ENGROSSED SENATE
BILL NO. 301 By: Bingman of the Senate

and

Thompson of the House

[motor carriers - modifying participation -

definitions -

effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 47 O.S. 2001, Section 162.1, as last amended by Section 1, Chapter 168, O.S.L. 2008 (47 O.S. Supp. 2008, Section 162.1), is amended to read as follows:

Section 162.1 ~~A. The Corporation Commission is authorized to promulgate all rules and regulations necessary to enable the State of Oklahoma to participate in the single state registration system for motor carriers authorized by the Intermodal Surface Transportation Efficiency Act of 1991, 49 U.S.C., Section 11506 (1991), and by applicable rules and regulations of the Interstate Commerce Commission.~~

~~B. The Corporation Commission is authorized to apply rules and regulations to interstate motor carriers exempt from the Interstate Commerce Commission regulations.~~

~~C.~~ The Corporation Commission is authorized to promulgate rules necessary to enable this state to participate in the Unified Carrier Registration System for interstate motor carriers, brokers, forwarders and leasing companies and interstate motor carriers holding intrastate authority as set forth in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Subtitle C-Unified Carrier Registration Act of 2005.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 1120, as last amended by Section 2, Chapter 168, O.S.L. 2008 (47 O.S. Supp. 2008, Section 1120), is amended to read as follows:

Section 1120. A. The Corporation Commission may, when in the interest of the State of Oklahoma and its residents, enter into the International Registration Plan or other compacts or agreements with other states to permit motor vehicle registration and license taxes on any truck, bus, or truck-tractor on a proportional basis commensurate with the use of Oklahoma highways. Proportional registration under such plans may be permitted for vehicles engaged in interstate commerce or combined interstate and intrastate commerce. Any action taken by the Oklahoma Tax Commission with respect to the International Registration Plan or other such compacts or agreements prior to ~~the effective date of this act~~ July 1, 2004 shall remain in effect unless altered by the Corporation Commission pursuant to its authority to do so after the effective date of this act.

B. The Corporation Commission shall require that such proportional registration be based on the percentage of miles actually operated by such vehicles or fleets of vehicles in the State of Oklahoma in the reporting period in proportion to the total fleet miles operated both within and without Oklahoma. If the registrant did not incur mileage for at least ninety (90) days of the reporting period, the Corporation Commission may accept the mileage from the preceding mileage reporting period. If the registrant did not incur mileage during the preceding reporting period, the registrant shall estimate its future operations in accordance with the International Registration Plan. Such percentage figure, so determined by the Corporation Commission, shall be the Oklahoma mileage factor. In computing the taxes under the foregoing formula, the Corporation Commission shall first compute the license fees for the entire fleet and then multiply the amount by the Oklahoma mileage factor on a dollar basis.

C. Upon receipt of the Oklahoma license and registration tax, which shall be paid by cash and/or certified funds, as computed under the provisions of the Oklahoma Vehicle License and Registration Act, the Corporation Commission shall register all such fleet vehicles, and shall issue a license plate, cab card or decal for each of such vehicles identifying it as part of an interstate fleet. The Corporation Commission may, upon satisfactory review of

the payment history of an applicant, waive the requirement for payment in cash or certified funds.

D. Vehicles so registered on a prorated basis shall be considered fully licensed in Oklahoma and shall be exempt from all further registration or license fees under the provisions of the Oklahoma Vehicle License and Registration Act; provided that such fleet vehicles are proportionally licensed in some other state, territory or possession of the United States or some foreign province, state or country with which the Corporation Commission has entered into a prorationing compact or agreement.

If a vehicle is permanently withdrawn from a proportionally registered fleet and a replacement vehicle is added to the fleet in the same calendar month, the replacement vehicle shall be considered fully registered as provided in Section 1133 of this title and Section 14-109 of this title, if the replacement vehicle is registered for a weight equal to or less than the vehicle permanently withdrawn, or if additional registration fees are paid when the replacement vehicle is registered for a weight greater than the vehicle withdrawn. If a vehicle is permanently withdrawn from a proportionally registered fleet and is not replaced by another vehicle in the same calendar month, credit shall be allowed as otherwise provided in this section.

E. Vehicles subsequently added to a proportionally registered fleet after commencement of the registration year shall be

proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

F. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from service, credit shall be allowed. Such credit shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in the registration year, reduced by those months elapsing since the beginning of the registration year. The credit may be applied against subsequent additions to the fleet to be prorated or for other additional registration fees assessed. In no event shall credit be allowed for fees beyond such registration year, nor shall any such amount be subject to refund. Provided, further, that vehicles removed from a prorated fleet or sold to a nonprorated fleet for operation in Oklahoma shall be registered in Oklahoma for the remaining portion of the year.

G. Mileage proportions for interstate fleets not operated in this state during the preceding year will be determined by the Corporation Commission on the basis of the operations of the fleet the preceding year in other states plus the estimated operation in Oklahoma, or, if no operations were conducted the previous year, a full statement of the proposed method of operation. In the absence

of a full statement of the proposed method of operation, the Corporation Commission shall require the applicant to utilize an estimated mileage chart provided by the Corporation Commission.

H. The records of total mileage operated in all states upon which the application is made for a period of three (3) years following the year upon which the application is based shall be preserved. Upon request of the Corporation Commission, such records shall be made available for audit as to accuracy of computation and payments. The Corporation Commission may enter into agreements with agencies of other states administering motor vehicle registration laws for joint audits of any such records.

I. The Corporation Commission may enter into compacts or agreements with other states or other countries or subdivisions of such countries allowing reciprocal privileges to vehicles based in such other states and operating in interstate commerce if the vehicles are properly registered therein.

J. Interchanged vehicles properly registered in another state may be granted reciprocal privileges when engaged in a continuous movement in interstate commerce, but must register in this state if used in intrastate commerce.

K. In addition to those taxes or fees imposed by the Oklahoma Vehicle License and Registration Act, the same or substantially the same type or category of tax or fee may be imposed upon an out-of-state resident as is imposed upon residents of Oklahoma for the same

or substantially similar use of a vehicle in such other state in the amount, or approximate total amount, of any fee or tax, including property, motor fuel, excise, sales, use or mileage tax required by the laws of such other state to be paid by a resident of this state making the same or similar use of a like vehicle in such state.

The Corporation Commission shall have the authority to promulgate rules which provide procedures for implementation of comparable regulatory fees and taxes for vehicles used in this state by residents of other states.

Any revenue derived from this subsection shall be apportioned in the same manner as provided in Section 1104 of this title.

It is the intention of the Legislature that the motor vehicle registration and licensing fees assessed against residents of other states operating similar vehicles in Oklahoma be comparably the same as the motor vehicle registration and licensing fees assessed against residents of Oklahoma operating a similar vehicle for a similar purpose in such other state; and that the Corporation Commission diligently monitor the motor vehicle registration and licensing fees assessed against residents of Oklahoma by other states and to provide for uniform treatment of Oklahoma residents operating vehicles in other states and for residents of other states operating vehicles in Oklahoma.

L. ~~The provisions of this section shall not apply to tour bus operations issued permits pursuant to Section 1171 of this title.~~

~~M.~~ The Corporation Commission shall assess a fee of Three Dollars ($3.00) to process an amended registration filed under the International Registration Plan to add a jurisdiction to an existing registration under the plan. The collection and payment of the fee shall be a prerequisite to amending the registration. All revenue derived pursuant to the provisions of this subsection shall be apportioned and distributed as provided for in Section 1104 of this title.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 1124, as last amended by Section 3, Chapter 168, O.S.L. 2008 (47 O.S. Supp. 2008, Section 1124), is amended to read as follows:

Section 1124. A. Any person, firm or corporation owning or possessing a commercial vehicle who:

1. Is a resident of the United States;

2. Is required to register the vehicle under the laws of this state;

3. Is not authorized to drive the vehicle on the public roads of this state for lack of registration or reciprocity of this state's laws with the laws of the state in which the vehicle is registered; and

4. Operates the vehicle for commercial purposes;

may receive a temporary permit from the Corporation Commission. The permit shall be recognized in lieu of registration in this state. The permit shall indicate the time and date of its issuance and

shall be valid for a period not to exceed seventy-two (72) hours from such indicated time.

B. A fee of Twelve Dollars ($12.00) shall be charged for the issuance of the temporary permit which shall be apportioned in the same manner as other vehicle license fees are apportioned under the terms of the motor vehicle license and registration laws of this state.

C. The temporary permit shall not be issued to any person, firm or corporation owning or possessing a commercial vehicle, truck, truck-tractor, trailer, semitrailer or motor bus, who has been apprehended for violating the registration laws of this state. If apprehended, the vehicle shall be immediately subject to such registration laws. Possession of the temporary permit shall not affect any liability or duty which the owner or operator of a vehicle might otherwise have by law. An operator of a vehicle possessing an expired, altered or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to registration and penalties therefor as provided by law.

D. The Corporation Commission may enter into an agreement with any person or corporation located within or without the state for transmission of temporary permits for a commercial vehicle by way of a facsimile machine or other device when the Corporation Commission determines that such agreement is in the best interests of the state.

E. The Corporation Commission may enter into an agreement with any state for transmission of that state's temporary permits for a commercial vehicle by way of a facsimile machine or other device when the Corporation Commission determines that such agreement is in the best interests of the state.

F. Any provision of this act providing for proportional registration under reciprocal agreements and the International Registration Plan that relate to the promulgation of rules shall not be subject to the provisions of Section 1151 of this title. The Corporation Commission may promulgate such rules as it deems necessary to administer the provisions of this section. The Corporation Commission may prescribe an application form for the temporary permit and such other forms as it deems appropriate.

G. The provisions of this section shall not apply to ~~tour bus operations issued permits pursuant to Section 1171 of this title, or to~~ vehicles entering this state for the express purpose of transporting the resources and equipment necessary to support production activities of the motion picture, television and video film industries operating within the state. Any such vehicle properly registered under the laws of another state or not registered with this state pursuant to the provisions of the International Registration Plan and used for the above-stated purpose shall not be subject to the registration requirements as set

forth in Section 1101 et seq. of this title while conducting said business.

SECTION 4. AMENDATORY 47 O.S. 2001, Section 1139, as amended by Section 22, Chapter 522, O.S.L. 2004 (47 O.S. Supp. 2008, Section 1139), is amended to read as follows:

Section 1139. A. In addition to vehicle license fees or taxes imposed upon vehicles in this state, every person operating any intercity motor bus upon, over, along or across any public highway of this state shall, in order to reimburse the state for the maintenance and upkeep of public highways of the state and for the administration and enforcement of the provisions of this act, pay to the Corporation Commission the following taxes or fees:

A tax of one-half (1/2) mill for each mile each passenger is transported over the public highways of this state. The tax levied by this section shall apply to those motor vehicles designed, constructed and used primarily for the purpose of transportation of persons.

B. Every person as defined by this section shall keep an accurate permanent record in this state, for a period of three (3) years, of all trips made by the person's respective vehicles, which record shall show the dates, origin, routes, destination and current vehicle license numbers, and shall make and file with the Corporation Commission monthly reports upon or before the fifteenth day of each month covering operations for the preceding calendar

month in such detail as may be required by the Corporation Commission, to be accompanied by a certified check, bank draft or money order in the amount of the mileage taxes and fees shown to be due.

C. Any taxes or fees provided for in this section, if not paid when due, shall then be delinquent and bear penalty at the rate of twelve percent (12%) per annum, when such taxes have been reported by the taxpayer, and at the rate of twenty-four percent (24%) per annum upon all taxes not reported within thirty (30) days after the date herein fixed for the filing of monthly reports.

~~D. The provisions of this section shall not apply to tour bus operations issued permits pursuant to Section 1171 of this title.~~

SECTION 5. AMENDATORY 68 O.S. 2001, Section 605, as amended by Section 9, Chapter 168, O.S.L. 2008 (68 O.S. Supp. 2008, Section 605), is amended to read as follows:

Section 605. The tax levied by this article shall not apply to motor fuel or diesel fuel imported into and used on the highways of this state by:

1. Persons operating motor vehicles commonly designated as automobiles or recreational vehicles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation;

2. Any person operating a motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons

or property, and a gross vehicle weight of less than twenty-six thousand (26,000) pounds;

3. Persons importing livestock and farm products in the raw state, including cotton, whether in the seed or ginned, and including cottonseed and baled hay, when such commodities are moved from farm to market, or from market to farm on a vehicle or on vehicles owned and operated by a bona fide farmer not engaged in motor vehicle transportation on a commercial scale;

4. ~~Tour buses operated to transport passengers by charter or special service as defined by the Interstate Commerce Commission;~~

~~5.~~ Motor fuel or diesel fuel used in vehicles owned by the United States of America; and

~~6.~~ 5. Persons importing motor fuel/diesel fuel for use into this state having applied for and received a temporary fuel permit from the Corporation Commission.

No exemption from the tax levied by Section 603 of this title and as set forth in this section shall be construed as an exemption from the tax levied by the Motor Fuel Tax Code.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 607, as last amended by Section 10, Chapter 168, O.S.L. 2008 (68 O.S. Supp. 2008, Section 607), is amended to read as follows:

Section 607. A. Before any person imports gasoline or diesel fuel into the state in the fuel supply tank or tanks of any motor vehicle, or in any other container for use on the highways of this

state, such person shall file application for and obtain a Motor Fuel/Diesel Fuel Importer for Use License. Such requirement shall be complied with notwithstanding the tax levied by the Motor Fuel Tax Code has been paid on such gasoline or diesel fuel. However, persons exempted by Section 605 of this title from the tax levied pursuant to Section 603 of this title shall not be required to obtain such license. The application required by this section shall be verified and filed on a form prescribed and furnished by the Corporation Commission showing the name and address and kind of business of the applicant, a designation of the principal place of business and such other information as the Corporation Commission may require. Such application must also contain, as a condition to the issuance of the license, an agreement by the applicant to comply with the requirements of Section 601 et seq. of this title and the rules of the Corporation Commission.

B. Before any such application may be approved by the Corporation Commission, the applicant must fully comply with the contribution requirements pursuant to Section 607.2 of this title. In addition, prior to the approval, the Corporation Commission may require the applicant to file a bond payable to the State of Oklahoma conditioned upon compliance with the provisions of Section 601 et seq. of this title and the rules of the Corporation Commission in a sum of not more than Ten Thousand Dollars ($10,000.00), the amount thereof to be fixed by an order of the

Corporation Commission. During the license year, the amount of any such bond required may be increased or reduced by the Corporation Commission at its discretion, and the Corporation Commission may in its discretion, waive the filing of a bond by any person who regularly purchases sufficient gasoline or diesel fuel on which the motor fuel or diesel fuel excise tax has been paid to this state when the tax equals or exceeds the amount of the tax levied against such person under Section 601 et seq. of this title.

C. Upon approval of such application and bond, the Corporation Commission shall issue to the applicant a nontransferable Motor Fuel/Diesel Fuel Importer for Use License bearing a distinctive number, at no charge to the applicant. The license shall be issued on an annual basis and shall remain in full force and effect until surrendered, suspended, or canceled in the manner provided by law. Each license shall be valid only for the operation of motor vehicles on the highways of this state by the person to whom it is issued including motor vehicles transporting persons or property in furtherance of the business of the licensee under a lease, a contract or any other arrangement, whether permanent or temporary in nature. The Corporation Commission may issue one (1) license credential to evidence the compliance of the applicant with the provisions of this section and the provisions of Section 1120 of Title 47 of the Oklahoma Statutes.

D. In consideration of the use of the highways of this state, and in addition to all other taxes levied for such purposes, all persons who import motor fuel/diesel fuel into the state in the fuel supply tank or tanks of motor vehicles for use in propelling the vehicles on the highways for commercial purposes may receive a temporary motor fuel/diesel fuel permit from the Corporation Commission. This permit shall be recognized in lieu of licensing requirements in this state. The permit shall indicate the time and date of its issuance and shall be valid for a period not to exceed one hundred twenty (120) hours from such indicated time.

A fee of Twenty-five Dollars ($25.00) shall be charged for the issuance of the temporary permit. Eight Dollars ($8.00) of the fee shall be apportioned in the same manner as other motor fuel/diesel fuel revenue. Two Dollars ($2.00) of the fee shall be retained by the Corporation Commission and apportioned as provided in Section 1167 of ~~this title~~ Title 47 of the Oklahoma Statutes. Fifteen Dollars ($15.00) of the fee shall be paid to the State Treasurer for deposit in the General Revenue Fund.

Any person importing motor fuel/diesel fuel into this state for use while in possession of an expired, altered or undated temporary fuel permit shall be deemed to be operating without proper licensing and shall be subject to licensing and penalties as provided for in the Motor Fuel/Diesel Fuel Importer for Use Tax Code.

The Corporation Commission may prescribe an application form for the temporary permit and such other forms as it deems appropriate. The Corporation Commission, without notice, may suspend the issuance of temporary permits to any person found to be in violation of the Motor Fuel/Diesel Fuel Importer for Use Tax Code or similar laws of this state.

The Corporation Commission may enter into an agreement with any person or corporation located within or without the state for transmission of temporary permits by way of a facsimile machine or other device when the Corporation Commission determines that such agreement is in the best interests of the state.

The Corporation Commission may enter into an agreement with any state for transmission of that state's temporary permits by way of a facsimile machine or other device when the Corporation Commission determines that such agreement is in the best interests of the state.

E. In lieu of the requirements as provided for in Section 601 et seq. of this title in respect to licensing, bonding, reporting and auditing, the Corporation Commission may, when in the best interests of this state and its residents, enter into the International Fuel Tax Agreement or other cooperative compacts or agreements with another state or other states or provinces to permit base state or base jurisdiction licensing of persons importing motor fuel or diesel fuel into this state and liable for the tax levied

pursuant to Section 601 et seq. of this title and provide for the cooperation and assistance among the member states and provinces in the administration and collection of motor fuels consumption and use taxes. Any action taken by the Oklahoma Tax Commission with respect to the International Fuel Tax Agreement or other such compacts or agreements prior to ~~the effective date of this act~~ June 9, 2004, shall remain in effect unless altered by the Corporation Commission pursuant to its authority to do so after the effective date of this act.

SECTION 7. AMENDATORY 47 O.S. 2001, Section 562, as last amended by Section 2, Chapter 315, O.S.L. 2008 (47 O.S. Supp. 2008, Section 562), is amended to read as follows:

Section 562. The following words, terms and phrases, when used in Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Motor vehicle" means any motor-driven vehicle required to be registered under the Oklahoma Vehicle License and Registration Act except all-terrain vehicles, utility vehicles, and motorcycles used exclusively for off-road use;

2. "New motor vehicle dealer" means any person, firm, association, corporation or trust not excluded by this paragraph who sells, offers for sale, advertises to sell, leases or displays new

motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor authorized by the manufacturer to make predelivery preparation of such vehicles sold to purchasers and to perform post-sale work pursuant to the manufacturer's or distributor's warranty. As used herein, "authorized predelivery preparation" means the rendition by the dealer of services and safety adjustments on each new motor vehicle in accordance with the procedure and safety standards required by the manufacturer of the vehicle to be made before its delivery to the purchaser. "Performance of authorized post-sale work pursuant to the warranty", as used herein, means the rendition of services which are required by the terms of the warranty that stands extended to the vehicle at the time of its sale and are to be made in accordance with the safety standards prescribed by the manufacturer. The term includes premises or facilities at which a person engages only in the repair of motor vehicles if repairs are performed pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. However, the term shall not include premises or facilities at which a new motor vehicle dealer or dealers within the area of responsibility of such dealer or dealers as defined in the manufacturer's franchise agreement of such dealer or dealers performs motor vehicle repairs pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. For the purpose of Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title, the terms "new motor

vehicle dealer" and "new motor vehicle dealership" shall be synonymous. The term "new motor vehicle dealer" does not include:

a. receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment or order of any court,

b. public officers while performing or in operation of their duties, or

c. employees of persons, corporations or associations enumerated in subparagraph a of this paragraph when engaged in the specific performance of their duties as such employees;

3. "Motor vehicle salesperson" means any person who, for gain or compensation of any kind, either directly or indirectly, regularly or occasionally, by any form of agreement or arrangement, sells or negotiates for the sale of any new motor vehicle for any new motor vehicle dealer to any one or more third parties;

4. "Commission" means the Oklahoma Motor Vehicle Commission;

5. "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles or who engages in the fabrication or assembly of motorized vehicles of a type required to be registered in the State of Oklahoma;

6. "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who, being authorized

by the original manufacturer, in whole or in part sells or distributes new and unused motor vehicles to motor vehicle dealers, or who maintains distributor representatives;

7. "Factory branch" means any branch office maintained by a person, firm, association, corporation or trust who manufactures or assembles motor vehicles for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

8. "Distributor branch" means any branch office similarly maintained by a distributor for the same purposes a factory branch is maintained;

9. "Factory representative" means any officer or agent engaged as a representative of a manufacturer of motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers;

10. "Distributor representative" means any person, firm, association, corporation or trust and each officer and employee thereof engaged as a representative of a distributor or distributor branch of motor vehicles, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers;

11. "Franchise" means any contract or agreement between a motor vehicle dealer and a manufacturer of a new motor vehicle or its distributor or factory branch by which the dealer is authorized to engage in the business of selling any specified make or makes of new motor vehicles;

12. "New or unused motor vehicle" means a vehicle which is in the possession of the manufacturer or distributor or has been sold only to the holder of a valid selling agreement, franchise or contract, granted by the manufacturer or distributor for the sale of that make of new vehicle so long as the manufacturer's statement of origin has not been assigned to anyone other than a licensed franchised new motor vehicle dealer of the same line-make;

13. "Area of responsibility" means the geographical area, as designated by the manufacturer, factory branch, factory representative, distributor, distributor branch or distributor representative, in which the new motor vehicle dealer is held responsible for the promotion and development of sales and rendering of service for the make of motor vehicle for which the motor vehicle dealer holds a franchise or selling agreement;

14. "Off premises" means at a location other than the address designated on the new motor vehicle dealer's license;

15. "Sponsoring entity" means any person, firm, association, corporation or trust which has control, either permanently or

temporarily, over the real property upon which the off-premise sale or display is conducted;

16. "Product" means new motor vehicles and new motor vehicle parts;

17. "Service" means motor vehicle warranty repairs including both parts and labor;

18. "Lead" means a consumer contact in response to a factory program designed to generate interest in purchasing or leasing a new motor vehicle;

19. "Sell or sale" means to sell or lease; and

20. "Factory" means a manufacturer, distributor, factory branch, distributor branch, factory representative or distributor representative, which manufactures or distributes vehicle products.

SECTION 8. This act shall become effective November 1, 2009.

Passed the Senate the 26th day of February, 2009.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2009.

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Presiding Officer of the House of Representatives