver to only intrastate operation;
- (2) L--restricts the driver to vehicles not equipped with air brakes;
- (3) M--restricts the driver from operating class A passenger vehicles;
- (4) N--restricts the driver from operating class A and B passenger vehicles;
- (5) P--restricts the driver from transporting passengers in a commercial motor vehicle bus;
- (6) V--indicates the existence of a medical variance on the driver's commercial driver's license information system driver record; and



(7) X--restricts the driver from transporting cargo in a tank vehicle.

### **New prohibitions related to CDLs**

(R.C. 4506.05 and 4506.20)

The bill prohibits any person who holds a CDL or CDL permit from driving a commercial motor vehicle in interstate commerce prior to reaching the age of 21. This is a strict liability offense and is punishable as a first degree misdemeanor. The bill also specifies that the current law prohibition against the operation of a commercial motor vehicle without complying with the requirements applicable to the operation of such a vehicle is a strict liability offense.

Additionally, the bill prohibits any employer from doing either of the following:

(1) Knowingly permitting or authorizing a driver to operate a commercial motor vehicle if the driver does not hold a valid CDL or CDL permit bearing the proper class or endorsement for the vehicle;

(2) Knowingly permitting or authorizing a driver to operate a commercial motor vehicle in violation of the restrictions on the driver's CDL or CDL permit.

Under the bill, a violation of either prohibition is a first degree misdemeanor.

### **Medical examinations**

(R.C. 4506.10)

The bill specifies that only a medical examiner who is listed on the national registry of certified medical examiners established by the Federal Motor Carrier Safety Administration (FMCSA) may perform a physical examination on a person for purposes of a CDL application. According to the FMCSA, a medical examiner includes, but is not limited to, doctors of medicine, doctors of osteopathy, physicians assistants, advance practice nurses, and doctors of chiropractic.<sup>1</sup>

Under current law, unchanged by the bill, a person must be medically certified as physically qualified to operate a commercial motor vehicle. Current law authorizes the following persons to conduct the examination: a person licensed to practice medicine or surgery or osteopathic medicine and surgery; a physician assistant who is authorized by the supervising physician to perform such a medical examination; a

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<sup>1</sup> DOT Medical Exam and Commercial Motor Vehicle Certification, Federal Motor Carrier Safety Administration, <http://www.fmcsa.dot.gov/medical/driver-medical-requirements/dot-medical-exam-and-commercial-motor-vehicle-certification> (last visited February 2, 2015).



certified nurse practitioner; a clinical nurse specialist; a certified nurse-midwife; or a chiropractic doctor.

### **Other provisions**

(R.C. 4506.03, 4506.05, 4506.07, 4506.10, 4506.15, 4506.16, and 4506.17)

The bill also does all of the following:

(1) Specifies that a CDL may not be upgraded or renewed until the applicant surrenders their current license or permit;

(2) Specifies that any conviction for an offense that would lead to disqualification, whether committed in a commercial motor vehicle or any other vehicle, must be counted for purposes of determining the number of violations and the appropriate disqualification period;

(3) Expressly references CDL permits in the prohibitions and other provisions governing CDLs; and

(4) Requires an applicant for a CDL or CDL permit to include the applicant's state of domicile on the application.

### **Definitional changes**

(R.C. 4506.01)

The bill modifies the definition of "commercial motor vehicle" to categorize a vehicle or combination of vehicles as a commercial motor vehicle if the weight threshold is met based upon the gross vehicle weight or the gross vehicle weight rating of the vehicle, rather than only the gross vehicle weight rating as under current law. This change will allow for the enforcement of the commercial driver's license law based on actual vehicle weight.

The bill modifies the definition of "serious traffic violation" to include violations of a law or local ordinance or resolution that prohibits texting while driving or the use of a handheld mobile telephone, unless the phone was being used to contact law enforcement or other emergency services. The bill modifies the definition of "texting" and defines "use of a handheld mobile telephone." Additionally, the bill specifies that an out of state traffic violation is a serious traffic violation if it is determined to be a serious traffic violation by the U.S. Secretary of Transportation and designated as such by the Director of ODOT. Under current law, if a person is convicted of two or more serious traffic violations within a three year period, the person's CDL will be disqualified for a statutorily specified period of time.



The bill also modifies the definition of "tank vehicle" to mean any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks that are either permanently or temporarily attached to the vehicle or its chassis and have an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more. The bill also specifies that "tank vehicle" does not include a commercial motor vehicle transporting an empty storage container tank that is not designed for transportation, has a rated capacity of 1,000 gallons or more, and is temporarily attached to a flatbed trailer. Under current law, "tank vehicle" means any commercial motor vehicle that is designed to transport any liquid and has a maximum capacity greater than 119 gallons or is designed to transport gaseous materials and has a water capacity greater than 1,000 pounds within a tank that is either permanently or temporarily attached to the vehicle or its chassis. Further, under current law, "tank vehicle" does not include any of the following:

- (1) Any portable tank having a rated capacity of less than 1,000 gallons;
- (2) Tanks used exclusively as a fuel tank for the motor vehicle to which it is attached;
- (3) An empty storage container tank that is not designed for transportation and that is readily distinguishable from a transportation tank; or
- (4) Ready-mix concrete mixers.

## **Driver's licenses and driver training schools**

(R.C. 4507.071, 4507.11, 4507.21, 4508.01, 4508.02, 4508.03, 4508.04, 4508.05, 4508.06, 4508.10, 4508.11, and 4511.043)

### **Testing for driver's licenses**

(R.C. 4507.11, 4507.21, and 4508.02)

### **Driver education course or driver training course**

The bill requires every person, rather than only persons less than 18 years of age as required by current law, when applying for an initial driver's license to show proof of having successfully completed any of the following:

- (1) An approved driver education course;
- (2) An approved driver training course; or



(3) A training course that is comparable to either of those two courses that was administered by a branch of the United States armed forces while residing outside this state for the purpose of being with or near any person serving in the United States armed forces.

#### **Road and maneuverability tests; use of a driving simulator**

The bill specifies that the law requiring an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motor vehicle consist of a road test and a maneuverability test. This is a codification of current practice. The bill requires the Director of Public Safety to determine the formats of these two tests.

In addition, the bill permits the Director to require every applicant for an initial driver's license to demonstrate the ability to exercise ordinary and reasonable control in the operation of a motor vehicle by using a driving simulator under the supervision of an examining officer. If the Director requires a simulated driving test, the applicant must successfully complete the test before taking the road and maneuverability tests. If the Director decides to require the use of a simulated driving test, the Registrar of Motor Vehicles is required to adopt rules governing the specifications for the driving simulators and the standards for the simulated driving test.

#### **Advanced driver skills course in lieu of the road and maneuverability tests**

The bill permits driver training schools to offer an advanced driver skills course. A driver's license applicant who has completed such an approved course may submit a written request for a waiver of the road and maneuverability tests to the Registrar or a deputy registrar. The applicant must include with the waiver request a valid certificate of completion of the advanced driver skills course issued by the driver training school that administered the course. Upon receipt of the waiver request and a valid certificate of completion, the Registrar is required to waive or direct a deputy registrar to waive the road and maneuverability tests.

The bill requires the Director of Public Safety, in accordance with the Administrative Procedure Act, to adopt rules governing the advanced driver skills course. The Director must ensure that the rules do all of the following:

(1) Establish minimum standards that a driver training school must meet in order to offer the advanced driver skills course;

(2) Establish minimum standards a person must meet in order to act as an instructor for the advanced driver skills course;



(3) Establish minimum qualifications and skills required for student admission to the course;

(4) Establish topics of instruction. The Director must design the topics to ensure that a person who completes the course is qualified to obtain a driver's license.

(5) Set forth the minimum hours of instruction, which must include a combination of classroom and behind-the-wheel instruction for a minimum of six hours of combined instruction;

(6) Establish requirements for driving exercises, including exercise dimensions, surface conditions, and runoff areas; and

(7) Set forth standards for determining successful completion of the course.

#### **Driver education and driver training for persons under 18 years of age**

The bill increases from eight to ten the number of hours of actual behind-the-wheel instruction conducted on public roads required for all beginning drivers of noncommercial motor vehicles who are under 18 years of age. In addition, under the bill, the rules the Director of Public Safety must adopt relating to driver training and instruction also must require online driver education courses for all such beginning drivers to include instruction about the dangers of driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. This requirement currently applies to the classroom instruction required for all such beginning drivers.

#### **Restrictions applicable to probationary driver's license holders**

(R.C. 4507.071)

The bill alters several of the restrictions established in current law that apply only to probationary driver's license holders. A probationary driver's license is issued, in lieu of a standard driver's license, to persons under the age of 18.

#### **Hours of operation**

The bill generally prohibits all probationary driver's license holders from operating a motor vehicle between midnight and 6 a.m. unless the holder is accompanied by a parent or guardian. The bill retains a provision of current law that permits such a license holder to operate a motor vehicle while traveling to or from work between midnight and 6 a.m. In such a case, the holder must have in the holder's immediate possession written documentation from the holder's employer. Current law generally prohibits a probationary driver's license holder who is less than 17 years of





age from operating a motor vehicle between the hours of midnight and 6 a.m. unless the holder is accompanied by a parent or guardian. The restricted period for a probationary driver's license holder who is between 17 and 18 years of age is 1 a.m. to 5 a.m.

### **Motor vehicle occupants**

The bill prohibits any probationary driver's license holder from operating a motor vehicle with more than one person who is not a family member occupying the vehicle unless the holder is accompanied by the holder's parent, guardian, or custodian. Under current law, this prohibition applies only to probationary driver's license holders who are less than 17 years of age.

### **Moving violations**

The bill specifies that commencing on the date the holder of a probationary driver's license pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed ("pleads guilty to") a moving violation, one of the following applies:

(1) If, on that date, the license holder has not attained the age of 17 years, 6 months, the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle for a period of six months from that date; or

(2) If, on that date, the license holder has attained the age of 17 years, 6 months but not 18 years, the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle until the holder attains the age of 18 years.

Current law places the following two restrictions on the operation of a motor vehicle by a probationary driver's license holder who commits a moving violation, commencing on the date the holder pleads guilty to the moving violation:

(1) If, on that date, the license holder has not attained the age of 16 years, 6 months, the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle for a period of six months from that date; or

(2) If, on that date, the license holder has attained the age of 16 years, 6 months but not 17 years, the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle until the holder attains the age of 17 years.

The bill eliminates a provision of current law that provides that a probationary driver's license holder who pleads guilty to a moving violation during the six-month period after issuance of the license does not have to be accompanied by the holder's parent or guardian if either (1) the holder committed the moving violation before



attaining 17 years of age, but on the date the holder pleads guilty to the moving violation, the holder has attained 17 years of age, or (2) the holder committed the moving violation after reaching 17 years of age.

### **Driver training schools**

(R.C. 4508.01, 4508.02, 4508.03, 4508.04, 4508.05, 4508.06, 4508.10, and 4508.11)

#### **Definition**

The bill adds to the definition of "driver training school" by providing that such a school includes a private business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons to operate or drive motor vehicles, that does either of the following:

(1) Provides an online driver education course approved by the Director of Public Safety and charges a consideration or tuition for the course; or

(2) Provides an advanced driver skills course approved by the Director and charges a consideration or tuition for the course.

Current law provides that a "driver training school" means a private business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons to operate or drive motor vehicles, that uses public streets or highways to provide training, and that charges a consideration or tuition for such services.

#### **Penalty for operating a driver training school without a valid license**

The bill provides that whoever operates a driver training school without a valid license is guilty of a second degree misdemeanor (punishable by a jail term of not more than 90 days, a fine of not more than \$750, or both) instead of a minor misdemeanor (punishable only by a fine of not more than \$150) as specified in current law. For a second or subsequent offense within two years of the first offense, the bill provides that the offender is guilty of a first degree misdemeanor (punishable by a jail term of not more than 180 days, a fine of not more than \$1,000, or both) instead of a fourth degree misdemeanor (punishable by a jail term of not more than 30 days, a fine of not more than \$250, or both) as specified in current law.

#### **Driver training instructor probationary license**

The bill provides that upon successful completion of all requirements for an initial driver training instructor license, the Director of Public Safety is required to issue an applicant a probationary driver training instructor license, which expires 180 days



from the date of issuance. In order to receive a driver training instructor license, a person who is issued a probationary instructor license must pass an assessment, which the Director must require by rule of all holders of a probationary instructor license. The person must pass the assessment prior to expiration of the probationary license. If the person fails to pass the assessment, or fails to meet any standards required for a driver training instructor license, the Director may extend the expiration date of the person's probationary license. Upon successful completion of the assessment and approval of the Director, the Director must issue to the person a driver training instructor license.

#### **Driver training instructor licenses, generally**

The bill specifies that all nonprobationary driver training instructor licenses expire on December 31 of every year, and a person may renew such a license by applying to the Director of Public Safety, either annually or biennially, as prescribed in rules the Director adopts. If driver training school licenses are renewed for two years, each application for renewal of such a license must be accompanied by a \$50 fee for each calendar year. If instructor licenses are renewed for two years, each application for renewal of such a license must be accompanied by a \$10 fee for each calendar year.

#### **Penalty for acting as a driver training instructor without a valid license**

The bill provides that whoever acts as a driver training instructor without having a valid license is guilty of a first degree misdemeanor instead of a fourth degree misdemeanor as specified in current law.

#### **Suspension of a driver training school or driver training instructor license**

Existing law permits the Director of Public Safety to suspend or revoke a driver training instructor license or driver training school license, or to impose a fine of not more than \$10,000 upon the holder of either such license, if the Director finds that a violation has occurred or a fine that has been imposed is not paid. The bill provides that, in addition to these reasons for a suspension, the Director may suspend a driver training instructor license without a prior hearing if the Director believes there exists clear and convincing evidence of any of the following:

(1) The license holder has engaged in conduct that presents a clear and present danger to a student or students.

(2) The license holder has engaged in inappropriate contact with a student. "Inappropriate contact" means any of the following, all as defined in the criminal code:

(a) Causing or attempting to cause physical harm;

(b) Sexual activity; or



(c) Engaging in any communication, either directly or through telecommunication, that is of a sexual nature or intended to abuse, threaten, or harass the student.

(3) The license holder has been convicted of a felony, or a misdemeanor that directly relates to the fitness of that person to provide driving instruction.

The bill also permits the Director to suspend a driver training school license without a prior hearing if the Director believes there exists clear and convincing evidence of any of the following:

(1) There exists a clear and present danger to the health, safety, or welfare of students should the school be permitted to continue operation;

(2) At the time the contract for training was signed, there was no intention to provide training, or no ability to provide training to students; or

(3) The school official knowingly allowed inappropriate contact, as defined above, between instructors and students.

Immediately following a decision to suspend an instructor or school license without a prior hearing, the Director, in accordance with the Administrative Procedure Act (APA), must issue a written order of suspension, cause it to be delivered to the license holder, and notify the license holder of the opportunity for a hearing. A hearing must be conducted under the APA if the license holder submits a request for a hearing in a timely manner. Whoever fails to return an instructor license or a school license that has been suspended under these provisions of the bill is guilty of a minor misdemeanor. For a second or subsequent such offense within two years of a first offense, the offender is guilty of a fourth degree misdemeanor.

#### **Payment for certificates of completion**

When a person successfully completes a course of instruction that is required for the issuance of a driver's license, the driver training school issues the person a certificate of completion. The bill requires driver training schools to remit payment for all such certificates (\$4 each) when they request the certificates from the Department of Public Safety. Failure to remit payment to the Department in a timely manner for the certificates is grounds for the Director to take action against the school as provided by law.

#### **Actions against persons who violate driver training school requirements**

Under the bill, the Attorney General, the prosecuting attorney of a county, or a city director of law, upon complaint of the Director of Public Safety, is required to



prosecute to termination or bring an action for injunction against any person who violates any driver training school Revised Code provision or any applicable rule. The court of common pleas in which an action for an injunction is filed has jurisdiction to grant injunctive relief upon a showing that the respondent named in the complaint is in violation of any driver training school Revised Code provision or any applicable rule.

## **The offense of "distracted driving"**

(R.C. 4511.206)

The bill creates the offense of "distracted driving," but limits application and prosecution of the offense to persons who also commit a moving violation or a vehicular homicide offense at the same time as the distracted driving offense. First, the bill prohibits any person from committing a moving violation while doing either of the following:

(1) Using in any manner an electronic wireless communications device; or

(2) Engaging in any activity that is not necessary to the driving of a motor vehicle and impairs, or reasonably would be expected to impair, the ability of the person to drive the motor vehicle safely.

The bill then prohibits any person from committing any vehicular homicide offense while doing either of the above two actions. Whoever violates either of the two above prohibitions is guilty of distracted driving, a misdemeanor. A person who pleads guilty to or is convicted of distracted driving while committing a moving violation is subject to the following penalties:

(1) A fine of \$100 on a first offense; or

(2) A fine of \$300 for a second or subsequent offense.

The court must impose the applicable fine in addition to any penalties the court imposes for the underlying moving violation. If a law enforcement officer issues a person a ticket, citation, or summons for a moving violation and also for the offense of distracted driving while committing a moving violation, the person who is issued the ticket is not permitted to enter a written plea of guilty and waive the person's right to contest the ticket, citation, or summons in a trial but instead is required to appear in person in the proper court to answer the charge.

A person who pleads guilty to or is convicted of distracted driving while committing a vehicular homicide offense is subject to the following penalties:



(1) A fine that is twice the maximum fine permitted for a violation of a specified provision of the vehicular homicide statute (R.C. 2903.06(A)(3)) (see **COMMENT**); and

(2) A jail or prison term that is twice the maximum term permitted for a violation of a specified provision of the vehicular homicide statute (R.C. 2903.06(A)(3)) (see **COMMENT**).

The court must impose the applicable fine or prison term in addition to any penalties the court imposes for the underlying vehicular homicide violation.

### **Driver Education Fund**

The bill creates the Driver Education Fund in the state treasury, consisting of all fines collected for state distracted driving offenses. The Department of Public Safety is required to use all money in the Fund to pay for the Department's driver safety activities and programs, as prescribed in rules the bill requires the Department to adopt.

### **Definitions**

For purposes of the distracted driving provisions of the bill, "electronic wireless communications device" includes any of the following:

(1) A wireless telephone;

(2) A text-messaging device;

(3) A personal digital assistant;

(4) A computer, including a laptop computer and a computer tablet; or

(5) Any other substantially similar wireless device that is designed or used to communicate text.

"Moving violation" means any violation of any statute or ordinance that regulates the operation of vehicles, streetcars, or trackless trolleys on the highways or streets. "Moving violation" does not include a violation of the state seat belt law or a substantially equivalent municipal ordinance, or a violation of any statute or ordinance regulating pedestrians or the parking of vehicles, vehicle size or load limitations, vehicle fitness requirements, or vehicle registration.



## **Transferring the registration of a trailer or semitrailer**

(R.C. 4503.103)

Current law specifies that the registration of a trailer or semitrailer may not be transferred to another trailer or semitrailer if the registration is a multi-year or permanent registration. The bill specifies that only a permanent registration of a trailer or semitrailer is nontransferrable.

## **Changes to Department of Public Safety fund allocations**

### **Deposit of specified fees in the State Bureau of Motor Vehicles Fund**

(R.C. 4501.34, 4503.26, 4505.14, 4506.08, 4509.05, 4513.263, 4519.63, 5502.03, 5502.131, 5502.39, and 5502.67)

The bill redirects the deposit of portions of specified fees collected by the Department of Public Safety, the Registrar of Motor Vehicles, and clerks of the courts of common pleas. Those fees are derived from the sale of lists containing certain information obtained from applications for driver's licenses and motor vehicle certificates of registration and certificates of title (such as applicant names and addresses). Currently, those portions of fees (a total of \$3 of each fee collected) are credited to the following funds:

- (1) The Emergency Management Agency Service and Reimbursement Fund (\$1.25 of each fee collected);
- (2) The Trauma and Emergency Medical Services Fund (\$0.60 of each fee collected);
- (3) The Homeland Security Fund (\$0.60 of each fee collected);
- (4) The Investigations Fund (\$0.30 of each fee collected); and
- (5) The Justice Program Services Fund (\$0.25 of each fee collected).

The bill requires those portions of fees to be credited instead to the existing State Bureau of Motor Vehicles Fund. That Fund is used to support the office of the Registrar.

The bill eliminates the authority of the Director of Budget and Management to transfer excess money from the Emergency Management Agency Service and Reimbursement Fund and the Justice Program Services Fund to the State Highway Safety Fund if the Director of Public Safety determines that the amount of money in



either fund exceeds the amount required to cover specified costs and requests the Director of Budget and Management to make such a transfer.

The bill also eliminates the Homeland Security Fund and the Investigations Fund. Under current law, the Homeland Security Fund is used to pay the expenses of administering the law relative to the powers and duties of the Director of the Division of Homeland Security in the Department of Public Safety. The Director of Public Safety must use the money in the Investigations Fund to pay the operating expenses of investigations.

### **Penalties and the Private Investigator and Security Guard Provider Fund**

(R.C. 4749.07; R.C. 4749.04, not in the bill)

The bill requires civil penalties imposed as part of a disciplinary action under the Private Investigator/Security Service Law to be deposited into the Private Investigator and Security Guard Provider Fund. Current law requires only revenue from license fees and one-third of fines imposed for violations of that Law be deposited into the Fund. Current law is silent as to where the civil penalties are to be deposited.

### **Unidentified Public Safety Receipts Fund**

(R.C. 4501.26)

The bill requires all investment earnings of the Unidentified Public Safety Receipts Fund to be credited not to that fund as in current law but instead to the existing State Bureau of Motor Vehicles Fund.

### **State Highway Safety Fund**

(R.C. 4501.044, 4501.045, and 4501.06)

The bill requires the following portions of motor vehicle registration taxes to be deposited into the State Highway Safety Fund:

(1) The 42.6% of those taxes that are collected from the registration of commercial motor vehicles weighing more than 26,000 pounds that are registered in Ohio under the International Registration Plan (IRP) and currently must be deposited into the Highway Obligations Bond Retirement Fund or, in certain circumstances, into the Highway Operating Fund; and

(2) After a required distribution to the State Highway Safety Fund, the 42.6% of the motor vehicle registration taxes that are collected from the registration of commercial motor vehicles that are registered in other states under the IRP and list





Ohio for apportionment purposes and currently also must be deposited into either the Highway Obligations Bond Retirement Fund or the Highway Operating Fund.

The bill also requires the portion of the taxes that are collected from the registration of commercial motor vehicles weighing more than 26,000 pounds that are not registered under the IRP and currently must be deposited into the Highway Obligations Bond Retirement Fund, which portion is 42.6% of such taxes, to be deposited instead into the State Highway Safety Fund.

### **Law Enforcement Reimbursement, Motor Vehicle Dealers Board, and Financial Responsibility Compliance funds**

(R.C. 4501.19 (repealed), 4503.233, 4505.09, 4509.101, 4509.81, and 4519.59)

The bill eliminates the following three funds, and requires all of the fees or portions of fees deposited into the funds under current law to be deposited instead into the existing State Bureau of Motor Vehicles Fund, which is the main fund used to pay the expenses of administering the law relative to the powers and duties of the Registrar of Motor Vehicles:

(1) The Law Enforcement Reimbursement Fund, which consists of money from fees the Registrar collects that are related to court-ordered motor vehicle immobilizations. This money is used to make payments to law enforcement agencies under specified Revised Code provisions.

(2) The Motor Vehicle Dealers Board Fund, which consists of a portion of fees charged for the issuance of certain motor vehicle certificates of title. The Motor Vehicle Dealers Board uses the money in the Fund in the exercise of its powers and performance of its duties.

(3) The Financial Responsibility Compliance Fund, which consists of money derived from specified fees under the Motor Vehicle Financial Responsibility Law. The Bureau of Motor Vehicles uses the money in the Fund exclusively to cover costs it incurs in the administration and the enforcement of the financial responsibility laws.

### **Elimination of the MARCS Operations Fund**

(R.C. 4501.28 (repealed))

The bill eliminates the MARCS Operations Fund, which consists of money the Emergency Management Agency receives from users of the multi-agency radio communications system. Money in the Fund is used to provide for the systems operation of MARCS.



## **Elimination of the Highway Obligations Bond Retirement Fund**

(R.C. 126.06, 127.14, 4501.03, 4501.04, 4501.044, 4501.06, 5528.19 (repealed), 5528.30, 5528.31, 5528.32 (repealed), 5528.33 (repealed), 5528.35 (repealed), 5528.36 (repealed), 5528.38 (repealed), 5528.39 (repealed), 5528.40, 5728.08, 5735.23, 5735.26, 5735.291, and 5735.30)

The bill eliminates the Highway Obligations Bond Retirement Fund and also eliminates associated obsolete language relating to certain highway bonds that no longer are outstanding or issued.

## **Security, Investigations, and Policing Fund**

(R.C. 4501.11)

The bill removes coordinating homeland security activities as one of the purposes for which money in the Security, Investigations, and Policing Fund may be used. The Fund still may be used for all of the following:

- (1) Providing security for the Governor, state officials and dignitaries, the Capital Square, and certain other state property;
- (2) Undertaking major criminal investigations involving state property;
- (3) Providing traffic control and security for the Ohio Expositions Commission;
- (4) Performing nonhighway-related duties of the State Highway Patrol at the Ohio State Fair.

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## **DEPARTMENT OF TRANSPORTATION**

### **Rail Development Commission elimination and transfer of duties to ODOT**

- Eliminates the Ohio Rail Development Commission and establishes the Ohio Department of Transportation, Division of Freight, which will assume the duties of the former Commission.
- Specifies that the Division is also responsible for any duty or obligation delegated to the Division by the Director of Transportation, including those related to the intermodal transportation of freight.
- Specifies that the Director of Transportation has direct authority over the affairs of the Division and is responsible for appointing a deputy director to oversee the Division's duties and obligations.



- Requires the Transportation Review Advisory Council to review and approve rail projects initiated under the authority of the Division.
- Eliminates a provision of current law that specifies that property of the Ohio Rail Development Commission that is leased or subleased to another party for purposes of rail service is subject to certain taxes and fees.
- Eliminates a provision of current law that specifies that bonds issued by the Ohio Rail Development Commission, and any interest or other income from such bonds, are not taxable.
- Eliminates a provision of current law that specifies that payments for special assessments on property owned by the Ohio Rail Development Commission but leased to another party for purposes of rail service must be paid by the lessee.

### **State rail safety oversight program**

- Requires the Department of Transportation (ODOT) to administer the federal Public Transportation Safety Program requirements applicable to rail fixed guideway systems.
- Requires ODOT, in its role as the designated state agency responsible for overseeing the safety practices of rail fixed guideway systems, to take certain actions regarding such oversight, including:
  - Enforcing the correction of identified hazardous conditions and plans to minimize, control, correct, or eliminate those identified hazardous conditions in a timely manner agreed upon within corrective action plans; and
  - Approving or disapproving, overseeing, and enforcing the development, updating, and implementation of each transit agency's public transportation safety plan.

### **Local construction cost match**

- With respect to the Director of Transportation's authority to issue a waiver of the county, municipal, or township portion of the costs of a highway project, eliminates the requirement that all of the following occur prior to the issuance of the waiver:
  - The completion of the preliminary engineering design of the project;
  - The acquisition of all necessary rights-of-way; and



--The performance or acquisition of all federal, state, and local environmental studies and permits.

### **Indefinite delivery indefinite quantity (IDIQ) contracts**

- Authorizes the Director of Transportation to enter into indefinite delivery indefinite quantity (IDIQ) contracts for not more than two projects in fiscal year 2016 and not more than two projects in fiscal year 2017.
- 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.

### **Construction manager general contractor pilot project**

- Authorizes the Director of Transportation to establish a pilot program with regard to a single project by hiring a firm to conduct engineering services, hiring a construction manager general contractor (CMGC) for preconstruction services, and hiring either the CMGC or another entity for construction services.
- Establishes procedures and requirements governing the contracts entered into under the pilot program.

### **Department of Transportation assumption of federal duties**

- Authorizes the Director of Transportation to enter into agreements with federal agencies for purposes of assuming certain duties of the Secretary of the U.S. Department of Transportation as authorized under federal law.
- Waives state immunity from civil liability with regard to actions taken by the Director pursuant to such an agreement with a federal agency.

### **Transportation Review Advisory Council**

- Eliminates the requirement that the Transportation Review Advisory Council (TRAC) annually hold up to six hearings around the state, and, instead, authorizes, but does not require, TRAC to hold any number of hearings around the state.

### **Agreements related to federal permits**

- Authorizes the Director of Transportation to enter into agreements with any department or agency of the United States for the sole purpose of dedicating staff to



the expeditious and timely review of environmentally related documents that the Director must submit to obtain approval of federal permits.

## **Rail Development Commission elimination and transfer of duties to ODOT**

(R.C. 126.11, 163.06, 163.09, 163.15, 163.21, 166.25, 307.202, 505.69, 717.01, 4117.10, 4981.01 (5501.57), 4981.02 (5501.58), 4981.03 (5501.581), 4981.031 (5501.59), 4981.032 (5501.591), 4981.033 (5501.592), 4981.04 (5501.60), 4981.05 (5501.593), 4981.06 (5501.61), 4981.07 (5501.611), 4981.08 (5501.612), 4981.09 (5501.66), 4981.091 (5501.661), 4981.10 (5501.613), 4981.11 (5501.64), 4981.12 (5501.641), 4981.13 (5501.642), 4981.131 (5501.643), 4981.14 (5501.582), 4981.15 (5501.644), 4981.16 (5501.645), 4981.17 (5501.646), 4981.18 (5501.647), 4981.19 (5501.648), 4981.22 (5501.649), 4981.24 (5501.614), 4981.25 (5501.62), 4981.26 (5501.63), 4981.28 (5501.65), 4981.29 (5501.651), 4981.30 (5501.652), 4981.31 (5501.653), 4981.32 (5501.654), 4981.33 (5501.655), 4981.34 (5501.656), 4981.35 (5501.601), 4981.40 (5501.602), 5501.03, 5512.02, 5512.03, 5512.04, 5512.05, 5512.06, 5519.01, and 5705.19)

### **ODOT Division of Freight**

The bill eliminates the Ohio Rail Development Commission and establishes the Ohio Department of Transportation (ODOT), Division of Freight, which will assume the duties of the former Commission. The bill also specifies that the Division is responsible for any duty or obligation delegated to the Division by the Director of Transportation, including those related to the intermodal transportation of freight. The duties of the Commission pertaining to rail service that pass to the Division include, in part, the following:

(1) Developing, promoting, and supporting safe, adequate, and efficient rail service throughout the state;

(2) Maintaining adequate programs of investigation, research, promotion, planning, and development for rail service;

(3) Providing for the participation of private corporations or organizations and the public in the development, construction, operation, and maintenance of rail service, and as franchisees of rail service;

(4) Undertaking the acquisition, renovation, repair, refunding, operation, maintenance, or construction of any rail service project;



(5) Establishing and operating a revolving loan fund to make loans to qualifying subdivisions, local or regional transportation authorities, or other persons for the acquisition, renovation, repair, refunding, or construction of rail service projects;

(6) Issuing bonds and notes and refunding obligations of the state for rail service projects;

(7) Acquiring, holding, or disposing of real and personal property in the exercise of its powers and performance of its duties;

(8) Receiving, subject to the approval of the Governor, grants for or in aid of the construction, repair, renovation, operation, maintenance, or acquisition of rail service projects, and receiving and accepting aid or contributions from any source of money, property, labor, or other things of value;

(9) Receiving and disbursing the proceeds of general obligation or other bonds of the state or agencies thereof as may be allowed by law pursuant to any resolution or act of the General Assembly;

(10) Making grants and loans to counties or municipal corporations, qualifying subdivisions, local or regional transportation authorities, or other persons for one or more rail service projects or parts thereof;

(11) Providing consultation services to any qualifying subdivision, local or regional transportation authority, or other person in connection with the acquisition, renovation, repair, or construction of any rail service project; and

(12) Doing all acts necessary and proper to carry out all expressly granted powers.

### **Organization of the Division**

(R.C. 4981.02 (5501.58), 4981.14 (5501.582), 4981.04 (5501.60), 4981.09 (5501.66), and 4981.091 (5501.661))

The bill specifies that any duty or obligation of the Division of Freight is under the purview of the Director of Transportation and that the Director has the authority to approve or disapprove any action of the Division. The Director may appoint a deputy director of the Division to serve at the pleasure of the Director. The deputy director is responsible, to the extent authorized by the Director, for the organization, direction, and supervision of the work of the Division. The deputy director also may exercise any powers and perform any duties of the Division, as authorized by the Director. Additionally, subject to the Civil Service Law and any civil service regulations, the



deputy director, with the approval of the Director, must select and appoint any necessary employees. The Director is authorized to employ experts for assistance in any specific manner at a reasonable rate of compensation.

The bill requires the Transportation Review Advisory Council (TRAC) to review and approve any rail project initiated by the Division. The bill also requires the Division to submit the draft plan for the construction and operation of an intercity conventional or high speed passenger transportation system, required to be prepared under current law, to TRAC for approval and acceptance. No money in the Rail Development Fund or the Federal Rail Fund may be expended for a rail project initiated by the Division until the project has been reviewed and approved by TRAC.

### **Repealed provisions of current law**

(R.C. 4981.20 and 4981.21)

The bill eliminates provisions of current law that do the following:

(1) Specify that any property of the Ohio Rail Development Commission that is leased or subleased to another entity for purposes of rail service is subject to ad valorem, sales, use, and franchise taxes and to zoning, planning, and building regulations and fees, in the same manner as if the lessee owned the property;

(2) Specify that a bond issuer is exempt from all taxes on its property used for rail service purposes so long as such property is used for purposes that would otherwise exempt the property; has ceased to be used by a former lessee and is not occupied or used; or has been acquired by the issuer but development has not yet commenced;

(3) Specify that bonds issued by the Commission, the transfer thereof, and the interest and other income from the bonds are free from taxation; and

(4) Specify that when a special assessment is made on real property owned by the Commission and leased to another entity, the installments of the assessment must be paid by the lessee and any installment left unpaid at the end of the lease must be paid by the issuer if the property is owned by it.

### **State rail safety oversight program**

#### **Administration of the federal Public Transportation Safety Program**

(R.C. 5501.55)

The bill requires ODOT to administer the federal Public Transportation Safety Program requirements that are applicable to rail fixed guideway systems. Pursuant to



that Program, each state that has a rail fixed guideway public transportation system that is not regulated by the Federal Railroad Administration must establish a state safety oversight program for purposes of ensuring the safety of such rail systems in the state.<sup>2</sup> The provisions of the federal Public Transportation Safety Program related to rail fixed guideway systems are similar to, but more extensive than, the requirements under the federal Rail Safety Oversight Law<sup>3</sup> that ODOT is required to administer under current law. The federal Public Transportation Safety Program replaces the federal Rail Safety Oversight Law, which will be repealed three years after the effective date of the rules established by the Secretary of the U.S. Department of Transportation as part of the Public Transportation Safety Program.<sup>4</sup>

### **Requirements related to state rail safety oversight**

(R.C. 5501.55 and 5501.56)

The bill modifies and expands the current law requirements related to state rail safety oversight. Under current law, ODOT generally must do all of the following:

(1) Establish a safety program plan standard for transit agencies operating a rail fixed guideway system within the state;

(2) Adopt standards for the personal security of passengers and employees of rail fixed guideway systems;

(3) Review and approve or disapprove the annual internal safety audit conducted by a transit agency;

(4) Periodically conduct an on-site safety review of each transit agency and make recommendations based on the review of the system safety program plan;

(5) Establish procedures for the investigation of accidents and unacceptable hazardous conditions;

(6) Investigate accidents and unacceptable hazardous conditions at transit agencies;

(7) Approve or disapprove any plan of a transit agency to minimize, control, correct, or eliminate any investigated hazard; and

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<sup>2</sup> 49 U.S.C. 5329(e).

<sup>3</sup> 49 U.S.C. 5330.

<sup>4</sup> P.L. 112-141, Div. B, §20030(e).





(8) Submit to the Federal Transit Administration any reports or other information necessary to remain in compliance with federal law and rules adopted under it.

The bill requires ODOT to establish a safety program documentation standard for transit agencies that implement or significantly enhance an applicable rail fixed guideway system in the state, in addition to the current law requirement (discussed above) that ODOT establish such a standard for transit agencies that operate a system. The bill also applies the same confidentiality and evidentiary restrictions to transit agency audits that are currently applied to ODOT investigations. Additionally, the bill requires ODOT to do all of the following:

(1) Establish procedures for coordinating and addressing immediate conditions at a transit agency along with establishing procedures for the investigation of accidents and hazardous conditions as required under current law (see above);

(2) Enforce the correction of identified hazardous conditions and plans to minimize, control, correct, or eliminate those identified hazardous conditions in a timely manner agreed upon within corrective action plans; and

(3) Approve or disapprove, oversee, and enforce the development, updating, and implementation of a transit agency's public transportation safety plan as defined and required by the Federal Transit Administration.

### **Local construction cost match**

(R.C. 5531.08)

The bill alters the law that authorizes the Director of Transportation to issue a waiver of the county, municipal, or township portion of the costs of a highway project. Under current law, upon the written request of a county, municipal corporation, or township, the Director, by a written determination that it would be in the best interests of the traveling public, may waive the county, municipal, or township share of the construction costs of a highway project. However, the Director is not permitted to issue such a waiver unless all of the following prerequisites have occurred:

(1) The preliminary engineering design of the project is complete;

(2) All necessary rights-of-way have been obtained; and

(3) All federal, state, and local environmental studies and permits have been performed or obtained.



The bill eliminates the requirement that the prerequisites be completed before the Director can issue the waiver. The bill also allows the Director to waive all costs associated with a project, not just the construction costs.

### **Indefinite delivery indefinite quantity (IDIQ) contracts**

(Section 755.20)

The bill requires the Director of Transportation to advertise, seek bids for, and award indefinite delivery indefinite quantity (IDIQ) contracts for not more than two projects in fiscal years 2016 and 2017. 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.

### **Construction manager general contractor pilot project**

(Section 755.30)

The bill allows the Director of Transportation to establish a pilot program with regard to a single pilot project by doing all of the following:

- (1) Entering into a contract to provide professional engineering services with regard to the project;
- (2) Entering into a contract with a construction manager general contractor (CMGC) to provide preconstruction services during the planning or design phase of the project; and
- (3) Entering into a subsequent contract with the CMGC or another entity to provide general contracting construction services for the project.

The bill requires the Director to advertise for CMGC services via the Internet at least four weeks before the deadline for responses from prospective CMGCs and specifies what information must be included along with the advertisement. The bill requires the CMGC to be selected using a qualification based selection process,



combining technical qualifications and competitive bidding elements. The Director must include in the process the consideration of small or disadvantaged businesses. When the CMGC is selected, the Director must enter into a contract with the CMGC for preconstruction services that includes a fee for those services.

After construction plans are sufficiently developed, the bill requires the Director to negotiate a construction services contract with the CMGC. The Director must negotiate the amount of the contract utilizing either a fixed price, fixed unit prices, or guaranteed maximum price. The negotiated contract amount must be independently and confidentially verified by a contracted third-party selected pursuant to specified provisions of state law. The bill only allows the Director to award the contract to the CMGC if the price negotiated with the CMGC does not differ by more than 10% from the official engineer's estimate and the independent estimate. If the Director and the CMGC cannot agree to a contract, the bill allows the Director to advertise and award the construction services contract pursuant to existing construction contract laws.

### **ODOT assumption of duties**

(R.C. 5531.30)

Under the bill, the Director of Transportation may enter into agreements and cooperate with the U.S. Department of Transportation, or any other appropriate federal agency, as provided in specified federal laws related to transportation and the environment. Pursuant to such an agreement, the Director may assume certain responsibilities of the Secretary of the U.S. Department of Transportation and take any other actions required by any such agreement or by those federal laws. The Director also may adopt any rules necessary to implement such an agreement and carry out any duties imposed under the agreement. The Director may make expenditures of money in connection with an agreement from any ODOT funds that are available to the Director.

With respect to an agreement entered into under the bill, the state waives its immunity from civil liability, including the immunity from suit in a federal court under the Eleventh Amendment to the U.S. Constitution. The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The state also consents to the jurisdiction of the federal courts over its civil liability with regard to the compliance, discharge, or enforcement of the responsibilities assumed under such an agreement with the same procedural and substantive requirements applicable to a suit against a federal agency. However, the bill specifies that the waiver of immunity and consent to federal jurisdiction applies only to those agreements and does not create



liability that exceeds the liability created under federal laws that authorize the agreements.

### **Transportation Review Advisory Council meetings**

(R.C. 5512.05)

The bill provides that the Transportation Review Advisory Council (TRAC), in developing its list of projects, may conduct public hearings at various locations around the state. Current law requires TRAC to hold not more than six public hearings annually at various locations around the state.

### **Agreements related to federal permits**

(Section 755.10)

The bill authorizes the Director of Transportation to enter into agreements with the United States or any department or agency of the United States, including the United States Army Corps of Engineers, the United States Forest Service, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service. The sole purpose of any such agreement is to dedicate staff to the expeditious and timely review of environmentally related documents that the Director must submit to obtain approval of federal permits. Such an agreement may include provisions for advance payment by the Director for labor and all other identifiable costs of the United States or the department or agency providing the services, as may be estimated by the United States or that department or agency. The Director is required to submit a request to the Controlling Board indicating the amount of the agreement, the services to be performed by the United States or the department or agency, and the circumstances giving rise to the agreement.

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## **DEPARTMENT OF TAXATION**

- Extends through the FY 2016-FY 2017 biennium the existing reductions in the motor fuel dealers' prompt payment and shrinkage allowances that applied during FY 2008-FY 2015 (1% and 0.5%, respectively).
- Requires the Treasurer of State to deposit in the Highway Operating Fund the first 2% of the amount of the motor fuel tax received in each calendar month.



## **Continuation of the motor fuel evaporation and shrinkage allowance**

(Section 757.20)

Ohio law imposes a motor fuel excise tax of 28¢ per gallon on motor fuel dealers. The codified law governing the motor fuel excise tax provides that a motor fuel dealer filing a complete and timely monthly tax report with payment is entitled to deduct the tax due on 3% of the fuel gallonage the dealer received, minus 1% of the fuel gallonage sold to retail dealers.<sup>5</sup> This deduction is to cover the costs of filing the report and to account for evaporation, shrinkage, and other losses. The last four transportation appropriations acts reduced the 3.0% deduction for fiscal years 2008 through 2015 to 1.0% (minus 0.50% of gallonage sold to retail dealers). The act extends through the FY 2016-FY 2017 biennium the uncodified 1.0% motor fuel shrinkage allowance for motor fuel dealers (minus 0.5% of gallonage sold to retail dealers).

Under the ongoing codified motor fuel excise tax law, retail dealers of motor fuel who have purchased fuel on which the motor fuel excise tax has been paid are granted a refund for evaporation and shrinkage equal to 1.0% of the taxes paid on the fuel each semiannual period.<sup>6</sup> The last four transportation appropriations acts reduced the refund percentage to 0.5% for fiscal years 2008 through 2015. The act extends through the FY 2016-FY 2017 biennium the uncodified 0.5% retail dealer shrinkage refund of the taxes paid on the fuel received by a retail dealer.

## **Motor vehicle fuel tax distribution**

(Section 757.10)

The bill provides that beginning on July 31, 2015, and on the last day of each month thereafter, the Treasurer of State must deposit in the Highway Operating Fund the first 2% of the amount of the motor fuel tax received in each calendar month. That amount must be paid into the Highway Operating Fund before making specified statutory distributions of motor fuel tax revenue but after transfers of statutorily required tax refunds. The bill's provisions are identical to provisions enacted for the FY 2014-FY 2015 biennium.

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<sup>5</sup> R.C. 5735.06, not in the bill.

<sup>6</sup> R.C. 5735.141, not in the bill.



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## MISCELLANEOUS

- Eliminates the requirement that state-owned or -leased motor vehicles use minimum amounts of E85 blend gasoline and blended biodiesel annually, with the minimum amounts increasing annually.

### Required use of alternative fuel by state motor vehicles

(R.C. 125.834)

The bill eliminates the following alternative fuel usage requirements for state-owned or -leased motor vehicles established under current law:

(1) That state-owned or -leased motor vehicles must use at least 60,000 gallons of E85 blend gasoline per calendar year by January 1, 2007, with an increase of 5,000 gallons per calendar year thereafter; and

(2) That state-owned or -leased motor vehicles must use at least one million gallons of blended biodiesel per calendar year by January 1, 2007, with an increase of 100,000 gallons per calendar year thereafter.

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## COMMENT

Under the bill, a person who pleads guilty to, or is convicted of, distracted driving while committing a vehicular homicide offense is subject to a fine of double the maximum fine permitted for a violation of a specified provision of the vehicular homicide statute (R.C. 2903.06(A)(3)) and a jail or prison term that is double the maximum term permitted for a violation of that statute. It is unclear which fine and which jail or prison term for a violation of R.C. 2903.06(A)(3) would constitute the basis for the distracted driving penalties.

Generally, a violation of R.C. 2903.06(A)(3) is a first degree misdemeanor and the offender is subject to a fine of up to \$1,000 and up to 180 days in jail. However, a violation of R.C. 2903.06(A)(3) is a fourth degree felony and an offender is subject to a prison term of up to 18 months and a fine of up to \$5,000 if the offender:

(1) Committed the violation while under a driver's license suspension or cancellation;

(2) Did not have a valid driver's license and was not eligible to obtain a driver's license renewal without taking a driver's license examination; or



(3) Was previously convicted of, or pleaded guilty to, a traffic-related homicide, manslaughter, or assault.

It is not clear whether the bill requires a court to impose upon a distracted driving offender penalties equal to double the maximum penalties for a vehicular homicide offense committed under the circumstances specified in (1) through (3) above, i.e. double the \$5,000 fine and 18 months in prison, even if the offender did not commit the offense under those circumstances.

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## HISTORY

ACTION	DATE
Introduced	02-10-15

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