



# Ohio Legislative Service Commission

## Bill Analysis

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(As Reported by S. Transportation)

**Sens.** Seitz, Kearney, Uecker, Eklund, Beagle, Manning, Brown, Hite, Lehner, Jones, Patton

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## **BILL SUMMARY**

### **Agreements to fund bridge-related projects**

- Authorizes the Director of Transportation to enter into an agreement with another state for the replacement, improvement, rehabilitation, operation, and maintenance of both of the following:
  - A bridge or system of bridges at one location that carries two interstate highways over the Ohio River to another state, and
  - Roadways providing for ingress to and egress from that bridge or system of bridges.
- Prohibits such an agreement from obligating the state to expend more than 50% of the total project costs, but exempts the agreement from funding restrictions under current law.

### **Public-private partnership (P3) agreements**

- Allows the Department of Transportation (ODOT) to reimburse one or more private entities for a portion of the actual costs each private entity incurred in submitting a proposal for a public-private initiative if the proposal was solicited by ODOT.
- Requires a P3 to provide all of the following in addition to the requirements under current law:

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\* This analysis was prepared before the report of the Senate Transportation Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

--Whether administrative fees or other charges will be collected for use of a transportation facility and the basis by which those fees will be determined and modified;

--A contract performance bond in an amount specified by the Director of Transportation, in conformance with terms and conditions specified by the Director; and

--A payment bond in an amount specified by the Director, conditioned upon specified terms and conditions.

- Provides that if a P3 is related to a toll project, money collected by the Department must be deposited as provided in the agreement.
- Provides that a P3 is not subject to the law that governs construction contracts entered into by the Director of Transportation.
- Clarifies that building and construction materials that will be incorporated into a transportation facility pursuant to a P3 are exempt from the sales tax and the use tax.

### **Toll projects**

- Provides an exception to the general prohibition against establishing tolls on an existing nontoll public road by authorizing such tolls on certain projects involving a bridge, or system of bridges, at one location that carries two interstate highways over the Ohio River.
- Amends the term "toll project" in the ODOT toll project law to include:

--Any project that involves substantial reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll or toll-free highway, bridge, or tunnel, including an existing highway, bridge, or tunnel, and conversion of the highway, bridge, or tunnel to a toll project;

--Conversion of an existing highway, bridge, or tunnel to a toll project;

--Initial construction of a highway, bridge, or tunnel as a toll project; or

--Conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll project.

- Provides for a "toll project operator" in the ODOT toll project law, and defines it to mean ODOT or any agency, political subdivision, authority, or other entity that



operates a toll project, including a private entity that operates a toll project pursuant to a P3.

- Requires a toll project operator to display signs that identify the user fees that apply to the toll project, and requires the signs to be displayed in advance of the toll project at specified locations.

### **User fees for toll projects**

- Changes the term "tolls" to "user fee," and defines it to be a rate, toll, fee, or other charge imposed by a toll project operator for use of all or part of a transportation facility, including a toll project.
- Provides that "user fee" also includes any such rate, toll, fee, or other charge imposed by a toll project operator pursuant to a P3.
- Permits ODOT to collect a user fee by utilizing an electronic toll collection device on a motor vehicle, and, for any motor vehicle that does not use such a device, by utilizing an electronic-monitoring system for user fee collection.

### **Use of a toll project by a motor vehicle**

- Provides that the registered owner of a motor vehicle that utilizes a toll project is liable for payment of the applicable user fee.
- Defines "registered owner" to be all of the following:
  - Any person or entity identified by the Bureau of Motor Vehicles (BMV) or any other state motor vehicle bureau, department, or office as the owner of a motor vehicle;
  - The lessee of a motor vehicle pursuant to a lease of six months or longer;
  - The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.
- Provides that all of the following persons must be afforded ready access, while in the performance of their official duties, to all property under ODOT jurisdiction and without payment of any user fee:
  - Public police officers;
  - Operators of municipal, township, county, and state maintenance vehicles;
  - Operators of United States military vehicles traveling in a convoy; and



--Operators of official emergency response vehicles.

### **User fee collection agreements**

- Authorizes the Director of Transportation to enter into an agreement with an equivalent agency in any other state or jurisdiction in order to enforce user fee collection with respect to out-of-state motor vehicles.
- Permits such an agreement to provide that the other state or jurisdiction will give effect to a motor vehicle certificate of registration issuance prevention order (see below) issued in Ohio in relation to such utilization of a toll project.

### **Collection of user fees by a toll project operator**

- Establishes procedures that govern the collection of user fees by a toll project operator and provides that some of the procedures are mandatory, such as those that guarantee a registered owner due process of law, while others are discretionary.
- Provides that if a motor vehicle utilizes a toll project and the user fee is not paid through an electronic toll collection device or otherwise, the toll project operator may send the registered owner an invoice for the unpaid user fee.
- Provides that if a registered owner who receives an invoice does not pay the fees due and does not request a hearing in a timely manner, the toll project operator may send the registered owner a late notice.
- Permits a registered owner who receives an invoice or a late notice for an unpaid user fee or an administrative fee to appeal the invoice or late notice and request a hearing conducted by a hearing officer of the toll project operator.
- Provides that if the hearing officer finds that the registered owner is liable for payment of the fees at issue and the registered owner does not make payment in full at the completion of the hearing, the hearing officer must issue a motor vehicle certificate of registration issuance prevention order.
- Specifies that a "motor vehicle certificate of registration issuance prevention order" generally is an order prohibiting the registration of a motor vehicle registered to a person who failed to pay a user fee and prohibiting the registration of a motor vehicle for which user fees were not paid.
- Permits a registered owner who is found by a hearing officer to be liable for payment of the fees at issue to appeal the decision to the municipal or county court that has jurisdiction over the location of the toll project.



- Provides that if a registered owner to whom a late notice is sent does not pay the fees due and does not request a hearing in a timely manner, the toll project operator may either issue a registration issuance prevention order or file a civil suit against the registered owner.
- Provides that if a registered owner is found in an appeal hearing before a municipal or county court to be liable for payment of the fees at issue and the registered owner does not make payment in full within 35 days of the hearing, the toll project operator may file a civil suit against the registered owner.
- Provides that in an appeal hearing or a civil trial before a municipal or county court, if the court finds that the registered owner is liable for payment of the fees at issue and the registered owner does not make payment in full at the completion of the hearing or trial, the toll project operator or court must:
  - Notify the BMV or equivalent office or agency of another state or jurisdiction; and
  - Issue a motor vehicle certificate of registration issuance prevention order in relation to the registered owner and the motor vehicle that utilized the toll project.

### **Information related to electronic toll collection and electronic monitoring**

- Permits a toll project operator to enter into an agreement with ODOT and the BMV or a unit of government of any other state or jurisdiction that is functionally equivalent to the BMV to obtain motor vehicle owner and registration information necessary to conduct electronic toll collection and electronic monitoring.
- Places limitations on the use of information collected by a toll project operator from an electronic toll collection device or an electronic-monitoring system, or obtained from ODOT, the BMV, or another state or jurisdiction.
- Requires a toll project operator to ensure that all images and other data collected are maintained in a protected database with security that is at least comparable to the security used for databases operated by ODOT, and are used solely for the collection of unpaid user fees and administrative fees.
- Requires a toll project operator to purge, write over, or otherwise eliminate from existence the images or other data not later than 180 days after the collection of any unpaid user fees or administrative fees.

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## CONTENT AND OPERATION

### Introduction

The bill generally addresses the financing of certain transportation infrastructure projects through both of the following type of provisions:

(1) General provisions that govern toll projects, user fees, public-private partnership agreements (P3s), interstate highway agreements, and bonded indebtedness; and

(2) Specific provisions that govern the replacement, improvement, rehabilitation, operation, and maintenance of a bridge or system of bridges at one location carrying two interstate highways, neither of which is a three digit partial or full circumferential, spur, or loop route, over the Ohio River and the roadways providing ingress to and egress from such a bridge or bridges.

While the general provisions apply to any future toll project or P3, the specific provisions of the bill apply to one existing bridge located in the Cincinnati area (I-71/75 Brent Spence Bridge) and any future bridge carrying two interstate highways over the Ohio River.



Generally, the bill does all of the following:

- (1) Authorizes the Director of Transportation to enter into interstate agreements regarding any bridge carrying two interstate highways over the Ohio River;
- (2) Exempts any such a bridge project from certain funding restrictions in current law;
- (3) Alters the law related to P3s;
- (4) Alters the law related to toll projects and the collections of user fees for toll projects;
- (5) Establishes procedures for the electronic collection of user fees;
- (6) Establishes due process procedures by which user fees and any associated administrative fees may be contested;
- (7) Provides for agreements with other states regarding the collection of user fees;
- (8) Establishes requirements for the collection of data and procedures for keeping such data secure; and
- (9) Alters the law governing the use of user fees to service bonded debt obligations.

### **Agreements to fund bridge-related projects**

The bill authorizes the Director of Transportation to enter into an agreement with another state for the replacement, improvement, rehabilitation, operation, and maintenance of both of the following: (1) a bridge or system of bridges at one location that carries two interstate highways over the Ohio River to another state, and (2) roadways providing for ingress to and egress from that bridge or system of bridges. Such an agreement cannot obligate the state to expend more than 50% of the total project costs.<sup>1</sup>

Under current law, unchanged by the bill, if the Director determines it to be in the interest of the welfare and safety of the citizens of Ohio, the Director may enter into agreements with other states or subdivisions thereof or the United States for cooperation in the repair, maintenance, or construction of a bridge crossing a stream

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<sup>1</sup> R.C. 5501.44(A)(3).





that forms a boundary line of Ohio. Current law requires that no such agreement can be made that obligates Ohio to expend more than the cost of construction of the portion of the bridge that is located within Ohio or more than 50% of the cost of maintenance of the bridge, and caps maintenance expenses at not more than \$300,000 per year. The additional types of agreement authorized by the bill are excepted from the funding restrictions under current law.<sup>2</sup>

## **Public-private partnership (P3) agreements**

### **Reimbursement for proposals solicited by the Department of Transportation**

The bill allows the Department of Transportation (ODOT) to reimburse one or more private entities for a portion of the actual costs each private entity incurred in submitting a proposal for a public-private initiative if the proposal was solicited by the Department. If the Department will consider reimbursement of actual costs, the Director must describe the terms and conditions that will apply to the reimbursement in the request for proposals. The bill authorizes the Director to include in the terms and conditions a requirement that, in exchange for the reimbursement, each private entity execute an agreement to transfer the rights to the use of the work product contained in the proposal to the Department.<sup>3</sup>

The bill requires that the Director make all decisions related to the reimbursement of any specific private entity and the maximum amount that may be reimbursed. The bill provides that reimbursement of such a proposal is not subject to competitive selection requirements or approval by the Controlling Board. If ODOT includes a reimbursement provision in a request for proposals and ODOT subsequently terminates the solicitation prior to the solicitation expiration date, the bill requires ODOT to prorate the amount of the reimbursement that is to be paid to each private entity that is participating in the solicitation on the date ODOT terminates it. ODOT must calculate the proration percentage by determining the number of days from the date the solicitation first was offered until the date ODOT terminated the solicitation and dividing that number by the number of days of the original solicitation period.

The bill provides that except as otherwise provided in writing by ODOT, if ODOT includes a reimbursement provision in a request for proposals and subsequently enters into negotiations based on the selection of a desired proposal and ODOT elects to

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<sup>2</sup> R.C. 5501.44(A)(1).

<sup>3</sup> R.C. 5501.71(G)(1).



terminate those negotiations for the convenience of ODOT and through no fault of the proposer, the proposer is entitled to the full reimbursement amount.<sup>4</sup>

### **Additional factor ODOT must consider in evaluating a P3 bid**

The bill contains a new factor ODOT must consider when evaluating and selecting a bid or proposal to enter into a P3. ODOT must consider whether the bid or proposal includes a teaming agreement that identifies the primary designer of record or design firm that represents not less than 30% of the estimated design fee, the primary construction contractor that represents not less than 30% of the estimated construction dollar value amount, and the primary financier representing not less than 50% of the total project cost.<sup>5</sup>

### **Content of a P3**

The bill requires P3s to provide all of the following in addition to the requirements under current law:

(1) Whether administrative fees or other charges will be collected for use of a transportation facility and the basis by which those fees will be determined and modified;

(2) A contract performance bond in an amount specified by the Director of Transportation, conditioned upon the private entity performing the work in accordance with the agreed upon terms, within the time prescribed, and in conformance with any other such terms and conditions as are specified by the Director; and

(3) A payment bond in an amount specified by the Director, conditioned upon the payment for all labor, work performed, and materials furnished in connection with the agreement and any other such terms and conditions as are specified by the Director.<sup>6</sup>

Current law generally requires a P3 to include provisions governing all of the following:

(1) The planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing, or operation of a transportation facility;

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<sup>4</sup> R.C. 5501.71(G)(2), (3), and (4).

<sup>5</sup> R.C. 5501.71(C)(9).

<sup>6</sup> R.C. 5501.73(B)(5), (10), and (11).



- (2) The term of the agreement;
- (3) The type of property interest, if any, the private entity will have in the transportation facility;
- (4) A maintenance plan;
- (5) Whether user fees will be collected and the basis by which the fees will be determined and modified;
- (6) Compliance with applicable laws;
- (7) Grounds for termination of the agreement; and
- (8) Procedures by which an agreement may be amended.

Specified additional provisions also may be included in a P3 agreement under current law.<sup>7</sup>

### **Other provisions related to P3 agreements**

The bill provides that if a P3 is related to a toll project, money collected by ODOT must be deposited as provided in the agreement. Under current law, money collected by the Department pursuant to a P3 must be deposited into the state treasury to the credit of the Highway Operating Fund.<sup>8</sup>

The bill provides that P3s are not subject to the law that governs construction contracts entered into by the Director of Transportation.<sup>9</sup>

The bill clarifies that building and construction materials that will be incorporated into a transportation facility pursuant to a P3 are exempt from the sales tax and the use tax.<sup>10</sup> Current law exempts the following, among other exemptions not pertinent to the bill, from those taxes:

- (1) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a

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<sup>7</sup> R.C. 5501.73(B), (C), and (D).

<sup>8</sup> R.C. 5501.73(F).

<sup>9</sup> R.C. 5501.73(G).

<sup>10</sup> R.C. 5501.78.

construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; and

(2) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements.<sup>11</sup>

## **Toll projects and the Ohio Department of Transportation**

Current law permits the Director of Transportation to approve toll projects. The provisions governing such toll projects are located in sections 5531.11 through 5531.18 of the Revised Code (hereinafter "ODOT toll project law"). All such toll projects must be part of the state highway system, and any revenue derived from a toll project must be used only for purposes of the toll project.<sup>12</sup> All ODOT toll projects must be developed and submitted for selection in accordance with the policies and procedures of the major new capacity selection process of the existing Transportation Review Advisory Council. Nothing in the ODOT toll project law may be construed to permit tolls to be charged on existing nontoll public roads.<sup>13</sup>

The bill establishes an exception to the prohibition against establishing tolls on an existing nontoll public road by authorizing such tolls on certain projects involving the replacement, improvement, rehabilitation, operation, and maintenance of a bridge, or system of bridges, that carries two interstate highways over the Ohio River, neither of which is a three digit partial or full circumferential, spur, or loop route, to another state, and for the replacement, improvement, rehabilitation, operation, and maintenance of the roadways that provide ingress to and egress from such a bridge or system of bridges, generally following the route of those interstate highways.

In addition, the bill retains the current provision that provides that any revenue derived from a toll project must be used only for purposes of the toll project, but includes a toll project or any aspect of a toll project pursuant to a P3. All ODOT toll projects are subject to the selection process of the TRAC, instead of the major new capacity selection process of the TRAC. The bill substitutes the term "user fees" for the term "tolls" in the provision that provides that nothing in the ODOT toll project law

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<sup>11</sup> R.C. 5739.02(B)(13) and 5741.02(C)(2), not in the bill.

<sup>12</sup> R.C. 5531.12(A).

<sup>13</sup> R.C. 5531.12(C).



may be construed to permit tolls to be charged on existing nontoll public roads. This same substitution is made in a number of other provisions in the bill.<sup>14</sup>

### **Definition of "toll project"**

The bill expands the definition of the term "toll project" to include (1) any project that involves substantial reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll or toll-free highway, bridge, or tunnel, including an existing highway, bridge, or tunnel, and conversion of the highway, bridge, or tunnel to a toll project, (2) conversion of an existing highway, bridge, or tunnel to a toll project, (3) initial construction of a highway, bridge, or tunnel as a toll project, or (4) conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll project.<sup>15</sup>

The bill also provides that "toll project" includes new interchanges constructed for economic purposes connecting a multi-lane highway that was not connected previously with other interstates, state highways, and local roads. Existing law provides that such new interchanges must connect a multi-lane, fully controlled access highway that was not connected previously with such other highways.

The bill eliminates language from the definition of "toll project" that provides that a "toll project" includes any sections or extensions of a toll project designated by ODOT as such for a particular purpose.<sup>16</sup>

### **Definition of "user fee"**

The bill changes the term "tolls" to "user fee." It defines a "user fee" as a rate, toll, fee, or other charge imposed by a toll project operator for use of all or part of a transportation facility, including a toll project. "User fee" also includes any such rate, toll, fee, or other charge imposed by a toll project operator pursuant to a P3.<sup>17</sup>

Current law defines "tolls" as tolls, special fees or permit fees, or other charges by ODOT to the owners, lessors, lessees, operators of motor vehicles, or other users of a toll project for the operation or use of or the right to operate on a toll project.

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<sup>14</sup> R.C. 5531.12.

<sup>15</sup> R.C. 5531.11(N).

<sup>16</sup> R.C. 5531.11(N)(2) and (3).

<sup>17</sup> R.C. 5531.11(P).



## **Use of a toll project by a motor vehicle**

Under the bill, the registered owner of a motor vehicle that utilizes a toll project is liable for payment of the applicable user fee.<sup>18</sup> The "registered owner" of a motor vehicle is all of the following persons:

- (1) Any person or entity identified by the Bureau of Motor Vehicles (BMV) or any other state motor vehicle bureau, department, or office as the owner of a motor vehicle;
- (2) The lessee of a motor vehicle pursuant to a lease of six months or longer; and
- (3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.<sup>19</sup>

## **User fee collection on toll projects**

Under the bill, ODOT may collect a user fee by utilizing a system of collection that is capable of charging an account holder the appropriate user fee by transmission of information from an electronic toll collection device on a motor vehicle. In addition, for any motor vehicle that does not use an electronic toll collection device, the Department may utilize an electronic-monitoring system for user fee collection.<sup>20</sup> An "electronic-monitoring system" is any form of electronic or other vehicle sensor or identifying device that automatically produces one or more photographs, one or more microphotographs, a videotape, recorded images, or other form of identifying data of each vehicle at the time it is used or operated on a toll project.<sup>21</sup>

## **"Toll project operator"**

The bill allows a "toll project operator" to operate a toll project. By definition, a "toll project operator" includes ODOT, but also includes any agency, political subdivision, authority, or other entity that operates a toll project, including a private entity that operates a toll project pursuant to a P3.<sup>22</sup>

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<sup>18</sup> R.C. 5531.144(A).

<sup>19</sup> R.C. 5531.11(I).

<sup>20</sup> R.C. 5531.141(A).

<sup>21</sup> R.C. 5531.11(C).

<sup>22</sup> R.C. 5531.11(O).

## **Initial actions when a motor vehicle utilizes a toll project**

The bill establishes procedures that govern the collection of user fees by a toll project operator. Some of the procedures are mandatory, such as those that guarantee a registered owner due process of law, while others are discretionary.

### **Invoice for user fee**

If a motor vehicle uses a toll project and the user fee is not paid through an electronic toll collection device or otherwise, the toll project operator first must use the electronic-monitoring system for the toll project to determine if the registered owner of the motor vehicle has established an account for the payment of the user fee. If such an account has been established, the toll project operator is required to charge the account holder the appropriate user fee. If the toll project operator cannot locate an established account, or if the toll project operator locates an established account but the account cannot be charged the appropriate user fee, the toll project operator may send by regular first class mail an invoice for the unpaid user fee. The toll project operator must send the invoice to the registered owner of the motor vehicle as shown in the records of either of the following:

- (1) The BMV; or
- (2) The department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the BMV.<sup>23</sup>

### **Contents of invoice**

The invoice the toll project operator sends to the registered owner must include all of the following:

- (1) The registered owner's name and current known address;
- (2) Descriptions and amounts of all user fees and administrative fees assessed. An "administrative fee" is a fee imposed by a toll project operator for toll collection, processing, and related activities.<sup>24</sup>
- (3) A request for payment within 35 days after the date of mailing of the invoice;

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<sup>23</sup> R.C. 5531.141(B)(1).

<sup>24</sup> R.C. 5531.11(A).



(4) A warning of the potential consequences for failing to pay the total amount due as indicated in the invoice, including additional fees and penalties, potential court summons, and inability to renew motor vehicle registrations;

(5) Information for disputing the invoice and a form that a person may use to file a notice to contest liability for a user fee or administrative fee;

(6) Contact information for the customer service center for the applicable toll project; and

(7) Information about obtaining an electronic toll collection device and establishing an electronic toll collection account.<sup>25</sup>

The bill also provides for the mailing of a late notice later in the collection process by a toll project operator to a registered owner.<sup>26</sup> Every late notice must contain all of the above information.<sup>27</sup>

### **Discretion of the toll project operator**

Under the bill, with respect to any user fee and any associated administrative fee, the toll project operator, in the toll project operator's sole discretion, may determine not to pursue collection of that user fee or administrative fee or to terminate collection measures in relation to that user fee or administrative fee.<sup>28</sup>

### **Procedural scenarios when a motor vehicle utilizes an ODOT toll project**

Under the bill, when a motor vehicle utilizes an ODOT toll project, a number of procedural scenarios are possible, depending on the actions of the toll project operator and the registered owner.

#### **(1) Actions of a person or entity upon receipt of an invoice for a user fee**

The bill provides that a person or entity that receives an invoice for a user fee from a toll project operator must do one of the following:

(1) Pay the user fee and any administrative fee listed in the invoice directly to the toll project operator within 35 days after the date of the mailing of the invoice;

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<sup>25</sup> R.C. 5531.143(A) to (G).

<sup>26</sup> R.C. 5531.142(C).

<sup>27</sup> R.C. 5531.143(A) to (G).

<sup>28</sup> R.C. 5531.141(B)(2).



(2) File with the toll project operator a notice to contest liability for the unpaid user fee within 35 days after the date of mailing of the invoice by utilizing the form that is supplied with the invoice;

(3) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the toll project operator within 35 days after the date of mailing of the invoice of the name and address of the person who was the lessee or renter of the motor vehicle at the time the user fee was incurred. Upon receipt of the name and address of the lessee or renter of a motor vehicle, the toll project operator must send an invoice to the motor vehicle lessee or renter.

These provisions also apply to a person or entity that receives a late notice.<sup>29</sup>

## **(2) The registered owner fails to pay the amount due or to contest the invoice**

If the registered owner fails to pay the amount due or to contest the invoice within 35 days after the date of mailing of the invoice, the toll project operator may send to the registered owner by regular first class mail a late notice, which must contain the same information as the original invoice. The toll project operator may charge an administrative fee for each late notice, the amount of which the Director must establish by rule.<sup>30</sup>

## **(3) Hearing if the registered owner contests liability**

If the registered owner, in response to an invoice or a late notice, submits a notice to contest liability for the user fee or any administrative fee, the toll project operator must schedule a hearing at which the registered owner may contest liability for the fee. The toll project operator must send written notice by regular first class mail to the registered owner listing the time and date of the hearing. A hearing officer of the toll project operator presides over the hearing, which must be held not later than 35 days after the date of mailing of the hearing notice. The hearing must be held at a location within the county in which the toll project is located. The registered owner may present evidence at the hearing as to the reasons why the registered owner is not liable for payment of the user fee or administrative fee. The hearing officer must determine if the registered owner is liable for the payment of any user fee or administrative fee.<sup>31</sup>

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<sup>29</sup> R.C. 5531.142(A)(1) to (3) and (B).

<sup>30</sup> R.C. 5531.142(C).

<sup>31</sup> R.C. 5531.144(B)(1).



If the hearing officer finds that the registered owner is not liable for payment of the user fee or administrative fee, the hearing officer must enter that finding into the records of the toll project operator and cancel the invoice.<sup>32</sup>

If the hearing officer finds that the registered owner is liable for payment of the user fee or any administrative fee, the hearing officer must enter that finding into the records of the toll project operator.<sup>33</sup>

**(4) At the hearing, the registered owner is found liable for payment of the fee in question and does not make payment in full upon completion of the hearing**

If the registered owner is found liable for payment of the fee in question and payment in full is not made upon completion of the hearing, the hearing officer must notify the Registrar of Motor Vehicles of the hearing officer's decision and include with the notification to the Registrar a "motor vehicle certificate of registration issuance prevention order." This is an order that, relative to the registered owner of a motor vehicle, prohibits the Registrar and any deputy registrar from doing both of the following:

(1) Accepting any application for a new or renewal motor vehicle certificate of registration in the name of the registered owner; and

(2) Issuing or renewing any motor vehicle certificate of registration for a motor vehicle that utilized a toll project for which the required user fee or associated administrative fee was not paid by the registered owner of that motor vehicle.<sup>34</sup>

The hearing officer must give the registered owner a copy of the order. The order remains in effect until the toll project operator notifies the Registrar that all unpaid user fees and administrative fees have been paid in full.

If the hearing officer finds that the registered owner is liable for payment of the user fee or any administrative fee and the registered owner resides in another state, the hearing officer must send notice of the hearing officer's decision to the department, division, bureau, office, or other unit of government that is functionally equivalent to the BMV. The hearing officer must include with the notice the registration issuance

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<sup>32</sup> R.C. 5531.144(B)(2).

<sup>33</sup> R.C. 5531.144(B)(3).

<sup>34</sup> R.C. 5531.11(F).

prevention order, which has the same effect in the other state or jurisdiction as in Ohio.<sup>35</sup>

**(5) A registered owner who is found liable for payment of fees at a hearing does not pay all fees due and does not file an appeal with the proper municipal or county court**

If the registered owner does not pay all unpaid user fees and administrative fees within 35 days after the date of the hearing officer's decision and the registered owner does not file an appeal with the municipal or county court having jurisdiction over the location of the toll project within that same 35-day period, the registered owner is considered to have waived the registered owner's right to appeal the hearing officer's decision and the toll project operator may file a civil suit against the registered owner in that municipal or county court.<sup>36</sup>

**(6) A registered owner fails to pay the initial invoice or to contest liability but contests liability after receipt of a late notice**

If the registered owner fails to pay an invoice and any administrative fee and fails to contest liability but subsequently submits a notice to contest liability after receipt of a late notice, the toll project operator must schedule and hold a hearing, and the hearing provisions previously reviewed apply to that hearing.<sup>37</sup>

**(7) A registered owner who is found liable for payment of fees at a hearing files an appeal with the municipal or county court**

A registered owner who is found liable for payment of any fees by the hearing officer may file an appeal with the municipal or county court having jurisdiction over the location of the toll project within 35 days after the date of the hearing officer's decision. Upon the timely filing of such an appeal, the clerk of the municipal or county court must notify the Registrar of the filing of the appeal. The timely filing of the appeal automatically stays the registration issuance prevention order pending the results of the appeal.<sup>38</sup> At the appeal hearing, the municipal or county court must determine whether the registered owner is liable for the payment of any user fee or administrative fee.<sup>39</sup>

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<sup>35</sup> R.C. 5531.144(B)(3).

<sup>36</sup> R.C. 5531.144(B)(4) and (C)(1).

<sup>37</sup> R.C. 5531.144(D).

<sup>38</sup> R.C. 5531.144(C)(1).

<sup>39</sup> R.C. 5531.144(C)(2).

**(8) At the appeal hearing, the court finds that the registered owner is not liable for payment of any fees**

If the court finds that the registered owner is not liable for payment of the user fee or administrative fee, the court must issue a ruling to that effect and cancel the invoice. The toll project operator immediately must inform the Registrar of the ruling and direct the Registrar to cancel the registration issuance prevention order.<sup>40</sup>

**(9) At the appeal hearing, the court finds that the registered owner is liable for payment of a user fee or administrative fee**

If the court finds that the registered owner is liable for payment of the user fee or any administrative fee, the court must issue a ruling to that effect. If payment in full is not made to the toll project operator upon completion of the appeal hearing, the toll project operator must inform the Registrar of the ruling and the failure by the registered owner to make payment in full. The stay of the registration issuance prevention order then terminates and the order becomes effective.

If, upon completion of the appeal hearing, the registered owner makes payment in full to the toll project operator of all user fees and administrative fees that the court found were due, the toll project operator must inform the Registrar of the ruling and of the payment in full by the registered owner, and also must direct the Registrar to cancel the registration issuance prevention order.

If the registered owner fails to pay in full the user fee and any administrative fee the court found were due within 35 days after the date of the court's ruling, the toll project operator may file a civil suit against the registered owner in the proper municipal or county court.<sup>41</sup>

**(10) In response to a late notice, the registered owner fails to make payment in full or to submit a notice to contest liability**

If the toll project operator sends a late notice to the registered owner and the registered owner, within 35 days after the date of mailing of the late notice, fails to pay the fees contained in the late notice and fails to submit a notice to contest liability for any of those fees, the toll project operator may do either of the following:

(1) Issue a registration issuance prevention order to the Registrar and send a copy of the order to the registered owner. If the registered owner resides in another state or jurisdiction, the toll project operator must send the order to the department,

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<sup>40</sup> R.C. 5531.144(C)(2).

<sup>41</sup> R.C. 5531.144(C)(2).

division, bureau, office, or other unit of government that is functionally equivalent to the BMV. The order has the same effect in the other state or jurisdiction as in Ohio.

(2) File a civil suit against the registered owner in the proper municipal or county court.<sup>42</sup>

At any time after a toll project operator issues a registration issuance prevention order, the registered owner may pay all user fees and administrative fees owed to the toll project operator. If such payment is made, the toll project operator must inform the Registrar of the payment and direct the Registrar to cancel the order.<sup>43</sup>

**(11) In response to the registration issuance prevention order referred to in above scenario (10), the registered owner requests a hearing in municipal or county court**

If the toll project operator sends a registration issuance prevention order to the Registrar as described in above scenario (10), the registered owner may file a request for a hearing in the proper municipal or county court within 35 days after the date the toll project operator sends the order to the Registrar. The order remains in effect pending the results of the court hearing. If the registered owner fails to file an appeal with the proper court within that 35-day period, the registered owner is considered to have waived the registered owner's right to appeal the issuance of the order. In addition, the toll project operator may file a civil suit against the registered owner in the proper court.<sup>44</sup>

**(12) The appeal hearing in the municipal or county court regarding the registration issuance prevention order**

In an appeal hearing regarding the registration issuance prevention order issued in above scenario (10), the municipal or county court must determine whether the registered owner is liable for the payment of any user fee or administrative fee and whether the issuance by the toll project operator of the order was valid.<sup>45</sup>

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<sup>42</sup> R.C. 5531.145(A)(1) and (2).

<sup>43</sup> R.C. 5531.145(D).

<sup>44</sup> R.C. 5531.145(B).

<sup>45</sup> R.C. 5531.145(C)(1).



**(13) At the appeal hearing, the court finds that the registered owner is not liable for payment of any fees**

If the court finds that the registered owner is not liable for payment of the user fee or administrative fee, the court must issue a ruling to that effect and dismiss the late notice. The toll project operator immediately must inform the Registrar of the ruling and direct the Registrar to cancel the order.<sup>46</sup>

**(14) At the appeal hearing, the court finds that the registered owner is liable for payment of a fee and issuance of the registration issuance prevention order was valid**

If the court finds that the registered owner is liable for payment of the user fee or any administrative fee and that the issuance by the toll project operator of the registration issuance prevention order was valid, the court must issue a ruling to that effect. If payment in full is not made to the toll project operator upon completion of the appeal hearing, the toll project operator must inform the Registrar of the ruling and the failure by the registered owner to make payment in full, and the order remains in effect.<sup>47</sup>

**(15) At the appeal hearing, the court finds that the registered owner is liable for payment of a fee but issuance of the registration issuance prevention order was not valid**

If the court finds that the registered owner is liable for payment of the user fee or any administrative fee but the issuance by the toll project operator of the registration issuance prevention order was not valid, the court must issue a ruling to that effect. The toll project operator must inform the Registrar of the ruling and direct the Registrar to cancel the order. The registered owner remains liable for payment of the user fee or any administrative fee. The toll project operator may reissue the registration issuance prevention order and, if the toll project operator does so, the registered owner may appeal the order as described in above scenario (11).<sup>48</sup>

**(16) After the appeal hearing, the registered owner pays all fees due in full**

If, upon completion of the appeal hearing, the registered owner pays in full to the toll project operator all user fees and administrative fees for which the court ruled the registered owner was liable, the toll project operator must inform the Registrar of

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<sup>46</sup> R.C. 5531.145(C)(1).

<sup>47</sup> R.C. 5531.145(C)(2).

<sup>48</sup> R.C. 5531.145(C)(3).

the ruling and the payment in full. The toll project operator also must direct the Registrar to cancel the registration issuance prevention order.<sup>49</sup>

### **(17) Toll project operator may file a civil suit against the registered owner after the appeal hearing**

If the court rules in above scenarios (14) and (15) that the registered owner is liable for payment of the user fee or any administrative fee and the registered owner does not pay all such fees within 35 days after the court issues the ruling, the toll project operator may file a civil suit against the registered owner in the proper municipal or county court.<sup>50</sup>

### **Civil suit filed by a toll project operator**

The bill contains detailed provisions that govern a civil suit filed by a toll project operator against a registered owner when such a civil suit is authorized as indicated above.

#### **Generally; suit for multiple user fees**

A toll project operator may file a civil suit against a registered owner in the municipal court or county court having jurisdiction over the location of the toll project. The toll project operator also must file all related documentation and information contained in the original invoice with the clerk of the municipal or county court. Generally, the toll project operator is prohibited from filing a civil suit earlier than 35 days after the date of mailing of a late notice to the registered owner.<sup>51</sup> In a circumstance in which a registered owner is liable for multiple user fees and any associated administrative fees involving one or more motor vehicles, the toll project operator may file a civil suit addressing all such user fees and administrative fees. In any case, no civil suit may include fees incurred more than 125 days prior to the date of filing of the suit.<sup>52</sup>

#### **Issuance of a summons to the registered owner**

The clerk of the municipal court or county court is required to execute a summons by sending a copy of the summons in accordance with the Rules of Civil Procedure to one of the following:

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<sup>49</sup> R.C. 5531.145(C)(4).

<sup>50</sup> R.C. 5531.145(C)(5).

<sup>51</sup> R.C. 5531.146(A)(1).

<sup>52</sup> R.C. 5531.146(A)(2).

(1) The address of the registered owner of the vehicle as shown in the records of the BMV;

(2) The person as identified and provided by a motor vehicle leasing dealer or motor vehicle renting dealer; or

(3) The address of the registered owner as shown in the records of the department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the BMV.

The issuance of such a summons constitutes sufficient notice to the registered owner.

The summons must compel the registered owner to appear in the municipal court or county court, and must include notice of the time and place of the trial as well as the potential civil penalty and any associated costs. The summons also must include a statement that the registered owner's motor vehicle utilized a toll project and therefore the registered owner incurred liability for payment of the applicable user fee. The summons constitutes sufficient notice to the registered owner that the vehicle was used on a toll project and, as a result, the registered owner is liable for payment of the user fee.<sup>53</sup>

### **Proof that a motor vehicle utilized a toll project**

Proof that a motor vehicle utilized a toll project and therefore the registered owner is liable for payment of the applicable user fee must be evidenced by either or both of the following:

(1) Information and documentation obtained from an electronic-monitoring system or electronic toll collection system;

(2) A certificate confirming the identification of the vehicle issued by a toll project operator that is based on an inspection of photographs, microphotographs, videotapes, other recorded images or identifying data produced by an electronic-monitoring system, or through electronic data collected by an electronic toll collection system.

The certificate and attached documentation are prima facie evidence of the facts contained therein. The court is required to ensure that the certificate and any photographs, microphotographs, videotapes, or other recorded images or electronic

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<sup>53</sup> R.C. 5531.146(A)(3).



data evidencing liability for payment of the applicable user fee are available for inspection in any proceeding to adjudicate the liability for payment of the user fee.<sup>54</sup>

### **Registered owner of a stolen motor vehicle not liable**

A registered owner is not liable for a user fee, and it is a complete defense to a cause of action asserting such liability, if within 35 days after the mailing of the invoice, late notice, or a summons the registered owner produces for the toll project operator or the court a certified copy of a report of a law enforcement agency that shows both of the following:

(1) The motor vehicle had been reported stolen prior to the time that the motor vehicle utilized the toll project; and

(2) The motor vehicle had remained stolen at the time of the alleged violation.

In such circumstances, the court is required to dismiss the case against the registered owner.<sup>55</sup>

### **Pretrial settlement offer by the toll project operator to the registered owner**

The toll project operator may offer to the registered owner the option to pay the unpaid user fee and any administrative fee, as specified in the summons, plus a reduced civil penalty, provided that the registered owner actually pays to the toll project operator the entire calculated amount not less than 14 days prior to the scheduled trial date. The toll project operator must establish a schedule for such reduced civil penalties that are offered to registered owners, and the toll project operator is required to adhere to the schedule when making any such offer. The toll project operator may revise the schedule from time-to-time as the toll project operator determines necessary.

If the registered owner accepts the offer and the toll project operator receives the entire amount not less than 14 days prior to the scheduled trial date, the toll project operator is required to move the court, not less than five business days prior to the trial date, to dismiss the summons issued to the registered owner. Upon such a motion, the court must dismiss the summons and dismiss the case.<sup>56</sup>

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<sup>54</sup> R.C. 5531.146(B).

<sup>55</sup> R.C. 5531.146(C)(1) and (2).

<sup>56</sup> R.C. 5531.146(D).



## **Imposition of a civil penalty**

If the municipal or county court finds that the registered owner is liable for payment of the user fee, the court must order the registered owner to pay all applicable court costs, user fees due, and administrative fees. The court also is required to impose a civil penalty upon the registered owner, as follows:

(1) For a first instance, as shown in the records of the toll project operator, in which the registered owner was liable for payment of a user fee and the registered owner did not pay the user fee and did not submit a timely notice to contest the user fee and the toll project operator sent both an invoice and a late notice to the registered owner, \$75;

(2) For a second such instance within one year of a first such instance, \$150;

(3) For a third such instance within two years of a second such instance, \$250;

(4) For a fourth or subsequent instance within three years of a third such instance, \$500.<sup>57</sup>

## **Disposition of all user fees, administrative fees, and penalties**

The clerk of the municipal or county court is required to pay all user fees, administrative fees, and penalties the court assesses and collects under these civil suit provisions to ODOT for deposit into the state treasury to the credit of the existing state Highway Operating Fund or for payment by ODOT in accordance with a P3.<sup>58</sup>

## **Issuance of a motor vehicle certificate of registration issuance prevention order**

If the court finds that the registered owner is liable for payment of a user fee, the court is required to issue a motor vehicle certificate of registration issuance prevention order. The order remains in effect until the court has notified the Registrar that all unpaid user fees, administrative fees, and civil penalties have been paid in full and the court has issued a new order rescinding its previous order. The Registrar and all deputy registrars are required to comply with the order.

If the registered owner resides in another state or jurisdiction, the court is required to issue the registration issuance prevention order and send a copy of the order to the department, division, bureau, office, or other unit of government of the

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<sup>57</sup> R.C. 5531.146(E)(1)(a) to (d).

<sup>58</sup> R.C. 5531.146(E)(2).



other state or jurisdiction that is functionally equivalent to the BMV for enforcement in that state or jurisdiction. The order has the same effect in the other state or jurisdiction as in Ohio.<sup>59</sup>

### **Restrictions regarding civil penalties**

A civil penalty cannot be made part of the driving record of the person upon whom the civil penalty is imposed, and it cannot be considered in any manner for insurance purposes in the provision of motor vehicle insurance coverage. No person may be subject to both a civil suit brought under the bill and to criminal prosecution under any Revised Code provision or any administrative rule for nonpayment of user fees or related administrative fees.<sup>60</sup>

### **Certain collection procedures prohibited**

Under the bill, a toll project operator cannot initiate collection procedures that are regulated by federal law against a registered owner in certain circumstances. Such collection procedures may include debt collection through third party debt collectors governed by the federal Fair Debt Collection Practices Act. The bill prohibits such collection procedures under the following circumstances:

(1) During the 35-day period after the date of mailing of an invoice or a late notice to the registered owner;

(2) The registered owner has timely submitted a notice to contest liability for a user fee or any administrative fee to the toll project operator. The toll project operator may initiate such collection procedures if, at the hearing conducted by the hearing officer, the hearing officer finds that the registered owner is liable for payment of the user fee or administrative fee at issue and the registered owner does not pay the fee at issue in full within 35 days after the hearing officer makes the finding.

(3) The registered owner has filed a request for an appeal hearing with the municipal or county court having jurisdiction over the location of the toll project. The toll project operator may initiate such collection procedures if, at the appeal hearing conducted by the municipal or county court, the court finds that the registered owner is liable for payment of the user fee or administrative fee at issue and the registered owner does not pay the fee at issue in full within 35 days after the court issues a ruling to that effect.

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<sup>59</sup> R.C. 5531.146(F)(1) and (2).

<sup>60</sup> R.C. 5531.146(G)(1) and (2).

(4) The toll project operator has filed a civil suit against the registered owner in the municipal or county court having jurisdiction over the location of the toll project.<sup>61</sup>

## **Information necessary to conduct toll collection**

### **Agreements with other states and jurisdictions**

The bill permits a toll project operator to enter into an agreement with ODOT and the BMV and the department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the BMV to obtain motor vehicle owner and registration information that is necessary to conduct electronic toll collection and electronic monitoring.<sup>62</sup>

### **Limitations on, and the security of, necessary information**

A toll project operator is required to ensure that information collected by an electronic toll collection device, an electronic-monitoring system in conjunction with an electronic toll collection system, or obtained from ODOT, the BMV, or another state or jurisdiction is limited solely to information that is (1) necessary for the collection of unpaid user fees and administrative fees, (2) necessary to establish the liability of the registered owner of a motor vehicle for payment of a user fee, or (3) necessary in any proceeding to establish or confirm such liability.<sup>63</sup>

In addition, a toll project operator also must ensure that all such images or other data collected are maintained in a protected database with security that is at least comparable to the security used for databases operated by ODOT, and are used solely for the collection of unpaid user fees and administrative fees.<sup>64</sup>

### **Restrictions applicable to necessary information**

All of the following apply to the images and other data necessary to conduct electronic toll collection:

(1) The images and other data are not public records under the Public Records Law.

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<sup>61</sup> R.C. 5531.147(A) to (D).

<sup>62</sup> R.C. 5531.148(A).

<sup>63</sup> R.C. 5531.148(B)(1).

<sup>64</sup> R.C. 5531.148(B)(2)(a) and (b).

(2) A toll project operator or any other person is prohibited from selling or using the images and data for sales, solicitation, or marketing purposes. This provision does not prohibit ODOT or the toll project operator from using the images and data to facilitate collection or payment of user fees and administrative fees.

(3) A toll project operator or any other person is prohibited from disclosing the images and data to any other entity except to a registered owner who contests liability for and challenges the imposition of a user fee or administrative fee; or except as may be necessary for the collection of unpaid user fees or administrative fees.

(4) The images and data cannot be used in any court in a pending action or proceeding except upon an order from a court of competent jurisdiction or unless the action or proceeding relates to the liability of the registered owner of a motor vehicle for payment of a user fee.<sup>65</sup>

### **Elimination of images and data**

Except as otherwise provided in the bill, a toll project operator is prohibited from retaining any images or other data collected by an electronic toll collection device, an electronic-monitoring system, or acquired from ODOT, the BMV, or another state or jurisdiction. The toll project is required to purge, write over, or otherwise eliminate from existence the images or other data not later than 180 days after the collection of any unpaid user fees or administrative fees. Upon request from the Director, any entity operating an electronic toll collection system or electronic-monitoring system in conjunction with an electronic toll collection system must certify compliance with these provisions and, upon request, must make all records pertaining to such system available for inspection and audit by the Director or the Director's designee.<sup>66</sup>

The bill prohibits any entity operating an electronic toll collection system or electronic-monitoring system in conjunction with an electronic toll collection system from failing to certify compliance with these provisions or failing, upon request, to make all records pertaining to such system available for inspection and audit by the Director or the Director's designee.<sup>67</sup> Whoever violates this prohibition is guilty of a minor misdemeanor on a first offense (a fine of not more than \$150; no jail term is

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<sup>65</sup> R.C. 5531.148(B)(3)(a) to (d).

<sup>66</sup> R.C. 5531.148(B)(4)(a).

<sup>67</sup> R.C. 5531.148(B)(4)(b).

possible), and a fourth degree misdemeanor on each subsequent offense (a fine of not more than \$250, a jail term of 30 days, or both).<sup>68</sup>

### **Payment of certain fees to the BMV; agreements with other state agencies**

The bill requires a toll project operator to compensate the BMV for its actions in enforcing the ODOT toll project law with respect to the registered owner of a motor vehicle that is titled or registered in this state. The toll project operator must provide this compensation by collecting and paying to the BMV, on a monthly basis, a \$5 administrative fee for each certificate of registration issuance prevention order sent to and processed by the BMV under the ODOT toll project law. The BMV is required to deposit all such money it collects in the state treasury to the credit of the existing State Bureau of Motor Vehicles Fund.<sup>69</sup>

Under the bill, the Director may enter into an agreement with the department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to ODOT or the BMV for the purpose of enforcing the user fee collection provisions of the toll project law contained in the bill. The agreement may provide that the other state or jurisdiction will give effect to a motor vehicle certificate of registration issuance prevention order issued in Ohio in relation to the utilization of a toll project by the owner of a motor vehicle registered in another state.<sup>70</sup>

### **Free access to a toll project by certain persons**

The bill provides that the rules the Director must adopt for the control and regulation of a toll project must provide that all of the following persons be afforded ready access, while in the performance of their official duties, to all property under ODOT jurisdiction and without the payment of any user fee:

- (1) Public police officers;
- (2) Operators of municipal, township, county, and state maintenance vehicles;
- (3) Operators of United States military vehicles traveling in a convoy;
- (4) Operators of official emergency response vehicles.<sup>71</sup>

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<sup>68</sup> R.C. 5531.148(B)(5).

<sup>69</sup> R.C. 5531.149(A).

<sup>70</sup> R.C. 5531.149(B).

<sup>71</sup> R.C. 5531.15(B)(1) to (4).



Existing law specifies that only public police officers must be afforded such access.

### **Signs that identify a "toll project" for the traveling public**

Under the bill, a toll project operator is required to display signs that identify the applicable user fees, including fees for motor vehicles that do not have an active, functioning electronic toll collection device registered for and in use in the vehicle. The toll project operator must erect or otherwise display signs in advance of the toll project at locations that are of distances that are sufficient to notify motor vehicle operators of the opportunity to exit the street or highway on which they are traveling before the street or highway becomes, becomes part of, or otherwise leads to the toll project and for the use of which user fees apply.<sup>72</sup>

### **User fees**

The bill provides that, as part of the plan, schedule, or system that the Director is required to establish for toll project user fees or charges, the Director also must develop a written process for setting user fee rates. In developing the process, the Director must seek and consider public comment. In doing so, the Director must hold at least one public hearing within 50 miles of the location of the toll project for which the written process is developed.<sup>73</sup>

The bill permits the Director, in accordance with the Administrative Procedure Act, to adopt additional rules as the Director determines necessary for the establishment, collection, and enforcement of user fees and administrative fees, including the purpose, amount, and duration of the fees.<sup>74</sup>

The bill eliminates language that provides that for any toll imposed under the ODOT toll project law, ODOT may use a system for toll collection that is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device on a motor vehicle to the toll lane, and the information then is used to charge the account holder the appropriate toll or charge.<sup>75</sup>

One or more user fees, or a portion of any user fees, may be pledged to the repayment of obligations in the bond proceedings for those obligations and, if so

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<sup>72</sup> R.C. 5531.14(A).

<sup>73</sup> R.C. 5531.14(B).

<sup>74</sup> R.C. 5531.14(B).

<sup>75</sup> R.C. 5531.14(B).





pledged is a pledged receipt for those obligations to the extent pledged in those bond proceedings. One or more user fees, or a portion of any user fees, also may be pledged to the repayment of obligations under a P3 or related financing as provided in the P3 law. The bill eliminates existing language that provides that one or more tolls, or a portion of any toll, may be pledged to the repayment of obligations in the bond proceedings for those obligations and if so pledged is a pledged receipt for those obligations to the extent pledged in those bond proceedings.<sup>76</sup>

Under the bill, the Director must fix and adjust user fees (current law does not specify the Director is to perform these actions) so as to provide funds at least sufficient with other revenues of the transportation system of Ohio, to pay all of the following:

(1) Any debt service charges (current law specifies "bond service charges") on obligations issued to pay the costs of one or more toll projects as those charges become due and payable;

(2) Together with any other amounts available for such purpose, any obligations under a P3 entered into in connection with a toll project as such amounts become due and payable (this provision is new law);

(3) The cost of maintaining, improving, repairing, constructing, financing (financing is not included in current law), and operating toll projects within the interstate system or the state highway system (current law specifies only the state highway system) and its different parts and sections, and to create and maintain any reserves for these purposes.<sup>77</sup>

The bill provides that user fees that are received pursuant to a P3 must be deposited in accordance with that P3 and used for the exclusive benefit of the toll project, not to the credit of the existing Ohio Toll Fund as specified in current law.<sup>78</sup>

Under the bill, the issuing authority, by July 15 of each fiscal year, is required to certify or cause to be certified to ODOT and the Office of Budget and Management the total amount of money required during the current fiscal year to meet in full all debt service charges (current law specifies "all bond service charges") and otherwise comply with not only the requirements of any applicable bond proceedings (this provision is current law) but also all obligations under a P3 relating to a toll project as provided in the P3 law (this provision is new). The issuing authority must make or cause to be made

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<sup>76</sup> R.C. 5531.14(C).

<sup>77</sup> R.C. 5531.14(D)(1) to (3).

<sup>78</sup> R.C. 5531.14(E).



supplemental certifications to ODOT and OBM for each bond service payment date and at such other times during each fiscal year as may be provided in the applicable bond proceeding or public-private agreement (current law specifies "as may be provided in the applicable bond proceedings") or required by ODOT or OBM. Bond service charges, costs of credit enhancement facilities, other financing costs, and any other amounts required under the applicable bond proceedings and all amounts required under any applicable P3 (current law specifies only "under the applicable bond proceedings") must be set forth separately in each certification. Money received from user fees and other pledged receipts must be deposited to the credit of the Bond Service Fund at those times and in those amounts as are necessary to satisfy all those payment requirements of the applicable bond proceedings or to the credit of any fund established for such a purpose under any P3 (current law specifies only "those payment requirements of the applicable bond proceedings").

Under the bill, at such time that bond service charges on all outstanding bonds issued in connection with any toll project and the interest on the bonds have been paid or a sufficient amount for the payment of all such bonds and the interest on the bonds to the maturity of the bonds has been set aside in trust for the benefit of the bondholders, as provided in the applicable bond proceedings, and at such time as all amounts due and to become due pursuant to a P3, which are payable from user fees, have been paid, the project must be operated, improved, and maintained by ODOT as a part of the state highway system and must be free of user fees.<sup>79</sup>

Current law provides that when all bonds issued in connection with any toll project and the interest on the bonds have been paid, or a sufficient amount for the payment of all such bonds and the interest on the bonds to the maturity of the bonds has been set aside in trust for the benefit of the bondholders, the project must be operated, improved, and maintained by ODOT as a part of the state highway system and must be free of tolls.

### **The Director of Transportation and certain contracts for a toll project**

The bill provides that the Director may enter into any contracts, including professional contracts, the Director determines to be necessary, convenient, or proper for the construction, improvement, repair, maintenance, administration, or operation of toll projects not only in the manner specified in current law governing ODOT contracts but also pursuant to a P3.<sup>80</sup>

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<sup>79</sup> R.C. 5531.14(F).

<sup>80</sup> R.C. 5531.13(B) and (C).



## Maintenance of a toll project

The bill requires a toll project to be maintained and kept in good condition and repair in accordance with the terms of an ODOT P3. This requirement is in addition to the current requirement that ODOT maintain each toll project, which the bill retains.<sup>81</sup>

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### HISTORY

ACTION	DATE
Introduced	05-07-14
Reported, S. Transportation	---

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<sup>81</sup> R.C. 5531.16(A).

