

# Fiscal Note & Local Impact Statement

124<sup>th</sup> General Assembly of Ohio

*Revised*

Ohio Legislative Service Commission  
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BILL:	Am. Sub. S.B. 242	DATE:	May 30, 2002
STATUS:	As Recommended by Conference Committee	SPONSOR:	Sen. Carnes (by request)
LOCAL IMPACT STATEMENT REQUIRED:	No	Not required for budget bills	
CONTENTS:	Tobacco budget for the biennium beginning July 1, 2002 and ending June 30, 2004		

## State Fiscal Highlights

STATE FUND	FY 2003*	FY 2004*	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	Transfer of up to \$3.9 million from Fund 087; Loss of about \$9.0 million per year in cigarette tax revenue; Potential negligible gain in court costs for illegal distribution of cigarettes		Loss of about \$9.0 million per year in cigarette tax revenue; Potential negligible gain in court costs for illegal distribution of cigarettes
Expenditures	- 0 -		- 0 -
<b>Tobacco Master Settlement Agreement Fund (Fund 087)</b>			
Revenues	- 0 -		- 0 -
Expenditures	Transfer of up to \$3.9 million to the GRF from the share allocated to Fund L87		- 0 -
<b>Ohio's Public Health Priorities Trust Fund (Fund L87)</b>			
Revenues	Loss of up to \$3.9 million transferred to GRF instead of Fund L87; Potential gain of \$3.9 million if revenue exceeds estimates and/or revenue from escrow account is received		- 0 -
Expenditures	Up to \$11,142,105 increase	Up to \$11,228,421 increase	- 0 -
<b>Law Enforcement Improvements Trust Fund (Fund J87)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Up to \$6.2 million increase	Up to \$1.0 million increase	- 0 -
<b>Tobacco Settlement Oversight, Administration, and Enforcement Fund (Fund U87)</b>			
Revenues	Gain of \$530,000 from Fund 087	Gain of \$552,000 from Fund 087	Annual gain through FY 2025 from transfer made under ORC 183.02 (I), established in the bill
Expenditures	Up to \$529,958 increase	Up to \$551,516 increase	- 0 -
<b>Biomedical Research and Technology Transfer Trust Fund (Fund M87)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Up to \$25.5 million increase	Up to \$25.5 million increase	- 0 -
<b>Education Technology Trust Fund (Fund S87)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Up to \$16.5 million increase	Up to \$16.5 million increase	- 0 -
<b>Southern Ohio Agricultural and Community Development Operating Expenses Fund (Fund 5M9)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Up to \$416,000 increase	Up to \$435,000 increase	- 0 -
<b>Southern Ohio Agricultural and Community Development Trust Fund (Fund K87)</b>			
Revenues	Potential gain from the distribution of excess funds and/or escrow received by Fund 087		- 0 -
Expenditures	\$15,835,000 increase due to a transfer to the Endowment Fund for indemnification payments	\$16,610,000 increase due to a transfer to the Endowment Fund for indemnification payments	- 0 -

<b>Tobacco Settlement Enforcement Fund (Fund T87)</b>			
Revenues	Gain of \$211,000 from Fund 087	Gain of \$219,000 from Fund 087	Annual gain through FY 2025 from transfer made under ORC 183.02 (J), established in the bill
Expenditures	Up to \$210,980 increase	Up to \$219,179 increase	- 0 -
<b>Tobacco Use Prevention and Control Operating Expenses Fund (Fund 5M8)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Up to \$833,000 increase	Up to \$1,212,000 increase	- 0 -
<b>Education Facilities Trust Fund (Fund N87)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Capital appropriation of \$148.4 million for the FYs 2003-2004 biennium		- 0 -
<b>Victims of Crime/ Reparations Fund (Fund 402)</b>			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2003 is July 1, 2002 – June 30, 2003.

\*The expenditures listed for FYs 2003-2004 represent the appropriations made in those funds in the bill. Therefore, the expenditure is listed as “up to \$X”, where \$X equals the amount of the appropriation.

- The tobacco revenue distribution schedule, which is contained in existing law, dictates what percentages of revenue are to be transferred from the Tobacco Master Settlement Agreement (Fund 087) to the various trust funds. Those transfers will happen independently of this bill unless a provision in this bill stops the transfers from happening. Therefore, except for the new funds being established in this bill, the revenues for the existing funds are shown as \$0 in the table above. The expenditure information provided in the table above lists the amount of appropriation authority for each fund that is contained in this bill. The following table shows the estimated distributions of tobacco revenue for FYs 2003 and 2004.

<b>Estimated Distributions of Tobacco Revenue</b>	<b>FY 2003</b>	<b>FY 2004</b>
Biomedical Research and Technology Transfer Trust Fund (M87)	\$22,919,215	\$23,724,600
Education Facilities Trust Fund (N87)	\$5,804,476	\$15,561,673
Education Facilities Endowment Fund (P87)	\$5,000,000	\$5,000,000
Education Technology Trust Fund (S87)	\$16,090,013	\$15,319,420
Ohio's Public Health Priorities Trust Fund (L87)	\$9,809,665	\$10,959,366
So. Ohio Agriculture & Community Development Trust Fund (K87)	\$15,835,000	\$16,610,000
Tobacco Use Prevention and Cessation Trust Fund (H87)	\$0	\$0
Tobacco Settlement Oversight, Admin., and Enforcement Fund (U87)	\$529,958	\$551,516
Tobacco Settlement Enforcement Fund (T87)	\$210,981	\$219,179
<b>TOTAL ESTIMATED DISTRIBUTIONS</b>	<b>\$76,199,308</b>	<b>\$87,945,754</b>

- Am. Sub. H.B. 405 of the 124th G.A. also included uncodified law transferring \$120.0 million per year in FYs 2002 and 2003 from the share of Fund 087 that is designated for the Tobacco Use Prevention and Cessation Trust Fund (Fund H87) to the General Revenue Fund. Since the allocation to Fund H87 will be less than \$120.0 million in each year, the amount transferred to Fund H87 will be \$0.
- The Tobacco Use Prevention and Control Foundation Endowment Fund funds all programmatic activities for the Foundation. This fund is a custodial account not subject to the legislative appropriations process. As of the beginning of FY 2002, this endowment fund had a total value (cash and fair value of investments) of \$228.8 million. OBM estimates that the fund will receive \$105.9 million in FY 2003 and \$117.9 million in FY 2004. However, as a result of the changes to Section 32 of Am. Sub. H.B. 405 of the 124th G.A. by this bill, there will be no transfer made to the Tobacco Use Prevention and Control Foundation from the Master Settlement Agreement Fund. The amount transferred to the GRF will be repaid to the fund in FYs 2013 and 2014.
- The bill establishes the Tobacco Settlement, Oversight, Administration, and Enforcement Fund (Fund U87) and the Tobacco Settlement Enforcement Fund (Fund T87). Fund U87 is to be used by the Attorney General to pay costs incurred by that office for tobacco settlement oversight, administration, and enforcement. Fund T87 is to be used by the Tax Commissioner to offset the cost of enforcing the excise tax on tobacco for each brand of cigarettes and roll-your-own cigarette tobacco that is not covered in the Tobacco Master Settlement Agreement. The bill appropriates \$529,958 in FY 2003 and \$551,516 in FY 2004 to the Attorney General from Fund U87. The bill also appropriates \$210,980 in FY 2003 and \$219,179 in FY 2004 to the Department of Taxation from Fund T87. The Department of Taxation will incur additional costs associated with the enforcement of the Tobacco Master Settlement Agreement. These costs will be offset by the appropriation in the bill from Fund T87.
- The bill requires the vendors of tobacco products not covered in the Tobacco Master Settlement Agreement to file a monthly report with the Tax Commissioner detailing the quantity of such cigarettes and cigarette tobacco sold, and authorizes the Tax Commissioner to charge a late fee of up to \$250 for reports that are not filed in a timely manner. Individuals not filing this report may be charged with a fourth degree misdemeanor.
- Am. Sub. H.B. 405 of the 124th G.A. included uncodified law allowing OBM to transfer up to \$20.0 million from the Tobacco Master

Settlement Agreement Fund (Fund 087) to the General Revenue Fund. This bill decreases that amount to \$3.9 million and makes it clear that this transfer is to come from the share of Fund 087 that is to be allocated to the Ohio's Public Health Priorities Trust Fund (Fund L87). The bill limits the amount that may be taken from the share allocated to Fund L87 to \$3.9 million.

- The bill includes language that would authorize OBM to transfer moneys to Fund K87 and Fund L87 if revenues exceed estimates in FYs 2002 and 2003 up to a specified amount and any revenue received from an escrow account as a result of a disputed claim. The amount transferred to Fund L87 is to happen first and it cannot exceed \$3.9 million, which is the total amount transferred from that fund to the GRF. In addition, if revenues exceed the specified amounts (Am. Sub. S.B. 192 of the 123rd G.A. estimates), any amount in excess of those estimates would be transferred to the Income Tax Reduction Fund in accordance with the provisions of existing law.
- Under the bill, each year through FY 2025, the Director of Budget and Management is required to transfer from the Tobacco Master Settlement Agreement Fund (Fund 087) to Funds U87 and T87 an amount that the Director determines is necessary to pay for the costs incurred by the Attorney General and the Department of Taxation. These transfers from Fund 087 will occur after the transfers are made to the Education Facilities Trust Fund (Fund N87) and the Education Facilities Endowment Fund (Fund P87), but prior to the transfers made to the other trust funds established in Chapter 183. of the Revised Code. This will result in less dollars being transferred to the non-educational facilities trust funds in each year through FY 2025.
- The bill codifies the Tobacco Use Prevention and Control Operating Expenses Fund (Fund 5M8) and the Southern Ohio Agricultural and Community Development Operating Expenses Fund (Fund 5M9), which were created by the Controlling Board on August 28, 2000. Under the provisions of the bill, the Treasurer of State will periodically pay into Fund 5M8 and Fund 5M9 from the endowment funds established in the Revised Code for the operations of the Tobacco Use Prevention and Control Foundation and the Southern Ohio Agricultural and Community Development Foundation. The funds transferred to Fund 5M8 and Fund 5M9 are to be used only to pay the compensation of the state employees of the foundations. All investment earnings of Fund 5M8 and Fund 5M9 will stay with the funds.
- The bill makes appropriations in eight line items under the Department of Health (DOH) funded by the Ohio's Public Health Priorities Trust Fund. The sum of the appropriations is \$5.9 million in each fiscal year.
- The bill makes appropriations in two line items under the Commission on Minority Health (MIH) funded by the Ohio's Public Health Priorities Trust Fund. The appropriations to these line items, which total \$1.2 million in each fiscal year, are to be used for minority health and academic partnership grants and for training and capacity building.
- Appropriation amounts will allow the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to maintain funding for six Circle For Recovery programs, seven ODADAS/DYS aftercare intensive outpatient programs, and one ODADAS/DYS aftercare residential treatment facility, which are currently being paid for with resources from the Ohio's Public Health Priorities Trust Fund (Fund L87). Total appropriations to ODADAS, in two line items, are \$3.5 million per year.
- The bill appropriates \$636,000 in each fiscal year to the Department of Public Safety (DHS) from the Ohio's Public Health Priorities Trust Fund (Fund L87). This appropriation level will provide for a continuation of current funding levels to be used to increase vendor compliance and to decrease underage tobacco use. Of the total appropriation, 80 percent will be used for enforcement and 20 percent will be used for education.
- The bill appropriates \$833,000 in FY 2003 and \$1,212,000 in FY 2004 in Fund 5M8 to cover the operating expenditures for the Tobacco Use and Prevention Control Foundation (TUP).
- The bill appropriates \$15,835,000 in FY 2003 and \$16,610,000 in FY 2004 in Fund K87 for indemnification payments to farmers for production losses.
- The bill appropriates \$416,000 in FY 2003 and \$435,000 in FY 2004 in Fund 5M9 to cover the operating expenses for the Southern Ohio Agricultural and Community Development Foundation (SOA).
- The bill appropriates an additional \$6.2 million in FY 2003 and \$1.0 million in FY 2004 from Fund J87 to line item 055-635 to fund capital improvements and technology enhancements at the Ohio Peace Officer Training Academy and the Bureau of Criminal Identification and Investigation.
- The bill continues the 25-member Biomedical Research and Technology Transfer Commission within the Ohio Board of Regents. The Commission provides competitive grants, called *Ohio BRIT Partnership Awards*, to public and private research institutions and companies in Ohio. The Commission periodically makes strategic assessments on the types of state investments in biomedical research that would be likely to create jobs and business opportunities and improve public health in Ohio. When appropriate, the Commission coordinates its activities with those of the Tobacco Use Prevention and Control Foundation and other agencies. The Board of Regents provides office space and facilities for the Commission, with costs paid from Regents' line item 235-405, Biomedical Research and Technology Transfer Commission (Fund M87). The bill includes appropriations totaling \$25,500,000 per year in fiscal years 2003 and 2004 in line item 235-405.
- In each fiscal year of the FYs 2003-2004 biennium, the Education Technologies Trust Fund (S87) will have appropriation authority of \$16.5 million. Earmarking language from Am. Sub. H.B. 94 of the 124th G.A. is being repealed as of July 1, 2002 and updated in this bill to reflect tobacco appropriations for the current biennium.
- The Education Facilities Trust Fund (N87) will be credited with \$148.4 million to be used by the Classroom Facilities Assistance Program to

fund the state's share for constructing, renovating, or repairing schools. These funds will be appropriated to the School Facilities Commission as a capital appropriation for the FYs 2003-2004 biennium. The bill also requires the Director of the School Facilities Commission to cancel encumbrances that would be paid out of the Educational Facilities Trust Fund (Fund N87) and reestablish those encumbrances for payment from the School Building Assistance Fund (Fund 032), which is where the bond proceeds will be deposited.

- Increase in cigarette wholesalers' and retailers' markups will reduce GRF revenues by about \$9.0 million per year.
- If, as a result of the bill, additional persons are convicted of "illegal distribution of cigarettes" then the state could gain locally collected court costs that are deposited in the state treasury and divided between the GRF and the Victims of Crime/Reparations Fund (Fund 402). Assuming that the number of additional convictions statewide is relatively small, then the amount of state court revenues that would be collected annually seems unlikely to be more than negligible.

### *Local Fiscal Highlights*

LOCAL GOVERNMENT		FY 2002	FY 2003	FUTURE YEARS
<b>School Districts</b>				
Revenues	Gain of \$148.4 million from SFC Fund N87	- 0 -	- 0 -	- 0 -
Expenditures	Permissive increase of up to \$26.0 million	- 0 -	- 0 -	- 0 -
<b>Public Hospitals, Clinics, etc.</b>				
Revenues	Gain of up to \$3.5 million	Gain of up to \$3.5 million	- 0 -	- 0 -
Expenditures	- 0 -	- 0 -	- 0 -	- 0 -
<b>Counties and Municipalities</b>				
Revenues	Potential gain, not likely to exceed minimal in most jurisdictions	Potential gain, not likely to exceed minimal in most jurisdictions	Potential gain, not likely to exceed minimal in most jurisdictions	Potential gain, not likely to exceed minimal in most jurisdictions
Expenditures	Potential increase, not likely to exceed minimal in most jurisdictions	Potential increase, not likely to exceed minimal in most jurisdictions	Potential increase, not likely to exceed minimal in most jurisdictions	Potential increase, not likely to exceed minimal in most jurisdictions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- School districts wishing to receive classroom facilities assistance program moneys from the School Facilities Commission must first elect to finance a portion of the project with its own bond issue and tax levy. LSC estimates that the local portion of these projects will be approximately 15-20 percent of the total cost of the projects. Using the SFYs 2003-2004 capital appropriation of \$148.4 million in this bill, LSC estimates that in SFY 2003, school districts choosing to participate in the program will face an increase in expenditures of up to \$26.0 million.
- In SFYs 2003 and 2004, appropriations out of Fund L87 total \$11.1 million and \$11.2 million, respectively. Of this amount, at least 25 percent must go toward minority health programs and five percent must go towards a non-entitlement program to provide emergency medical assistance, including medication, oxygen, or both, to low-income seniors whose health has been adversely affected by tobacco use. The bill outlines three additional activities that will receive a portion of Fund L87 appropriations. One of these areas is for partial reimbursement, on a county basis, of public hospitals, free medical clinics, and similar organizations that provide free, uncompensated care to the general public. Of the Fund L87 appropriations, \$3.5 million is appropriated in each fiscal year in line item 440-414, Uncompensated Care, for this purpose. Therefore, public hospitals, clinics, etc., stand to receive up to \$3.5 million per fiscal year from Fund L87.
- The new "quantity of sale" prohibition appears to in effect criminalize the sale of individual cigarettes. LSC fiscal staff has not been able to very precisely discern the prevalence of such sales, which means that it is difficult to determine how many additional persons may be arrested, prosecuted, convicted, and sanctioned. It does appear though that the sale of individual cigarettes is most prevalent in carryouts located in economically disadvantaged urban neighborhoods and around college campuses. The cost for county and municipal criminal justice systems depends on: (1) the prevalence of the sale of individual cigarettes, and (2) how aggressive local law enforcement and prosecuting attorneys are in pursuing violators. At this time, there is no hard evidence to suggest that the number of new criminal cases that might be created as a result of the prohibition will be very large in any given local jurisdiction. Assuming that were true, then any resulting increase in the annual costs of county and municipal criminal justice systems to dispose of these cases seems unlikely to exceed minimal. It is also the case that counties and municipalities would likely gain some court cost and fine revenues that then offsets some of those increased costs.

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### *Detailed Fiscal Analysis*

As part of the Tobacco Master Settlement Agreement (MSA), the State of Ohio was initially projected to receive approximately \$10.1 billion from fiscal year (FY) 2000 through 2025. Of this total, \$239.5 million is a result of the role the Attorney General played in the tobacco litigation and settlement negotiations. A variety of factors will affect the exact amount received by the state in a given year, and all revenue projections should be viewed as estimated figures. Once received by the state, the MSA funds are deposited into the Tobacco Master Settlement Agreement Fund (Fund 087). The funds collect interest while in Fund 087 and then are distributed to the various trust funds, pursuant to the allocations established in section 183.02 of the Revised Code, shortly after the end of the fiscal year in which the funds are received. This bill does not change the allocations to each of the funds that are currently in the Revised Code. However, it does divert in FYs 2002 and 2003 money that would otherwise be transferred to the Ohio's Public Health Priorities Trust Fund. This bill, among other things, makes the appropriations from the various tobacco trust funds for fiscal years 2003 and 2004.

The state received a total of \$412.3 million in FY 2000 and \$315.8 million in FY 2001 in revenue from the MSA. In addition to the payments from the MSA, investment earnings totaled \$7.7 million in FY 2000 and \$8.4 million in FY 2001. Therefore, the total amount available to be allocated to the various trust funds was \$420.0 million in FY 2001 and \$324.2 million in FY 2002.

OBM is estimating total revenue, including investment earnings, of \$364.0 million in FY 2002 and \$372.7 million in FY 2003. In both fiscal years, the amount of revenue from investment earnings totals less than 2.0 percent of all revenue. The remaining 98 percent of the revenue is from payments made pursuant to the MSA. By comparison, the amount of revenue that Ohio would have received prior to any revenue adjustment factors is \$418.8 million in FY 2002 and \$422.7 million in FY 2003.

### *Transfer of Tobacco Funds to the GRF*

Am. Sub. H.B. 405 of the 124th G.A. included uncodified language allowing OBM to transfer up to \$20.0 million from the Tobacco Master Settlement Agreement Fund (Fund 087) to the General Revenue Fund by reducing the amounts that would otherwise be transferred to the various trust funds. This bill changes the amount and method of transfer. The bill appropriates in FYs 2002 and 2003 an amount to be determined by the Director of Budget and Management to appropriation item 001-602, GRF Revenue Supplement. The Director is required to disburse this money to the GRF via an intrastate transfer voucher. The sum of the appropriation for the two years is not to exceed \$3.9 million. That amount is to come from a reduction in the transfer that was to be made from the Tobacco Master Settlement Agreement Fund to Fund L87.

This transfer to the GRF is in addition to other transfers that were made in Am. Sub. H.B. 405 of the 124th G.A. and are expected to be made in Sub. S.B. 261 of the 124th G.A. In Section 32 of Am. Sub. H.B. 405, uncodified law was included that gives OBM the authority to transfer up to \$120 million per year in FYs 2002 and 2003 from the share of Fund 087 that would be credited to the Tobacco Use Prevention and Cessation Trust Fund (Fund H87) to the GRF. Sub. S.B. 261 of the 124th G.A. appropriates over the FYs 2003-2004 biennium \$345.0 million to appropriation item 001-602, GRF Revenue Supplement, and allows the Director of Budget and Management to disburse this money to the GRF. These moneys would have otherwise been transferred to the Education Facilities Trust Fund. This bill appropriates up to \$3.9 million over the FYs 2003-2004 biennium to the same appropriation item from money that would have otherwise been transferred to the Ohio's Public Health Priorities Trust Fund. OBM has a total of \$588.9 million that it can transfer from the Tobacco Master Settlement Agreement Trust Fund to the GRF over the FYs 2003-2004 biennium.

The following table illustrates the estimated distributions to the various funds for each year of the FYs 2003-2004 biennium.

<b>Estimated Distributions of Tobacco Revenue</b>	<b>FY 2003</b>	<b>FY 2004</b>
Biomedical Research and Technology Transfer Trust Fund (M87)	\$22,919,215	\$23,724,600
Education Facilities Trust Fund (N87)	\$5,804,476	\$15,561,673
Education Facilities Endowment Fund (P87)	\$5,000,000	\$5,000,000
Education Technology Trust Fund (S87)	\$16,090,013	\$15,319,420
Ohio's Public Health Priorities Trust Fund (L87)	\$9,809,665	\$10,959,366
So. Ohio Agriculture & Community Development Trust Fund (K87)	\$15,835,000	\$16,610,000
Tobacco Use Prevention and Cessation Trust Fund (H87)	\$0	\$0
Tobacco Settlement Oversight, Admin., and Enforcement Fund (U87)	\$529,958	\$551,516
Tobacco Settlement Enforcement Fund (T87)	\$210,981	\$219,179
<b>TOTAL ESTIMATED DISTRIBUTIONS</b>	<b>\$76,199,308</b>	<b>\$87,945,754</b>

The following table illustrates the actual distributions to the various trust funds for FYs 2001 and 2002.

<b>Historical Distributions of Tobacco Revenue</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>TOTAL</b>
Biomedical Research and Technology Transfer Trust Fund (M87)	\$4,359,243	\$26,697,667	\$31,056,910
Education Facilities Trust Fund (N87)	\$133,062,505	\$128,938,733	\$262,001,238
Education Facilities Endowment Fund (P87)	\$5,000,000	\$5,000,000	\$10,000,000
Education Technology Trust Fund (S87)	\$11,967,810	\$11,436,420	\$23,404,230
Ohio's Public Health Priorities Trust Fund (L87)	\$8,702,399	\$12,711,363	\$21,413,762
Law Enforcement Improvements Trust Fund (J87)	\$18,702,400	\$4,414,725	\$23,117,125
So. Ohio Agriculture & Community Development Trust Fund (K87)	\$20,261,756	\$15,451,537	\$35,713,293

Financial Distribution of Tobacco Revenue Trust Fund (H87)	FY 2003	FY 2002	TOTAL
<b>TOTAL DISTRIBUTIONS</b>	<b>\$419,994,272</b>	<b>\$324,228,593</b>	<b>\$744,222,865</b>

### *Distribution of Excess Revenue and/or Escrow*

The bill contains a provision that requires the Director of Budget and Management to compare the amount of revenue that is credited to the Tobacco Master Settlement Agreement Fund in FYs 2002 and 2003 that falls within a range of \$364,000,000 to \$418,783,038.09 in FY 2002 and \$372,700,000 to \$422,746,368.61 in FY 2003 to the amount the state receives in each of those years from an escrow account that has been established by a tobacco company that is participating in the Tobacco Master Settlement Agreement, while that company is disputing a portion of its calculated payments. The Director is then required to distribute whichever amount is greater.

The Director is to distribute the excess funds such that over FYs 2003 and 2004, the Ohio's Public Health Priorities Trust Fund receives up to a total of \$3.9 million first and then any additional amounts would be transferred to the Southern Ohio Agricultural and Community Development Trust Fund.

If any amounts are transferred to Fund L87 under this provision, the amount transferred is required to be used to increase the appropriation in Department of Health line item 440-411, Dental Care Programs for Minority and Low-Income Populations, and in line item 440-414, Uncompensated Care. Any increase to line item 400-414 will be used to fund new dental clinics or to expand existing dental clinics. The amount that each line item will be increased in each fiscal year, if enough funds are transferred, is \$225,000 per year in line item 440-414 and \$120,000 per year in line item 440-411. The amounts transferred to each line will be up to the discretion of the Director of Health.

### *Establishment of New Funds*

The bill establishes the Tobacco Settlement, Oversight, Administration, and Enforcement Fund (Fund U87) and the Tobacco Settlement Enforcement Fund (Fund T87). Fund U87 is to be used by the Attorney General to pay costs incurred by that office in tobacco settlement oversight, administration, and enforcement. Fund T87 is to be used by the Tax Commissioner to pay costs of enforcing the excise tax on tobacco for each brand of cigarettes and roll-your-own cigarette tobacco that is not covered in the tobacco master settlement agreement. The bill appropriates \$529,958 in FY 2003 and \$551,516 in FY 2004 to the Attorney General from Fund U87. The bill also appropriates \$210,980 in FY 2003 and \$219,179 in FY 2004 to the Department of Taxation from Fund T87. The Department of Taxation is hiring staff to enforce MSA requirements pertaining to 425 cigarette wholesalers and other tobacco product distributors. The Department provides reports to the Attorney General processes reports from affected reporting entities, increases criminal enforcement efforts towards nonfilers, and provides documentation of compliance efforts.

At this time, these appropriation levels are intended to support the payroll and related operating expenses associated with five full-time equivalent (FTE) staff positions at the Office of the Attorney General. This appears to include the costs associated with three existing FTEs plus an additional attorney and a paralegal. Last fall, the Controlling Board approved the transfer of \$208,281 from its Emergency Purposes Fund (Fund 5S4) to the Office of the Attorney General to pay the FY 2002 costs associated with MSA oversight, administration, and enforcement duties. These costs included the payroll expenses associated with three FTEs.

Under the bill, each year through FY 2025, the Director of Budget and Management is required to transfer from the Tobacco Master Settlement Agreement Fund (Fund 087) to Funds U87 and T87 an amount that the Director determines is necessary to pay for the costs incurred by the Attorney General and the Department of Taxation related to oversight, administration, and enforcement of the tobacco settlement. This transfer from Fund 087 will occur after the transfers are made to the Education Facilities Trust Fund (Fund N87) and the Education Facilities Endowment Fund (Fund P87), but prior to the transfers made to the other trust funds established in Chapter 183. of the Revised Code. This will result in less dollars being transferred to the non-educational facilities trust funds in each year through FY 2025.

The bill codifies the Tobacco Use Prevention and Control Operating Expenses Fund (Fund 5M8) and the Southern Ohio Agricultural and Community Development Operating Expenses Fund (Fund 5M9), which were created by the Controlling Board on August 28, 2000. Under the provisions of the bill, the Treasurer of State will periodically pay into Fund 5M8 and Fund 5M9 from the endowment funds established in the Revised Code for the operations of the Tobacco Use Prevention and Control Foundation and the Southern Ohio Agricultural and Community Development Foundation. The funds transferred to Fund 5M8 and 5M9 are to be used only to pay the compensation of the state employees of the foundations. All investment earnings of Fund 5M8 and 5M9 will stay with these funds.

### *Administrative Costs in Grants*

Under current law, the Tobacco Use Prevention and Control Foundation (TUP), the Southern Ohio Agricultural and Community Development Foundation (SOA), or the Biomedical Research and Technology Transfer Commission may not spend over five percent of its annual appropriation on administrative expenses except that in FYs 2001 and 2002, the foundations or commission seeking to spend more than five percent may exceed the five percent cap if it has had a spending plan approved by the Controlling Board. This bill modifies the exception to the five percent cap so that the foundations or commission may exceed the cap in any fiscal year for which the Controlling Board approves its spending plan. This change may provide entities with additional flexibility in the use of tobacco settlement dollars.

### ***Markup on Cigarettes***

The bill increases the cost of doing business factor in the calculation of cigarette retailers' mark-up from 6% to 8%. It also increases the cigarette wholesalers' markup from 2.5% to 3.5%. The combined impact of these two provisions is likely to lead to an increase in the price of cigarettes of about 2.9 percent. The increase in the cost of doing business would raise the price by about 9 cents per pack. This price increase will decrease consumption of taxed cigarettes by about 1.7 percent.<sup>[1]</sup>

Assuming taxed consumption of approximately 967 million packs per year, this 1.7 percent decrease in consumption would reduce consumption by about 16.4 million packs per year. At a tax rate of 55 cents per pack (assuming the tax rate in the As Passed by the House version of S.B. 261), the increase in the cost of doing business will decrease revenues by approximately \$9.0 million per year. The total cost would be borne by the GRF.

Cuyahoga County imposes a 4.5 cent per pack levy on cigarette sales in that county. A decrease in cigarette consumption will also decrease cigarette tax receipts under the Cuyahoga County Cigarette Stamp Sales.

### ***Illegal Distribution of Cigarettes and Other Tobacco Products***

The bill expands the existing offense of "illegal distribution of cigarettes or other tobacco products" by essentially prohibiting: (1) the manufacture, sale, or distribution of any pack of cigarettes containing fewer than 20 cigarettes, and (2) the sale of cigarettes in a smaller quantity than that placed in the pack by the manufacturer. The "minimum cigarette package size" prohibition would codify a provision of the MSA that expired on December 31, 2001. As it seems that participating manufacturers in the MSA have most likely continued to adhere to that provision, this new prohibition is not likely to create any direct fiscal effect, through increased enforcement and prosecution, on the state or its political subdivisions.

The new "quantity of sale" prohibition, however, is somewhat more problematic to analyze for its fiscal effects, as it appears to in effect criminalize the sale of individual cigarettes. LSC fiscal staff has not been able to very precisely discern the prevalence of such sales, which means that it is difficult to determine how many additional persons may be arrested, prosecuted, convicted, and sanctioned. It does appear though that the sale of individual cigarettes is most prevalent in carryouts located in economically disadvantaged urban neighborhoods and around college campuses. The cost for county and municipal criminal justice systems depends on: (1) the prevalence of the sale of individual cigarettes, and (2) how aggressive local law enforcement and prosecuting attorneys are in pursuing violators. At this time, there is no hard evidence to suggest that the number of new criminal cases that might be created as a result of the prohibition will be very large in any given local jurisdiction. Assuming that were true, then any resulting increase in the annual costs of county and municipal criminal justice systems to dispose of these cases seems unlikely to exceed minimal. It is also the case that counties and municipalities would likely gain some court cost and fine revenues that then offsets some of those increased costs.

Under existing law, a violation of the offense of illegal distribution of cigarettes or other tobacco products is a misdemeanor of the fourth degree and enhances to a misdemeanor of the third degree if the person has been previously convicted of the offense. A misdemeanor of the fourth degree carries a maximum individual fine of \$250 and a possible jail term of not more than 30 days, while a misdemeanor of the third degree carries a maximum individual fine of \$500 and a possible jail term of not more than 60 days.

If, as a result of the bill, additional persons are convicted of "illegal distribution of cigarettes" then the state could gain locally collected court costs that are deposited in the state treasury and divided between the GRF and the Victims of Crime/Reparations Fund (Fund 402). Assuming that the number of additional convictions statewide is relatively small, then the amount of state court revenues that would be collected annually seems unlikely to be more than negligible.

### **Ohio's Public Health Priorities Trust Fund (Fund L87)**

This trust fund funds the appropriations for programs located in four agencies. OBM projects that this trust fund will receive \$9.8 million in FY 2003 and \$11.0 million in FY 2004. As noted above, the amount received by this trust fund will be reduced by \$3.9 million over FYs 2002 and 2003.

The moneys in the fund are used for five priority areas. Under the provisions of the Revised Code, at least 25 percent of the annual appropriations from this fund must be used for minority health programs and five percent of the annual appropriations from the fund must be used for a non-entitlement program to provide emergency medical assistance, including medication, oxygen, or both, to low-income seniors whose health has been adversely affected by tobacco use. The other priority areas are enforcement of the under-age tobacco use laws, alcohol and drug abuse prevention programs, and uncompensated care programs.

The moneys from Fund L87 are allocated to the departments of Health, Alcohol and Drug Addiction Services (ODADAS), Public Safety, and the Commission on Minority Health in the following amounts:

<b>AGENCY</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>TOTAL</b>
Health	\$5,851,105	\$5,902,421	\$11,753,526
Minority Health	\$1,155,000	\$1,190,000	\$2,345,000
ODADAS	\$3,500,000	\$3,500,000	\$7,000,000
Public Safety	\$636,000	\$636,000	\$1,272,000
<b>TOTAL</b>	<b>\$11,142,105</b>	<b>\$11,228,421</b>	<b>\$22,370,526</b>

AGENCY	FY 2003	FY 2004	TOTAL
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**Department of Health (DOH)**

**Uncompensated Care**

The Department has a total of eight line items covering three of the five priority areas for the Public Health Priorities moneys. Sixty percent of the funds appropriated to DOH are in line item 440-414, Uncompensated Care. The funds in this line item are used to make subsidy payments for a variety of uncompensated care programs. These programs include Child and Family Health Services clinics, dental clinics, Federally Qualified Health Centers (FQHCs), free clinics, pulmonary rehabilitation, uncompensated care costs for hospitals, and infant mortality reduction.

This bill appropriates \$3.5 million in each fiscal year for this purpose. The following table shows the historical and proposed spending for this program, by initiative.

Program	FY 2001 Actual	FY 2002 Appropriations	FY 2003 Recommendations	FY 2004 Recommendations
Child & Family Health Service Clinics	\$400,000	\$400,000	\$400,000	\$400,000
Dental Clinics	\$508,333	\$900,000	\$450,000	\$450,000
FQHCs	\$900,000	\$900,000	\$950,000	\$950,000
Free Clinics	\$800,000	\$800,000	\$800,000	\$800,000
Pulmonary Rehab.	\$277,946	\$344,138	\$294,138	\$294,138
Infant Mortality Reduction	\$0	\$0	\$205,862	\$205,862
Ohio Hospital Association	\$400,000	\$400,000	\$400,000	\$400,000
<b>TOTAL</b>	<b>\$3,286,279</b>	<b>\$3,744,138</b>	<b>\$3,500,000</b>	<b>\$3,500,000</b>

The moneys allocated to the Ohio Hospital Association are used to help fund services to individuals. During FYs 2001 and 2002, OHA solicited proposals from health care providers to provide services to uninsured children and pregnant women. Fourteen proposals were funded and 1,340 people were served.

**Emergency Medical Assistance**

In this bill, \$557,105 in FY 2003 and \$561,421 in FY 2004 is appropriated for this priority area in line item 440-412, Emergency Medications and Oxygen for Low-Income Seniors. All of this appropriation authority is for subsidy payments to provide assistance to low-income seniors whose health has been adversely affected by tobacco use.

DOH administers this program by distributing funds to the Ohio Primary Care Association, which then allocates the money to FQHCs in Ohio. Services provided with these funds are only offered to the extent that funds are available.

In FY 2001, about 12 low-income seniors received assistance from this program. DOH expects that in the upcoming biennium, the number of participants will increase.

**Minority Health Programs**

DOH has six separate line items funding minority health programs totaling \$1,794,000 in FY 2003 and \$1,841,000 in FY 2004. The line items are listed in the table below.

ALI	ALI Name	FY 2001 Actual	FY 2002 Appropriation	FY 2003 Recommendation	FY 2004 Recommendation
440-404	Minority Health Care Data Development	\$963	\$600,000	\$350,000	\$350,000
440-409	Tuberculosis Prevention and Treatment	\$133,321	\$450,000	\$450,000	\$450,000
440-410	Hepatitis C Prevention and Intervention	\$3,982	\$300,000	\$425,000	\$425,000
440-411	Dental Care Programs for Minority & Low-Income Populations	\$270,000	\$420,000	\$300,000	\$300,000
440-420	Childhood Lead WIC Pilot	\$0	\$0	\$50,000	\$50,000
440-421	Infant Mortality Reduction Initiative	\$0	\$0	\$219,000	\$266,000
<b>TOTAL</b>		<b>\$408,266</b>	<b>\$1,770,000</b>	<b>\$1,794,000</b>	<b>\$1,841,000</b>

In addition to appropriations made to the Commission on Minority Health (discussed below), about 31 percent of the appropriations made from this trust fund are for minority health programs. According to the Department, the funding levels recommended by the governor will support the continuation and/or the expansion of existing minority health programs operated by DOH. The follow list outlines the proposed uses of the funds by line item.



- 440-404: Collect data to determine the most prevalent public health challenges within economically disadvantaged minority communities;
- 440-411: Provide screening, preventive services, and comprehensive dental care to over 2,250 children over the biennium;
- 440-420: Develop a pilot program in two WIC (Women, Infants, and Children) clinics using filter paper to test for high levels of lead in children;
- 440-410: Continue Hepatitis C research by DOH;
- 440-409: Provide technology and supplies that will produce tuberculosis test results in two days, rather than six to eight weeks; and
- 440-421: Expand Infant Mortality Reduction Initiative sites to reach a greater number of high-risk women in low-income minority communities and help them obtain appropriate pre- and post-natal care.

### ***Commission on Minority Health (MIH)***

The Commission has two line items in the bill funding activities in the minority health programs priority.

#### **Community Minority Health and Academic Partnership Projects**

The majority of MIH's funding is in line item 149-402, Minority Health and Academic Partnership Grants, with appropriation authority of \$1.055 million in FY 2003 and \$1.09 million in FY 2004. Of this appropriation amount, \$1.0 million in each year is designated for subsidy payments. Projects receiving grant dollars from MIH are required to document initial baseline data regarding the behavior or risk to be reduced, and then monitor the impact of the intervention by measuring changes in the behavior or risk. In previous years, these activities were funded in separate line items.

In addition to the community partnership grants, this line item will also fund projects at academic institutions that target the six critical areas that are responsible for the majority of premature illness and death in minority populations. These six areas are heart disease, cancer, diabetes, infant mortality, substance abuse, and violence.

In FYs 2001 and 2002, MIH funded 19 community partnership grants and plans to fund three academic projects.

#### **Training and Capacity Building**

In each fiscal year, \$100,000 is appropriated in line item 149-403, Training and Capacity Building. These moneys are to be used to assist groups and organizations that serve minority communities to train them in initiating and implementing projects that will improve the health status of their community.

### ***Department of Alcohol and Drug Addiction Services (ODADAS)***

Appropriation amounts will allow the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to maintain funding for six Circle For Recovery programs, seven ODADAS/DYS aftercare intensive outpatient programs, and one ODADAS/DYS aftercare residential treatment facility, which are currently being paid for with resources from the Ohio's Public Health Priorities Trust Fund (Fund L87).

#### **Minority Health Programs**

The Circle For Recovery programs are operated within the existing Urban Minority Alcoholism and Drug Abuse Outreach Program (UMADAOP). The objective of the Circle For Recovery programs is to prevent relapse of criminal and chemical dependency involvement among African-American adult parolees. Six Circle For Recovery programs were fully operational by the end of FY 2001. These programs provide services to 300 parolees annually. Specific services include: weekly intensive alcohol and other drug prevention relapse sessions to adult parolees, weekly family reunification sessions, monthly victim awareness sessions, and weekly employment/vocational sessions.

This bill appropriates \$500,000 per year in line item 038-403, Urban Minority Alcoholism and Drug Abuse Outreach Programs, for this purpose.

#### **Alcohol and Drug Abuse Prevention**

Currently, there are seven ODADAS/DYS aftercare intensive outpatient programs and an ODADAS/DYS aftercare residential treatment facility. Both aftercare programs are designed to assist DYS parolees with substance abuse problems to successfully transition from institutional life back into their communities. These programs provide case managed community outpatient treatment to juvenile ex-offenders or a community-based residential transitional treatment program for adolescents with severe alcohol and other drug problems. The seven outpatient programs provide intensive services to 450 DYS parolees per year. The aftercare residential treatment facility provides services to 50 DYS parolees per year.

The bill appropriates \$3.0 million per year in line item 038-405, Juvenile Offender Aftercare Program, for these purposes.

### ***Department of Public Safety (DHS)***

The Department of Public Safety has been allocated \$636,000 in fiscal year 2003 and \$636,000 in fiscal year 2004. These funds are for the under-age tobacco use enforcement priority. This level of funding would be a continuation of current funding levels and will be used to increase vendor compliance and to decrease underage tobacco use. Local governments will continue to receive funding through enforcement grants. Eighty percent (\$508,800) of available funds will be used for enforcement and 20 percent (\$127,200) of funds will be used for education.

The planned allocation by district for enforcement is as follows for both fiscal years:

<b>ENFORCEMENT ALLOCATIONS FOR FY 2003 AND FY 2004</b>			
<b>FUNDING ALLOCATION</b>	<b>AMOUNT</b>	<b>LOCAL GOVERNMENT ALLOCATION</b>	<b>TOTAL</b>
Public Safety Central Office	\$21,597	\$13,988	\$35,585
Akron	\$39,712	\$26,368	\$66,080
Cincinnati	\$49,394	\$32,638	\$82,032
Cleveland	\$37,726	\$25,082	\$62,808
Columbus	\$57,089	\$37,623	\$94,712
Toledo	\$37,726	\$25,082	\$62,808
Total Fringe Benefits			\$99,776
Investigative Unit	\$60,556		
Local Governments		\$39,220	
Administrative Costs	\$5,000	\$0	\$5,000
<b>TOTAL</b>	<b>\$308,800</b>	<b>\$200,000</b>	<b>\$508,800</b>

### ***Department of Aging***

The bill requires the Department of Aging to develop a program that creates a toll-free telephone number to provide information on prescription drug assistance that is available in Ohio. Besides using state funds, The Department of Aging is also required to seek additional funding for the program from private sources. Prior to the disbursement of any funds for the program, the Department must receive Controlling Board approval.

### **Tobacco Use Prevention and Control Foundation (TUP)**

#### ***Operating Expenses***

The Tobacco Use Prevention and Control Foundation has appropriation authority of \$833,000 in fiscal year 2003 and \$1,212,000 in fiscal year 2004 for payroll expenses in the bill. These funds are accounted for in the Tobacco Use Prevention and Control Operating Expenses Fund (Fund 5M8).

The bill contains uncodified language relating to the Foundation that deals with investment earnings on Fund 5M8. On July 1, 2002, or as soon thereafter as possible, the Director of Budget and Management is required to transfer the investment earnings that would have been credited to the Tobacco Use Prevention and Control Operating Expenses Fund (Fund 5M8) in fiscal years 2001 and 2002 from the General Revenue Fund back to Fund 5M8.

#### ***Foundation Members***

The bill increases the number of board of trustees members from twenty to twenty-four. The four new members of the Foundation are all legislators, two from the House of Representatives, appointed by the Speaker of the House and two from the Senate, appointed by the President of the Senate. One of the House of Representative members is to be from the same political party as the Speaker of the House and the other is to be from the major political party of which the Speaker of the House is not a member. Similarly, one of the Senate members is to be from the same political party as the President of the Senate and the other is to be from the major political party of which the President of the Senate is not a member. The terms of the legislative members are to be for the biennial session of the General Assembly in which they are appointed. All of these new members are nonvoting members.

Trustee members are to serve without compensation, but are to be reimbursed for reasonable and necessary expenses incurred in the conduct of foundation business. According to the executive director of the Tobacco Use Prevention and Control Foundation, the Foundation meets once a month in Columbus. Lunch is provided at the meeting. Section 101.27 of the Revised Code provides that a legislator can be reimbursed for mileage from the member's residence, by the most direct highway route of public travel to the seat of government (Columbus). Therefore, it is likely that a member who travels to Columbus and attends a Foundation meeting would seek mileage reimbursement from the House or the Senate, as appropriate. If at any time, the Foundation meets some place other than Columbus, the member would have to seek reimbursement for mileage directly from the Foundation.

#### ***Endowment Fund***

In addition to the operating expenses fund, the Foundation has a custodial fund, the Tobacco Use Prevention and Control Foundation Endowment Fund that pays for non-operating expenses. The Office of Budget and Management projects that the endowment fund will receive \$105.9 million in FY 2003 and \$117.9 million in FY 2004, transferred from the Tobacco Master Settlement Agreement Fund (Fund 087) via the

Tobacco Use Prevention and Cessation Trust Fund (Fund H87). However, pursuant to Section 32 of Am. Sub. H.B. 405 of the 124th G.A., all of the revenue that was to be distributed to Fund H87 will instead be transferred to the GRF. The amount transferred to the GRF will be repaid to Fund H87 in FYs 2013 and 2014.

At the beginning of FY 2002, the Foundation's endowment fund had a cash balance of \$228.8 million. Estimated investment earnings for FY 2002 are \$17.0 million. As noted above, the amounts transferred to this fund in FYs 2001 and 2002 was \$217.9 million and \$119.6 million, respectively.

Although the foundation's trust fund will not receive any new revenues in FYs 2003-2004, its programs are funded through the endowment funds, which had a cash balance at the start of FY 2002, as noted above, of \$228.8 million. Since the endowment fund is a custodial fund, the moneys in the fund are controlled by the Foundation's Board of Directors and are not required to be appropriated by the legislature. As of February 2002, the Foundation has not yet determined how much money it will spend on programmatic activities. All activities are required to be in accordance with five goals outlined in the Revised Code. In order to carry out its planned activities, the Foundation is planning to hire 10 to 20 employees over the course of the biennium. The majority of these individuals will fall under the program director and the finance director in the draft table of organization.

LSC believes that the Foundation plans to continue during the upcoming biennium with a counter-marketing media campaign, which began in FY 2002, with a focus on preventing youth smoking. The estimated cost of this media campaign is \$25 million over the course of the biennium.

In addition to the media campaign, the Foundation is planning to disburse about \$20 million in grants to organizations across Ohio to carry out programs targeted at the prevention and reduction of tobacco consumption.

The bill specifies that the Foundation must devote a certain percentage of its funds to assist in the reduction of the use of smokeless tobacco. These funds are spent on a counter-marketing media campaign and on grants to organizations.

## **Southern Ohio Agricultural and Community Development Foundation (SOA)**

### ***Operating Expenses***

The Southern Ohio Agricultural and Community Development Foundation has appropriation authority of \$416,000 in fiscal year 2003 and \$435,000 in fiscal year 2004 for payroll expenses in the bill. These funds are accounted for in the Southern Ohio Agricultural and Community Development Operating Expenses Fund (Fund 5M9). These funding levels will allow the Foundation to continue to operate at current levels.

The bill appropriates \$15,835,000 in FY 2003 and \$16,610,000 in FY 2004 to appropriation line item 945-602, Southern Ohio Agricultural and Community Development Foundation, to account for the amounts that the Foundation will receive from the Tobacco Master Settlement Agreement Fund for use in FYs 2003 and 2004. The bill also requires the Southern Ohio Agricultural and Community Development Foundation to make indemnification payments in FYs 2003 and 2004 totaling the amounts received by its Endowment Fund from its Trust Fund. The Foundation is required to identify quota owners, growers, producers, and tenant farmers engaged in the production of burley tobacco and determine if they are eligible for an indemnification payment. The Foundation is also required to calculate and make indemnification payments for production losses to eligible candidates. Payment is to be limited to candidates in the part of the state where burley tobacco has traditionally been grown.

The bill contains uncodified language relating to the Foundation that deals with investment earnings on Fund 5M9. On July 1, 2002, or as soon thereafter as possible, the Director of Budget and Management is required to transfer the investment earnings that would have been credited to the Southern Ohio Agricultural and Community Development Operating Expenses Fund (Fund 5M9) in FYs 2001 and 2002 from the General Revenue Fund back to Fund 5M9.

### ***Foundation Members***

The bill increases the number of board of trustees members from twelve to sixteen. The four new members of the Foundation are all legislators, two from the House of Representatives, appointed by the Speaker of the House and two from the Senate, appointed by the President of the Senate. One of the House of Representative members is to be from the same political party as the Speaker of the House and the other is to be from the major political party of which the Speaker of the House is not a member. Similarly, one of the Senate members is to be from the same political party as the President of the Senate and the other is to be from the major political party of which the President of the Senate is not a member. The terms of the legislative members are to be for the biennial session of the General Assembly in which they are appointed. All of these new members are nonvoting members.

Trustee members are to serve without compensation, but are to be reimbursed for reasonable and necessary expenses incurred in the conduct of foundation business. According to the executive director of the Southern Ohio Agricultural and Community Development Foundation, the Foundation meets once a month in Hillsboro. Lunch is provided at the meeting. Members that travel to Hillsboro for a Foundation meeting may seek reimbursement from the Foundation. Reimbursement for mileage will range from approximately \$0, if a member lives in Highland County, up to approximately \$162, if a member travels from Ashtabula County to attend the meeting (approximately 540 miles roundtrip times 30 cents per mile).

### ***Endowment Fund***

The Foundation also has a custodial fund, the Southern Ohio Agricultural and Community Development Foundation Endowment Fund, which pays for non-operating expenses. The Office of Budget and Management estimates the fund will receive \$15.8 million in fiscal year 2003 and \$16.6 million in fiscal year 2004, transferred from the Tobacco Master Settlement Agreement Fund (Fund 087) via the Southern Ohio Agricultural and Community Development Trust Fund (Fund K87). The amount actually transferred to the endowment fund in FYs 2003 and 2004 will be \$0 in both fiscal years after the transfer from Fund 087 to the GRF is made pursuant to division (B) of Section 32 of Am. Sub. H.B. 405 of the 124th General Assembly.

According to the Foundation, the endowment fund had a total value (cash and fair value of investments) of \$20.2 million at the beginning of fiscal year 2002. The interest earned on this will be approximately \$570,000. As noted above, the amount transferred to this fund in FYs 2001 and 2002 was \$21.1 million and \$15.7 million, respectively.

The mission of the Foundation is to create and develop opportunities for Ohio's tobacco farming areas as well as rural communities. The Foundation also helps replace production of tobacco with the production of other agricultural products. The Foundation has four pilot projects currently planned to begin in the current fiscal year. These are as follows:

- **Education Assistance Program** – provides education and training assistance to tobacco growers making the transition from tobacco growing to the production of other agricultural products.
- **Farmland Preservation Program** – preserves agricultural land and soils in regions where tobacco has traditionally been grown.
- **Livestock Genetics Improvement Project** – assists livestock farmers by improving the quality of herds through the use of genetics or superior breeding stock.
- **Livestock Systems Program** – deals with fences, corrals, and working systems.

### **School Facilities Commission (SFC)**

The bill appropriates \$148.4 million for the Classroom Facilities Assistance Program (CFAP) through the School Facilities Commission. While all districts are eligible for financial assistance under CFAP, funding is based on the Department of Education's equity list. The School Facilities Commission received \$462.8 million in tobacco money during the last biennium.

Sub. S.B. 261 authorizes the School Facilities Commission to issue \$345 million in bonds over the FY 2003 – FY 2004 biennium for the School Building Assistance Program that in a sense makes up for the loss of revenue from the Tobacco Master Settlement Agreement to the Educational Facilities Trust Fund that are being transferred to the GRF.

School districts wishing to receive classroom facilities assistance program moneys from the School Facilities Commission must first elect to finance a portion of the project with its own bond issue and tax levy. LSC estimates that the local portion of these projects will be approximately 15-20 percent of the total cost of the projects. Using the FYs 2003-2004 capital appropriation of \$148.4 million plus the amount that will be generated from the sale of bonds, LSC estimates that in FY 2003, school districts choosing to participate in the program will face an increase in expenditures of up to \$26.0 million.

The School Facilities Commission had encumbered the funds that are now being diverted to the GRF. The bill requires the Director of the School Facilities Commission to cancel encumbrances that would be paid out of Education Facilities trust Fund (Fund N87) and reestablish those encumbrances for payment from the School Building Program Assistance Fund (Fund 032), which is where the bond proceeds will be deposited.

### **Board of Regents**

The bill continues both the Biomedical Research and Technology Transfer Trust Fund and its related Commission, which is created "within the Ohio Board of Regents." The Commission is funded by line item 235-405, Biomedical Research and Technology Transfer Commission, within the Board of Regents' budget. This line item contains appropriations of \$25.5 million per year in fiscal years 2003 and 2004.

From the funds appropriated in the line item, the 25-member unpaid Commission administers the programs funded by the tobacco trust fund by providing competitive grants, called *Ohio BRTT Partnership Awards*, to public and private research institutions and companies in Ohio for "any of a broad range of activities" involving biomedical research and technology transfer. Each grantee is required to match the state's grant funds and the Commission foresees the matches to be on the order of \$5 to \$10 for each state dollar. The first grants using the FYs 2001-2002 appropriations will be awarded in May 2002. The Commission expects to make from four to six grants ranging from \$5 million to \$15 million per grant.

For guidance, the Commission conducts strategic assessments of current programs in these areas to determine the kinds of grant opportunities that are likely to create jobs and business opportunities and benefit public health. A required focus of the assessments is initiatives that address tobacco-related illnesses. Priority will be given to proposals that "leverage additional private and public funding resources." Specific fields considered for grant awards include human genetics and genomics, structural plant biology, biomedical engineering, computational biology, environmental biology, and plant biology.

The Board of Regents provides office space and facilities for the Commission, which has appointed an executive director and one staff

member. The Commission is required to submit an annual report of its activities to the governor and General Assembly by October 1 of each year. The first of these reports was submitted in October 2001.

The Commission's activities are coordinated with other state technology and development programs, including those of the Governor's Office of Science and Technology, the Board of Regents, the Department of Development, and the Tobacco Use Prevention and Control Foundation.

### ***Commission Members***

The bill increases the number of commission members from twenty-five to twenty-nine. The four new members of the Commission are all legislators, two from the House of Representatives, appointed by the Speaker of the House and two from the Senate, appointed by the President of the Senate. One of the House of Representative members is to be from the same political party as the Speaker of the House and the other is to be from the major political party of which the Speaker of the House is not a member. Similarly, one of the Senate members is to be from the same political party as the President of the Senate and the other is to be from the major political party of which the President of the Senate is not a member. The terms of the legislative members are to be for the biennial session of the General Assembly in which they are appointed. All of these new members are nonvoting members.

Trustee members are to serve without compensation, but are to be reimbursed for reasonable and necessary expenses incurred in the conduct of commission business. According to the executive director of the Biomedical Research and Technology Transfer Commission, the Commission meets once a quarter in Columbus. Lunch is provided at the meeting. Section 101.27 of the Revised Code provides that a legislator can be reimbursed for mileage from the member's residence, by the most direct highway route of public travel to the seat of government (Columbus). Therefore, it is likely that a member who travels to Columbus and attends a Commission meeting would seek mileage reimbursement from the House or the Senate, as appropriate. If at any time, the Commission meets some place other than Columbus, the member would have to seek reimbursement for mileage directly from the Commission.

### **SchoolNet Commission (NET)**

The bill appropriates \$16.5 million in each of the FYs 2003-2004 biennium for the SchoolNet Commission. In FY 2003, \$1.0 million is earmarked for RISE Learning Solutions. As under prior grants, the SchoolNet Commission is required to work with RISE to develop a program to educate preschool staff members and providers on developmentally appropriate teaching methods, behavior guidance, and literacy using the latest technology available. In FY 2003, \$1,917,293 will be used for the Ohio ONEnet project. The Ohio ONEnet project aims to connect every K-12 public classroom with the internet and with other classrooms. Other FY 2003 earmarks include \$909,247 to be used for the INFOhio Network, a program that provides online resources, such as the encyclopedia, to schools and \$298,750 for the JASON Project. The JASON Project is a professional development project for teachers. The funds will be used to provide statewide access to JASON Content and provide a 75 percent subsidy for licensing fees of the content. In FY 2003, \$200,000 has been earmarked for the Stark County School Teacher Technical Training Center. The earmarks for FY 2003 contained in this bill are equivalent to the FY 2003 earmarks contained in Am. Sub. H.B. 94 of the 124th G.A., which are being repealed in this bill.

A majority of the tobacco funds will be used to purchase computers for sixth grade students. The state's goal is to have one computer for every five students. Grants are given to local school districts based on their quartile of wealth. The first two quartiles of wealth receive \$380 per pupil and students in the third and fourth quartile receive \$188 per student. Language in the bill permits SchoolNet to use remaining funds to move onto the seventh grade once all computers are purchased for the sixth grade. In FY 2003, \$12,174,710 is available for SchoolNet Plus. In FY 2004, the entire amount appropriated, \$16.5 million, is available for SchoolNet Plus. The fifth round of SchoolNet Plus will be approximately \$37.6 million.

As noted above, the bill repeals Section 103.03 of Am. Sub. H.B. 94 of the 124th G.A. This section deals with the earmarking of Education Technologies Trust Fund moneys received by the SchoolNet Commission for FYs 2002 and 2003. The effective date of the repeal of this section is July 1, 2002, the beginning of FY 2003. The FY 2003 earmarks contained in Section 103.03 are reproduced in this bill.

### **Attorney General**

Existing division (B) of section 183.02 and section 183.10 of the Revised Code, which are unchanged by the bill, control the revenues and expenditures of Fund J87. Specifically, section 183.10 of the Revised Code creates the Law Enforcement Improvements Trust Fund (Fund J87) and requires that: (1) all money credited to the fund be used by the Office of the Attorney General to maintain, upgrade, and modernize its law enforcement and laboratory facilities, and (2) all investment earnings of the fund be credited to the fund. And under division (B) of section 183.02 of the Revised Code, \$23.1 million has been transferred from Fund 087 to Fund J87.

Under current law, unchanged by the bill, Fund J87 will not receive any additional MSA revenue. Fund J87 will, however, continue to retain its investment earnings.

To date, \$5.2 million has been appropriated from Fund J87 to line item 055-635. According to the Office of the Attorney General's Tobacco Budget Revenue Request, these funds will be used to: (1) purchase laboratory equipment, supplies, and support maintenance and system upgrades to the Automated Fingerprint Identification System (AFIS), and (2) purchase distance learning equipment and other training aids for the Ohio Peace Officer Training Academy (OPOTA).

The bill appropriates an additional \$6.2 million in FY 2003 and \$1.0 million in FY 2004 from Fund J87 to line item 055-635. According to the Office of the Attorney General's Tobacco Budget Revenue Request, these additional funds will be used as follows:

- (1) Support expansion of OPOTA's outdoor training facility in London, Ohio, including the addition of a driving skills pad, a drivers' training track and skid pad, a 250-yard outdoor weapons firing range, and a multi-level firing and ropes training tower (\$5,200,000 in FY 2003).
- (2) Purchase equipment and other items for OPOTA's training facility, including a state-of-the-art portable interactive target, portable metal targets, weapons supplies, grounds and maintenance equipment, and five driving track vehicles (\$600,000 in FY 2003).
- (3) Make the final lease/purchase payment for AFIS and replace outdated laboratory and forensic equipment (\$400,000 in FY 2003 and \$500,000 in FY 2004).
- (4) Provides for laboratory improvements and training upgrades at OPOTA in the area of computer crimes and DNA evidence (\$500,000 in FY 2004).

The bill also contains uncodified law: (1) requiring moneys in line item 055-635 be used in accordance with section 183.10 of the Revised Code, and (2) allowing the Office of the Attorney General to consolidate the design and construction elements of the Ohio Peace Officer Training Academy Outdoor Training Facility and Improvements project into one contract. This project will be funded using moneys in the aforementioned line item 055-635. The Office of the Attorney General has indicated that: (1) in the past, the combination of design and construction elements into one contract has allowed capital projects to finish early and under budget, and (2) similar positive effects are expected by permitting a combination design-construction contract in the case of the Ohio Peace Officer Training Academy Outdoor Training Facility and Improvements project. This uncodified law relative to the Office of the Attorney General's handling of money in line item 055-635 was first enacted pursuant to Am. Sub. H.B. 405 of the 124th General Assembly.

## **Department of Taxation**

As mentioned above, the bill creates the Tobacco Settlement Enforcement Fund (Fund T87) to offset the cost of enforcing the excise tax on tobacco for each brand of cigarettes and roll-your-own cigarette tobacco that is not covered in the tobacco master settlement agreement. It requires the vendors of such products to file a monthly report with the Tax Commissioner detailing the quantity of such cigarettes and cigarette tobacco sold, and it authorizes the Tax Commissioner to charge a late fee of up to \$250 for reports that are not filed in a timely manner.

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[1] The average weighted price includes both generic and premium cigarettes. The price elasticity of demand for cigarettes is assumed to be at -0.6, i.e. a 10 percent price increase results in a 6 percent decrease in consumption. Accepted ranges of price elasticity of demand for cigarettes are between -0.4 and -0.6.