Bill Analysis

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Am. Sub. H.B. 16*

126th General Assembly
(As Passed by the House)

Reps. Calvert, Allen, C. Evans, Flowers, Hartnett, McGregor, S. Patton, Trakas, Aslanides, Barrett, Beatty, Blessing, Book, Brown, Carano, Carmichael, Cassell, DeBose, Distel, Domenick, D. Evans, Fende, Hagan, Harwood, Hughes, Kearns, Key, Koziura, Law, Martin, Mason, Miller, Mitchell, T. Patton, Peterson, Schaffer, Schlichter, Schneider, Seitz, Setzer, G. Smith, J. Stewart, Walcher, White, Widowfield

BILL SUMMARY

- Makes changes to the law governing the Attorney General's duty to collect debts owed the state by (1) allowing a bankrupt party's tax liability that is not final to be certified for collection and (2) allowing uncollectible debts to be sold to private vendors or cancelled.

- Allows debt claims that are certified for collection to be recovered from lottery prizes and certain tax refunds, and permits the Tax Commissioner to recoup the costs incurred in recovering certified claims from refunds and to make rules regarding the recovery and cost recoupment.

- Permits the use of appropriations to satisfy judgments, settlements, and administrative awards made against the state.

- Permits the Attorney General to conduct investigations, including the power to issue subpoenas and to have them enforced by contempt, regarding actions to enforce the reimbursement, repayment, recovery, and subrogation rights of the Reparations Fund.

- Makes changes to the law governing garnishment proceedings against property other than personal earnings.

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* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note and Capital Bill Analysis for H.B. 16 for an analysis of such provisions.*

- Changes the issuer of obligations to pay costs of capital facilities for Ohio cultural facilities and Ohio sports facilities from the Ohio Building Authority to the Treasurer of State.

- Modifies the current definition of "state historical facility," as used in the Ohio Cultural Facilities Commission Law, to include only those sites or facilities (1) that are created, supervised, operated, protected, maintained, and promoted by the Ohio Historical Society, (2) the title to which resides in whole or in part with the state, the Society, or both the state and the Society, and (3) that are managed directly by or subject to a cooperative or management contract with the Ohio Cultural Facilities Commission and used for or in connection with the Commission's activities.

- Changes the issuing and related authority over local subdivision capital improvement bonds that have been or will be issued from the Treasurer of State to the Ohio Public Facilities Commission.

- Requires the Ohio Public Facilities Commission, the Ohio Building Authority, and the Treasurer of State, before issuing obligations for certain capital facilities, to submit to the Director of Budget and Management any credit enhancement facilities or interest rate hedges for the obligations.

- For purposes of the Bond Law, changes the definition of "interest rate hedge" and "bond proceedings."

- Prohibits the Director of Administrative Services from collecting a commission or fee from a real estate broker or the private owner when certain real property is leased or rented to the state.

- Specifies that the Prevailing Wage Law applies to public improvement construction projects funded by appropriations or reappropriations of the 126th General Assembly.

- Eliminates the Department of Administrative Services's (DAS) duty to illuminate the exterior of the Ohio Departments Building.

- Eliminates the requirement that state agencies occupying space in the Ohio Departments Building reimburse DAS for the cost of occupying the

space and pay any debt service that may be charged by the Director of DAS.

- Permits the Department of Administrative Services and the Office of Budget and Management to acquire, install, and implement the Ohio Administrative Knowledge System.

- Permits the Director of Administrative Services to authorize certain state departments and agencies to administer capital facility projects not exceeding $1.5 million in cost.

- Directs the State Architect to establish a program to certify state universities and state community colleges to administer state-funded capital facilities projects without the oversight of the Department of Administrative Services.

- Requires the Ohio Board of Regents to approve and monitor local administration of capital facilities projects by certified institutions of higher education.

- Requires certified institutions of higher education to conduct biennial audits of the institutions' administration of capital facilities projects.

- Maintains existing law permitting state universities and state community colleges that are not certified by the State Architect to locally administer capital facilities projects under certain conditions.

- Requires the Ohio Board of Regents to adopt rules governing the allocation of state capital appropriations to state colleges and universities.

- Changes the name of the "Medical College of Ohio at Toledo" to the "Medical University of Ohio at Toledo."

- Establishes in the state treasury the State Action for Education Leadership Fund to receive money from a grant from the Wallace Foundation to the Department of Education.

- Permits a school district that is expected to receive assistance under the Classroom Facilities Assistance Program within the next three fiscal years instead to receive assistance under the Exceptional Needs School Building Assistance Program if the district's entire project consists of a

single K-12 building and the district was one of the first districts to participate in the Expedited Local Partnership Program.

- Excludes the par value of voter-approved bonds, the proceeds of which will be used by a school district to pay any of its share of a classroom facilities project, from the district's net bonded indebtedness for the purpose of calculating that share.

- Requires the Ohio School Facilities Commission to encumber state funds for classroom facilities projects by fiscal year, instead of by biennium as under current law.

- Permits educational service centers to contract with political subdivisions to acquire, construct, operate, or maintain parks, recreational facilities, and community centers.

- Creates the Parks Capital Expenses Fund to pay design, engineering, and planning costs that are incurred by the Department of Natural Resources for parks-related capital projects.

- Adds the Clerk of the Senate and the Clerk of the House of Representatives to the Capital Square Review and Advisory Board (CSRAB).

- Limits CSRAB's authority to place art and artifacts in the chambers and committee rooms of the General Assembly.

- Specifies the salary of the members of the Senate elected Majority Floor Leader, Assistant Majority Floor Leader, and Assistant Majority Whip for the 126th General Assembly.

- Permits the Director of Development to designate governmental entities as agencies of the state to create and preserve jobs, to designate the regions of the state in which they may operate, and to modify each agency's operating region and authority; and specifies that similar authority under Section 56.09 of Am. Sub. H.B. 298 of the 119th General Assembly is continuing.

- Removes the authority granted to a city designated as an urban cluster in a rural statistical area to designate areas within the city as enterprise zones.

- Temporarily authorizes certain counties to return excess balances in their county delinquent property tax collection funds to the taxing units in the county.

- Authorizes some townships to temporarily use money in a tax increment financing fund to pay public safety operating expenses.

- Makes "minimum service payment obligations" (payable as part of a tax increment financing arrangement) enforceable by a lien attaching to real property, equivalent to a tax lien.

- Permits county boards of revision to release liens for environmental cleanup debt against real property under certain limited circumstances.

TABLE OF CONTENTS

CONTENT AND OPERATION

Collection of amounts owed the state

Attorney General duties

(R.C. 131.02 and 131.021)

Under current law, whenever amounts are payable to the state, the officer, employee, or agent who administers the law under which the amount is payable must collect the amount or cause it to be collected. If the amount is not paid within 45 days after it is due, the officer, employee, or agent must certify the amount due to the Attorney General. It becomes the Attorney General's job to collect the claim or secure a judgment and issue an execution for its collection.

The bill adds two new duties to the Attorney General's duties to collect these debts owed to the state. First, the bill provides that any pending tax liability that the Tax Commissioner determines is owed to the state, but is not final, may be certified to the Attorney General for collection if a party owing the tax liability has filed for bankruptcy and the tax liability is a pre-petition debt. The bill expressly provides that, with respect to a tax liability pending appeal, it is neither making the tax liability final nor is it altering the procedures and processes a party must follow to appeal the liability. The bill requires the Tax Commissioner to notify the Attorney General of any adjustments made to the pending tax liability certified for collection to reflect the final tax liability. This provision applies to all taxes and fees, including any penalties, additional charges, and interest charges, administered by the Tax Commissioner, but not taxes and fees that are paid to a county auditor or treasurer.

The second new duty requires the Attorney General to do the following, if the Attorney General finds, after investigation, that any claim due and owing to the state is uncollectible and the chief officer of the agency reporting the claim consents: (1) sell, convey, or otherwise transfer the claim to one or more private entities for collection, or (2) cancel the claim or cause it to be cancelled.

However, as an exception to collection activities for uncollectible debts, the bill requires the Attorney General to cancel or cause to be cancelled an unsatisfied claim on the date that is 40 years after the date the claim is certified.

Recovery of state claims against lottery prizes and tax refunds

(R.C. 3770.073, 5733.121, and 5747.12)

Under current law, if a person is entitled to a lottery prize award and is indebted to the state for any tax, worker's compensation premium, unemployment contribution, or payment in lieu of an unemployment contribution, or any charge, penalty, or interest arising from those debts, the Director of the State Lottery Commission or the Director's designee must deduct the debt amounts from the prize awards and pay the deducted amount to the Attorney General for satisfaction of the debt. If a taxpayer is entitled to a refund of corporation franchise or state income tax and is indebted to the state for any tax, worker's compensation premium, unemployment contribution, or motor vehicle certificate of title fee, or any charge, penalty, or interest arising from those debts, the amount refundable may be applied to those debts.[1] Under current law, only debts that have become final may be recovered.

[1] *With respect to corporations, payments in lieu of unemployment contributions are also considered a debt that may be deducted from a tax refund.*

The bill adds to the list of debts for which the state may make a recovery from lottery awards and tax refunds claims certified to the Attorney General for collection, including tax liability that is not final if the party who may have the liability has filed for bankruptcy and the tax liability is a pre-petition bankruptcy debt.

The bill, with respect to recoveries from the tax refunds, provides that the Tax Commissioner may charge each respective agency of the state for the Commissioner's cost in applying refunds to debts due to the state and may charge the Attorney General for the Commissioner's cost in applying refunds to certified claims. The Commissioner is permitted to promulgate rules to implement this authority. With respect to state income tax refunds, the rules may address, among other things, situations such as those where persons may jointly be entitled to a refund but do not jointly owe a debt or certified claim.

Satisfaction of judgments and settlements against the state

(Section 28.05)

The bill provides that an appropriation made in this bill or any other bill may be used to satisfy judgments, settlements, or administrative awards ordered or approved by the Court of Claims or by any other court of competent jurisdiction in connection with civil actions against the state. This authorization, however, does not apply to appropriations to be applied to or used for payment of guarantees by or on behalf of the state, or for payments under lease agreements relating to, or debt service on, bonds, notes, or other obligations of the state. In addition, it includes appropriations from funds into which proceeds or direct obligations of the state are deposited only to the extent that the judgment, settlement, or administrative award is for or represents capital costs for which the appropriation may otherwise be used and is consistent with the purpose for which any related obligations were issued or entered into. This judgment and settlement authority is not intended to subject the state to suit in any forum in which it is not otherwise subject to suit, and it is not intended to waive or compromise any defense or right available to the state in any suit against it.

Reparations Fund recovery investigations and subpoenas

(R.C. 2743.712)

Under current law, the Reparations Fund is used to make awards to victims of crimes. The fund has the right of reimbursement, repayment, recovery, and subrogation in favor of the fund from various persons and parties. For example, recovery could be made from a claimant who received an award but was not actually eligible for it, or from a third party who had a legal obligation to pay

expenses for which an award was made. The Attorney General has the authority to institute, prosecute, and settle actions and proceedings to enforce those rights.

The bill permits the Attorney General, before taking any action regarding the enforcement of the rights described above, to investigate the need for that action. To determine whether those enforcement actions are needed, the Attorney General may issue subpoenas and subpoenas duces tecum to compel any person or entity to provide any information regarding overpayments from the Reparations Fund or that would impact the determination.

If the Attorney General issues a subpoena or subpoena duces tecum and if the materials required to be produced are outside of the state, the Attorney General may designate one or more representatives, including officials of the state in which the materials are located, to inspect the materials on the Attorney General's behalf. The bill also permits the Attorney General to reciprocate regarding similar requests from other states. The person or entity may make the materials available to the Attorney General at a convenient location within the state.

The bill also provides that at any time before the return day specified in the subpoena or subpoena duces tecum or within 20 days after service, whichever period is shorter, the person or entity receiving the subpoena may file with the Franklin County Common Pleas Court a petition to extend the return day or to modify or quash the subpoena or subpoena duces tecum. The bill requires the petition to state good cause.

A person or entity subpoenaed must comply with the terms of the subpoena or subpoena duces tecum unless the Franklin County Common Pleas Court provides otherwise in an order entered prior to the day for return of the specific subpoena (or a later day as extended by the court). If a person or entity fails to comply with a subpoena or subpoena duces tecum, that failure is contempt of court. The Attorney General may file a contempt of court charge in the Franklin County Common Pleas Court for that failure and may obtain an order adjudging the person or entity in contempt of court. If a charge is to be filed, it must be in writing. An entry will be made on the journal and the accused will be given a hearing. If found guilty of contempt of court, one of the following applies:

- For a first offense, the guilty party will be subjected to a fine of no more than $250, a definite term of imprisonment of no more than 30 days, or both;

- For a second offense, the guilty party will be subjected to a fine of no more than $500, a definite term of imprisonment of no more than 60 days, or both;

- For a third or subsequent offense, the guilty party will be subjected to a fine of no more than $1,000, a definite term of imprisonment of no more than 90 days, or both.

Garnishment law changes

(R.C. 2716.11)

Under current law, a proceeding for garnishment of property, other than personal earnings, may be commenced after a creditor obtains judgment against a debtor and the creditor or the creditor's attorney files an affidavit that sets forth various things including that the creditor or attorney has "good reason to believe and does believe" that the person named in the affidavit as the garnishee may have property, other than personal earnings, of the debtor that is not exempt under Ohio law. The bill would change this mandatory declaration by requiring only "a reasonable basis to believe" that the person named in the affidavit may have property.

Bond issuing authority for Ohio cultural facilities and Ohio sports facilities

(R.C. 154.01, 154.02, 154.07, 154.23, 3383.02, and 3383.07; Sections 39.01, 39.03, and 39.04)

Under existing law, the Ohio Building Authority (OBA) is authorized to issue special obligations (that is, obligations other than general obligations) for the purpose of paying the costs of capital facilities designated by the General Assembly for housing state agencies and their functions (R.C. Chapter 152.; Article VIII, Section 2i, Ohio Constitution). As the issuing authority for the Ohio Cultural Facilities Commission, OBA issues obligations to pay the costs of capital facilities for "Ohio cultural facilities" and "Ohio sports facilities," as those terms are defined in the Ohio Cultural Facilities Law (R.C. Chapter 3383.).[2]

The bill changes the issuing authority for the Ohio Cultural Facilities Commission from OBA to the Treasurer of State. The Treasurer of State is currently permitted to issue special obligations authorized by the General Assembly to pay the costs of capital facilities for mental hygiene and retardation, state-supported and state-assisted institutions of higher education, and parks and recreation, which facilities are acquired, operated, or leased by the Ohio Public Facilities Commission (R.C. Chapter 154.; Article VIII, Section 2i, Ohio Constitution). Under the bill, those obligations may also be issued to pay the costs

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[2] Am. Sub. H.B. 516 of the 125th General Assembly recently renamed the Ohio Arts and Sports Facilities Commission the "Ohio Cultural Facilities Commission." Likewise, the term Ohio arts facilities is changed to "Ohio cultural facilities."

of capital facilities for Ohio cultural facilities and Ohio sports facilities. The bill permits the Ohio Public Facilities Commission to lease such capital facilities to, and make other agreements with respect to the use or purchase of such facilities with, the Ohio Cultural Facilities Commission and any other governmental agency authorized by law to operate the facilities. These leases and agreements are subject to the Ohio Cultural Facilities Law.

The bill specifies that this change in issuers is to take effect on July 1, 2005, and addresses matters relating to the transition.

Ohio Cultural Facilities Commission Law--definition of "state historical facility"

(R.C. 3383.01)

The bill modifies the current definition of "state historical facility," as used in the Ohio Cultural Facilities Commission Law, to include only those sites or facilities (1) that are created, supervised, operated, protected, maintained, and promoted by the Ohio Historical Society pursuant to those statutes that specify the Society's public powers and duties, (2) the title to which resides in whole or in part with the state, the Society, or both the state and the Society, and (3) that are managed directly by or subject to a cooperative or management contract with the Ohio Cultural Facilities Commission and used for or in connection with the Commission's activities (R.C. 3383.01(N)).

Current law defines "state historical facility" to mean a site or facility of archaeological, architectural, environmental, or historical interest or significance, or a facility, including a storage facility, appurtenant to the operations of such a site or facility, that is owned by or located on real property owned by the state or by an arts organization, so long as the real property of the arts organization is contiguous to state-owned real property in the care, custody, or control of an arts organization, and that meets the conditions described in item (3) above.

Change of issuing authority for local subdivision capital improvement project obligations

(R.C. 151.01; Sections 39.01 and 39.02)

Transfer of issuing authority

Current law permits the Treasurer of State to issue obligations to pay the cost of financing or assisting in the financing of capital improvement projects of local subdivisions under Section 2m of Article VIII of the Ohio Constitution. Capital improvement projects include, for example, the acquisition, construction,

reconstruction, improvement, planning, and equipping of roads and bridges, wastewater treatment systems, water supply systems, and sanitary collection, storage, and treatment facilities. Local subdivisions are counties, municipal corporations, townships, sanitary districts, and regional water and sewer districts. The financing is distributed through the Ohio Public Works Commission.

The bill transfers the issuing authority over the obligations from the Treasurer of State to the Ohio Public Facilities Commission. The bill further states that this transfer applies (1) to any proceedings commenced after the effective date of the transfer, (2) to any proceedings pending, in progress, or completed on the effective date of the transfer, and (3) to the securities authorized or issued or obligations entered into pursuant to those proceedings, notwithstanding the applicable law previously in effect or any provision to the contrary in a prior resolution, order, notice, or other proceeding. The bill also provides that any proceedings pending or in progress on the effective date of the transfer, and the securities sold, issued, and delivered, or obligations entered into pursuant to those proceedings, shall be deemed to have been taken, authorized, sold, issued, delivered, and entered into in conformity with the transfer. The Revised Code provisions amended regarding the transfer of authority, except as provided in the bill regarding the authority over outstanding bonds and related matters (see below), are deemed to remain applicable to securities issued or obligations entered into pursuant to or in reliance to those Revised Code sections prior to the effective date of the transfer of authority.

Authority over outstanding bonds and related matters

In addition to the transfer of issuing authority, the bill also does all the following with respect to bonds of the state previously authorized and issued by the Treasurer of State to finance all or a portion of the costs of capital improvement projects of local subdivisions and with respect to prior authorizations for such improvements that are superseded matters, on the effective date of the transfer of authority:

(1) Gives the Ohio Public Facilities Commission all the rights, powers, duties, obligations, and functions of the Treasurer and the Treasurer's employees as provided in or pursuant to the bonds and orders relating to them;

(2) Transfers to the Commission all appropriations previously made to or for the performance of those rights, powers, duties, obligations, and functions of the Treasurer and employees regarding the bonds and related orders to the extent of the remaining and unencumbered balances;

(3) Considers all related agreements and covenants of the Treasurer and the basic instruments and bonds to be the agreements and covenants of the Commission and binding upon it;

(4) Provides that the authority transfer does not affect the validity of any agreement, covenant, resolution, order, bonds, or related documents authorized, entered into, or issued by the Treasurer under the superseded matters and that nothing in the will regarding the transfer or supersession impairs the validity of, or the obligations and rights under, those agreements, covenants, resolutions, orders, bonds, or related documents;

(5) Transfers to the Commission all the basic instruments, documents, books, papers, and records of the Treasurer relating to the outstanding bonds;

(6) Provides that references to the Treasurer and the Treasurer's employees or authorized representatives in any contract or other document relating to those outstanding bonds shall be considered references to the Commission and its appropriate officers.

Effective date

The bill's provisions regarding the authority transfer over outstanding local subdivision capital improvement bonds and future bond issues take effect July 1, 2005.

Modification of issuer submissions to Director of Budget and Management

(R.C. 9.98 and 126.11)

Under current law, the Ohio Public Facilities Commission and the Ohio Building Authority, when issuing obligations, are required to submit certain information to the Director of Budget and Management regarding the particulars of the issuance. These particulars include the projected sale date, amount, and type of obligations to be sold, preliminary and final offering documents, and final terms including the sale price. The Treasurer of State, when issuing obligations for highways, local subdivision capital improvements, Clean Ohio revitalization projects, and lease-rental facilities administered by the Public Facilities Commission, is required to submit the identical information. With respect to the submissions, the bill changes two things. First, it requires the Commission and Authority to submit for review and approval, and the Treasurer to submit for review and mutual agreement, two additional items: any credit enhancement facilities or interest rate hedges for the obligations. A "credit enhancement facility" means, for example, letters of credit, lines of credit, stand-by, contingent, or firm securities purchase agreements, insurance, or surety arrangements,

guarantees, and other arrangements that provide for direct or contingent payment of debt charges. A credit enhancement facility also includes credit, reimbursement, marketing, remarketing, and interest rate hedge agreements. "Interest rate hedge" is defined under current law to mean any arrangement by which either (1) the different interest costs or receipts at fixed interest rates and at floating interest rates, or at different maturities, are exchanged on stated amounts of bonds or investments, or on notional amounts, or (2) a party will pay interest costs in excess of an agreed limitation. This definition, however, is changed by the bill as described in "***Bond Law definition changes***" in this analysis, below.

Second, the bill, consistent with the transfer of issuing authority for obligations issued for local subdivision capital improvements from the Treasurer of State to the Ohio Public Facilities Commission (see "***Change of issuing authority for local subdivision capital improvement project obligations***," above), transfers the responsibility for the information submissions for these obligations from the Treasurer to the Commission.

Bond Law definition changes

(R.C. 9.98, 133.01, 5537.01, and 5540.01)

Current law provides a number of definitions for terms used frequently in proceedings for the issuance of state and local obligations. One such definition is that of "interest rate hedge." Under current law, that term means "any arrangement by which either:

(1) The different interest costs or receipts at fixed interest rates and at floating interest rates, or at different maturities, are exchanged on stated amounts of bonds or investments, or on notional amounts;

(2) A party will pay interest costs in excess of an agreed limitation."

The bill amends that definition to make interest rate hedge mean "any arrangement:

(1) By which either:

(a) The different interest costs or receipts at, between, or among fixed or floating interest rates, including at different floating interest rates, are exchanged on stated amounts of bonds or investments, or on notional amounts; or

(b) A party will pay interest costs in excess of an agreed limitation; and

(2) Which also may include a requirement for the issuer to issue bonds at a future date. This requirement shall be deemed to be part of the bond proceedings

at the time the interest rate hedge is entered into. Issuance of bonds at a future date shall not require further legislative action, but shall be a ministerial act."

The additional language in (2) above conforms to changes made by recently enacted Am. Sub. H.B. 431 of the 125th General Assembly.

The bill also makes the amended definition of "interest rate hedge" consistent among all laws governing the issuance of state and local obligations that use that term.

Under current law, "bond proceedings" means "resolutions, ordinances, orders, trust agreements, indentures, and bonds, loan, sale, or installment sale agreements, agreements with administrative, indexing, or remarketing agents, and agreements pertaining to credit facilities, interest rate hedges, and put arrangements, which authorize or provide for the terms, security, liquidity, issuance, marketing, remarketing, delivery, carrying, redemption, or payment of bonds, or the investment of moneys pertaining to bonds." The bill amends the definition to extend the reference to all these activities done in relation to issued bonds to bonds previously authorized to be issued.

Collection of fees or commissions in connection with the state's public works

(R.C. 123.10)

Current law requires the Director of Administrative Services to (1) regulate the rate of tolls to be collected on the state's public works and (2) fix all rentals and collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in those public works. The bill prohibits the Director, with respect to item (2), from collecting a commission or fee from a real estate broker or the private owner when real property is leased or rented to the state. (R.C. 123.10(A).)

Prevailing wage requirement

(Section 28.07)

Ohio's Prevailing Wage Law requires that a public authority wishing to engage in construction of a public improvement project that costs more than the statutory threshold amount pay workers employed on the project the prevailing wage. The prevailing wage is the sum of the basic hourly rate of pay, certain employer contributions to funds, plans, and programs, and fringe benefit costs such as insurance and vacation leave. Apart from specified exceptions, the prevailing wage requirement applies to any officer, board, or commission of the state, any political subdivision, and any institution supported in whole or in part by public funds. Examples of public improvements include buildings, roads, streets,

alleys, sewers, and all other structures or works constructed by a public authority or a person who constructs a structure for a public authority pursuant to contract. Public improvements include facilities rented or leased by a public authority within six months after completion of construction done to suit it for occupancy. Public improvements also include certain projects and facilities specified in law, including projects undertaken by or through the Department of Development Advisory Council or industrial development bonds.

The bill provides that except as exempted under the Prevailing Wage Law, no moneys appropriated or reappropriated by the 126th General Assembly can be used for the construction of public improvements unless the mechanics, laborers, or workers engaged to do the work are paid the prevailing rate of wages determined by law. The bill also provides that this prevailing wage requirement does not affect the wages and salaries of state employees while engaged on force account work, nor interfere with the use of inmate and patient labor by the state.

Ohio Departments Building

(R.C. 123.023 and 125.28)

The bill eliminates the Department of Administrative Services's (DAS) duty to illuminate the exterior of the Ohio Departments Building at 65 South Front Street in Columbus (R.C. 123.023). The bill also removes the requirement that state agencies occupying space in the Ohio Departments Building reimburse DAS for the cost of occupying the space and pay any debt service that may be charged by the Director of DAS (R.C. 125.28(A)(2)). Sub. H.B. 388 of the 125th General Assembly, which took effect March 2, 2004, authorized the Governor to convey the Ohio Departments Building to the Supreme Court of Ohio.

Ohio Administrative Knowledge System (OAKS) project

(Section 33.01)

The bill provides that the Ohio Administrative Knowledge System (OAKS) will be an enterprise resource planning system that will replace the state's central services infrastructure systems, including the central accounting system, the human resources/payroll system, the fixed assets management system, and the procurement system. The Department of Administrative Services, in conjunction with the Office of Budget and Management, may acquire the system, including the enterprise resource planning software and installation and implementation of it pursuant to law governing the purchase of supplies and services. Any lease-purchase arrangement utilized, including any fractionalized interest, must provide at the end of the lease period that OAKS becomes the property of the state.

Agency administration of capital facilities projects

(Section 28.04)

Current law gives the Director of Administrative Services extensive authority over capital facility construction, including its administration. It also gives the Director extensive authority over contracting regarding construction projects. In spite of this law, the bill permits the Director to authorize the following departments and agencies to administer any capital facilities projects the estimated cost of which, including design fees, construction, equipment, and contingency amounts, is less than $1.5 million: the Departments of Mental Health, Mental Retardation and Developmental Disabilities, Alcohol and Drug Addiction Services, Agriculture, Job and Family Services, Rehabilitation and Correction, Youth Services, Public Safety, and Transportation; the Ohio Veterans' Home; and the Rehabilitation Services Commission. The bill requires that requests for authorization to administer capital facilities projects must be made in writing to the Director of Administrative Services by the applicable state agency within 60 days after the effective date of the act in which the General Assembly initially makes an appropriation for the project. On the release of project funds by the Controlling Board or the Director of Budget and Management, the agency may administer the capital project without the supervision or control of the Director of Administrative Services.

Local administration of higher education capital projects

(R.C. 123.10, 123.17, 3345.50, and 3345.51)

Current law

(R.C. 3345.50)

Current law permits a state university (including the Medical College of Ohio at Toledo and the Northeastern Ohio Universities College of Medicine) or a state community college to administer a capital facilities project without the supervision of the Department of Administrative Services (DAS) under certain conditions. If the total state funding appropriated for the project is $4 million or less, the institution must notify the Ohio Board of Regents of its intent to administer the project within 60 days after the effective date of legislation initially appropriating funds for the project. If the capital project involves state funds in excess of $4 million, the institution must meet criteria in rules adopted by the Board of Regents in order for the Board and DAS to approve the institution's request to administer the project. Regardless of the amount of state funds appropriated for a project, an institution must comply with all applicable laws and

guidelines regarding public improvements to administer a capital facilities project locally.

Local administration competency certification program

(R.C. 123.10(B) and 123.17)

The bill creates an alternative route by which state universities (including the two medical colleges and state community colleges may acquire the authority to administer capital facilities projects without DAS oversight. Under the bill, these institutions may complete a local administration competency certification program created by the State Architect. Institutions that are not certified by the State Architect may only administer capital projects locally in accordance with the conditions in existing law described above.

To be certified by the State Architect under the new program, an institution must select employees responsible for administering capital facilities projects to participate in the program. The program must provide instruction about the Public Improvements Law and DAS rules and policies regarding capital projects. Specifically, the program must cover (1) the planning, design, and construction process, (2) contract requirements, (3) construction management, and (4) project management.

The State Architect must award local administration competency certification to a state university or state community college that meets the following criteria:

(1) The institution applies for certification in the manner prescribed by the State Architect;

(2) The State Architect determines that a sufficient number of the institution's employees, representing a sufficient number of employee classifications, has completed the program to ensure that the institution's capital projects will be conducted successfully and in accordance with law;

(3) The institution's board of trustees provides written assurance that the institution will enroll additional employees in the certification program as needed to compensate for employee turnover;

(4) The State Architect determines that the employees who have completed the program demonstrate satisfactory knowledge of and competency in the requirements for administering capital projects;

(5) The board of trustees provides written assurance that the institution will conduct biennial audits of its administration of capital projects (see "***Biennial audits of capital projects***" below); and

(6) The board of trustees agrees in writing to hold the state and DAS harmless for any claim of injury, loss, or damage resulting from the institution's administration of a capital project.

In addition, each institution must pay a fee to participate in the certification program. All fees are set by the State Architect and deposited in the existing State Architect's Fund in the state treasury. Money from the Fund must be used for the program's operational expenses.[3]

Board of Regents approval of local administration of capital projects

(R.C. 3345.51(A) and (B))

Under the bill, state universities and state community colleges that receive local administration competency certification from the State Architect may administer any capital facilities project without DAS oversight, regardless of the amount of state funds appropriated for the project, if the Board of Regents grants approval to do so.[4] The bill requires the Board of Regents to approve a certified institution's request for local administration if:

(1) The institution's board of trustees notifies the Board of Regents in writing of its request to administer a capital project within 60 days after the effective date of the initial appropriation for the project;

(2) The board of trustees passes a resolution stating its intent to comply with all applicable laws governing the selection of consultants, preparation and approval of contract documents, receipt of bids, award of contracts, estimates for

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[3] The State Architect's Fund consists of certain tolls and other revenues collected by DAS on public works of the state, fund transfers authorized by the General Assembly, and a portion of the investment earnings from the Administrative Building Fund. Money in the Fund must be used by DAS for (1) personnel and other administrative expenses, (2) evaluations of public works, (3) the cost of building design specifications, (4) provision of project management services, and (5) any other purposes the Director of Administrative Services deems necessary to perform the Department's duties under the Public Works Law. (R.C. 123.10(B).)

[4] Institutions approved to administer capital projects locally may still request assistance, guidance, or other services from DAS at any time (R.C. 123.17(F) and 3345.51(F)).

labor and materials, and escrow accounts and with DAS guidelines regarding contract documents; and

(3) The institution meets criteria in rules adopted by the Board of Regents.[5]

The criteria in (3) above must be developed with DAS and higher education representatives chosen by the Board of Regents. These criteria must include matters such as the adequacy of the institution's staffing levels and expertise, past performance of the institution in administering capital projects, and the amount of funding from other sources that the state used to finance the project.

Biennial audits of capital projects

(R.C. 3345.51(C))

When a certified institution administers a capital facilities project, the institution must conduct biennial audits for the duration of the project to ensure that the project is being administered properly. The Board of Regents, in consultation with higher education representatives selected by the Board, must adopt rules in accordance with the Administrative Procedure Act establishing criteria for these audits. The criteria must include documentation necessary for determining compliance with the Public Improvements Law and a method for determining if an institution is using its local administration competency certification appropriately.

Monitoring local administration of capital projects

(R.C. 3345.51(D))

The bill requires the Board of Regents, in consultation with higher education representatives chosen by the Board, to adopt rules in accordance with the Administrative Procedure Act creating criteria for monitoring capital facilities projects administered by certified institutions. These criteria must include a process for institutions to remedy problems, such as the improper use of state funds or legal violations, uncovered during a biennial audit. They also must outline conditions under which the Board of Regents may revoke the authority of an institution to administer capital projects locally. Failure of an institution to maintain a sufficient number of employees who have completed the local administration competency certification program is grounds for revocation under the bill.

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[5] *These rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).*

Revocation of local administration authority

(R.C. 3345.51(E))

If the Board of Regents revokes the authority of a certified institution to administer a capital project locally, DAS must assume responsibility for the completion of the project. The Board of Regents may require the institution to seek new local administration competency certification from the State Architect prior to reinstating the institution's authority to administer capital projects.

Rules for allocating capital appropriations to state colleges and universities

(R.C. 3333.072)

The bill requires the Ohio Board of Regents to adopt rules to govern the allocation of state capital appropriations to state colleges and universities. The Board must consult with the state colleges and universities and with the Office of Budget and Management before it adopts the rules. The Board is directed to incorporate the recommendations of the 1994 final report on the Commission to Study Higher Education Debt Service, "as these recommendations have been utilized and modified in procedures developed by the Board and the Office of Budget and Management since the report was issued."

Change of the name of the Medical College of Ohio at Toledo

(R.C. 145.011, 151.04, 154.01, 3305.01, 3307.01, 3333.045, 3334.01, 3345.04, 3345.12, 3345.17, 3345.31, 3345.32, 3345.50, 3345.71, 3350.01, 3350.02, 3350.03, 3350.04, and 3350.05; Sections 89, 89.04, and 89.08 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended; Section 26.23 of Am. Sub. S.B. 189 of the 125th General Assembly)

The bill changes the name of the "Medical College of Ohio at Toledo" to the "Medical University of Ohio at Toledo."

State Action for Education Leadership Fund

(R.C. 3301.21)

The bill establishes in the state treasury the State Action for Education Leadership Fund to receive money from a grant from the Wallace Foundation to the Ohio Department of Education. Investment earnings on money in the fund must be credited to the fund. The bill requires the Department to use the money in the fund to do the following:

(1) Develop leadership training programs for the "Big-Eight" school districts;[6]

(2) Target training to teacher-leaders, principals, and union leaders;

(3) Increase administrators' and teachers' skills in using student assessment data to improve instructional decisions; and

(4) Align school district and school building budget allocations with student performance data.

Background

The Wallace Foundation was established by bequests of DeWitt Wallace, founder of the Reader's Digest Association, and his wife Lila Acheson Wallace. According to information on its web site, the Foundation concentrates on three areas of interest: developing effective school leaders to improve student learning; providing high quality informal learning opportunities for children and families; and promoting new standards of practice that enable arts and cultural institutions to diversify, broaden, and deepen relationships with their audiences.[7]

In November 2004, the Foundation awarded the Ohio Department of Education a renewable grant of $1.2 million for the State Action for Education Leadership Project. According to the Department's press release, the grant will be used in collaboration with education, community, and municipal and state government leaders to develop individual leadership training programs for the Big-Eight school districts; to create state policies around educator preparation, recruitment, and training; to measure progress by analyzing student assessment data; and to develop a statewide data system to inform instructional and leadership training decisions.[8]

Classroom facilities assistance programs

Background

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in the

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[6] *The "Big-Eight" districts are: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.*

[7] *http://www.wallacefoundation.org/WF/AboutUs/FAQ/FAQ.htm.*

[8] *http://webapp1.ode.state.oh.us/cncs/view.asp. The press release indicates that the grant is renewable for up to two additional years for a total of up to $3.6 million.*

acquisition of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served.

Other programs have been established to address the particular needs of certain types of districts. One of these additional programs, the Exceptional Needs School Facilities Assistance Program, provides low-wealth districts and "large land area" districts with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues.[9] The Expedited Local Partnership Program, on the other hand, permits most school districts that have not been served under CFAP to enter into agreements permitting them to apply the advance expenditure of *district* money on approved parts of their district-wide needs toward their shares of their CFAP projects when they become eligible for that program.[10]

Exceptional Needs Program eligibility

(R.C. 3318.37)

Current law, not changed by the bill, permits a district that has agreed to participate in the Expedited Local Partnership Program to receive funding under the Exceptional Needs Program only if the district was one of the districts to enter into Local Partner agreements in the first two years of the program.[11] Current law also prohibits any district that is reasonably expected to be eligible for district-wide assistance under CFAP within three fiscal years to receive assistance under the Exceptional Needs Program. The bill removes this latter restriction for a

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[9] R.C. 3318.37. For purposes of this program, a "low-wealth district" is one with an adjusted valuation per pupil that is at or below the statewide median, and a "large land area district" is one with a territory of greater than 300 square miles regardless of wealth.

[10] R.C. 3318.36, not in the bill.

[11] Prior to September 14, 2000, the Expedited Local Partnership Program was limited to participation by only five low-wealth districts per year. After that date, all districts regardless of wealth may enter into agreements under the program. See Am. Sub. S.B. 272 of the 123rd General Assembly. The bill refers to the districts that entered into agreements during the first two years of the program.

district if (1) the district's entire forecasted district-wide project consists of a single building designed to house grades K through 12 and (2) the district was one of the first districts to enter into an agreement under the Expedited Local Partnership Program. In other words, the K-12 building needed by the district could be built with assistance under Exceptional Needs Program instead of under CFAP. A district's share of the project cost under either program likely would be the same.

Calculation of school district's net bonded indebtedness

(R.C. 3318.01(F))

The cost of a school district's classroom facilities project, called the "basic project cost," is shared between the state and the district.

Local share--current law. Under continuing law, the district's share is the *greater* of the following:

(1) An amount equal to 1% of the basic project cost times the district's wealth percentile rank; or

(2) An amount that would raise the district's net bonded indebtedness to within $5,000 of its "required level of indebtedness." The required level of indebtedness for districts in the first percentile is 5% of the district's valuation. For districts in subsequent percentiles, the required level of indebtedness is calculated under the following formula:

5% of the district's valuation + .0002 (the district's wealth percentile rank – 1).[12]

A district's net bonded indebtedness is the difference between the district's existing debt and the amount held in the sinking fund and other debt retirement funds of the district. Under current law, a district's existing debt is the sum of the par value of all outstanding and unpaid bonds and notes of the district, any amounts the district is obligated to pay under a lease-purchase agreement for construction or building improvements, and the par value of bonds that have been authorized by district voters but not yet issued and may be used for the classroom facilities project.[13]

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[12] *R.C. 3318.032. No district's share of a project, however, may exceed 95% of the basic project cost. A district's valuation is the total value of all property in the district as assessed for tax purposes (R.C. 3318.01(P)).*

[13] *Under continuing law, notes issued for school buses, notes issued in anticipation of the collection of current revenues, bonds issued to pay final judgments, and indebtedness*

The bill. The bill removes, from the calculation of the district's net bonded indebtedness, the par value of voter-approved bonds that will be used to pay a portion of a district's share of the basic project cost of a classroom facilities project. In other words, those bonds do not count in totaling the district's existing debt, regardless of whether the bonds have been issued yet. This change has the effect of lowering the district's net bonded indebtedness for the purpose of determining the district's share of the basic project cost under the method described in (2) above. Consequently, it would take a larger amount of new debt to increase a district's net bonded indebtedness to within $5,000 of its required level of indebtedness, which would increase the district's share of the basic project cost under that calculation.

Encumbrance of state funds for classroom facilities projects

(R.C. 3318.02, 3318.03, 3318.04, 3318.11, and 3318.41)

Under current law, the Ohio School Facilities Commission must determine the amount of state funds to encumber for classroom facilities projects by biennium. The bill instead requires the Commission to encumber state funds by fiscal year. As under current law, when determining the amount of state funds to encumber for classroom facilities projects, the Commission must consider each project's estimated construction schedule and grant priority to unfinished projects over projects for which initial state funding is sought. In a corresponding change, the bill permits the Commission to limit the number of on-site visits it conducts in a fiscal year based on its projections of the state funds available for undertaking new classroom facilities projects that year.

Educational service center contracts with political subdivisions to operate parks, recreational facilities, and community centers

(R.C. 755.16 and 755.18)

The Education Law provides for educational service centers (ESCs), which are regional public entities that provide some administrative oversight and a variety of other services to all "local" school districts within their service areas. For providing these services, an ESC receives payments both from the state and from those local districts. In addition, ESCs are permitted to provide services to "city" and "exempted village" school districts that enter into agreements for those services. ESCs do not have taxing authority and have only limited authority to issue bonds. Each ESC is administered by its own superintendent and is under the

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arising from the acquisition of a site for a classroom facilities project are not included in a district's net bonded indebtedness.

oversight of its own elected "governing board." The territory of an ESC consists of the combined territory of the "local" school districts that receive its services. (R.C. 3311.05, 3311.053, and 3311.054--not in the bill.)

Current law permits political subdivisions such as school districts, municipal corporations, townships, and counties, among others, to jointly acquire, operate, and maintain parks, recreational facilities, and community centers. The community centers referred to in existing law are centers acquired, operated, or maintained under a joint agreement, and used for governmental, civic, or educational operations or recreational activities. These community centers may be used only by persons as determined by the participating contracting entities. (R.C. 755.16.)

The bill permits the political subdivisions currently permitted to enter into agreements for joint acquisition, construction, operation, and maintenance of parks, recreational facilities, and community centers, to also contract with an educational service center for these purposes. The educational service center may erect, enlarge, or reconstruct a building or the center's premises as part of the park, recreational facility, or community center to be jointly acquired. The bill permits such a center to agree to contribute lands, money and other personal property, and services to the joint venture. The bill authorizes educational service centers to appropriate money for contract purposes and specifically authorizes centers to pay operation expenses for these purposes from its general fund. (R.C. 755.16 and 755.18.)

Parks Capital Expenses Fund

(R.C. 1541.23)

The bill creates in the state treasury the Parks Capital Expenses Fund consisting of moneys transferred to it from the Parks and Recreation Improvement Fund created in current law. The Parks Capital Expenses Fund must be used to pay design, engineering, and planning costs that are incurred by the Department of Natural Resources for parks-related capital projects.

Capitol Square Review and Advisory Board

Composition

(R.C. 105.41)

The Capitol Square Review and Advisory Board currently consists of the following 11 members:

--Two members of the Senate;

--Two members of the House of Representatives;

--Five members appointed by the Governor, one representing the Office of the State Architect and Engineer, one representing the Ohio Arts Council, one representing the Ohio Historical Society, one representing the Ohio Building Authority, and one representing the public at large;

--One member who is a former President of the Senate;

--One member who is a former Speaker of the House of Representatives.

The bill adds the Clerk of the Senate and the Clerk of the House of Representatives to the Board.

Authority

(R.C. 105.42)

Current law grants the Board, among other things, sole authority to coordinate and approve any improvements, additions, and renovations made to capitol square and to regulate all uses of capitol square. In addition, the Board is required to establish and maintain a collection of furniture, antiques, and other items of personal property for placement in capitol square. (R.C. 105.41.)

The bill provides that, despite this authority, the Board is prohibited from placing any artwork, artifact, bust, memorial, monument, or other commemorative work in the chambers, committee rooms, or other meeting rooms of the House of Representatives or the Senate, without first obtaining the approval of the Speaker of the House of Representatives or the Speaker's designee, or of the President of the Senate or the President's designee, as applicable. If approval is granted, the placement must be made in accordance with any conditions accompanying the approval.

Salary of certain Senate leadership positions

(Section 38.01)

Current law prescribes the salary of members of the Senate and of the House of Representatives, including those members who are elected to leadership positions.[14] The Senate is required to elect a President, President Pro Tempore,

[14] *Prescribing members' compensation by statute is required by Article II, Section 31 of the Ohio Constitution, which states "[t]he members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or*

and Assistant President Pro Tempore, and the salaries of those officers, as well as that of the Senate Majority Whip, are set forth in statute (along with the salaries of the Senate minority leaders and the leaders elected by the House of Representatives). (R.C. 101.02 and 101.27, not in the bill.)

The bill states that, despite the above, the term of office of the members of the Senate elected Majority Floor Leader, Assistant Majority Floor Leader, and Assistant Majority Whip are deemed to begin on the effective date of this provision. Each such member is to receive, during the remainder of calendar year 2005, salary payments equal to the amounts paid under current law to the members of the House of Representatives elected Majority Floor Leader, Assistant Majority Floor Leader, and Assistant Majority Whip, respectively, during the remainder of that year. For calendar year 2006, they are to receive an annual salary that is equal to the annual salary prescribed by current law for the members of the House of Representatives elected Majority Floor Leader, Assistant Majority Floor Leader, and Assistant Majority Whip, respectively.

Designating governmental entities to create or preserve jobs

(R.C. 122.012)

Section 56.09 of Am. Sub. H.B. 298 of the 119th General Assembly designated the Toledo-Lucas County Port Authority as an agency of the state for the creation and preservation of jobs and employment opportunities, and the financing of projects intended to create and preserve jobs and employment opportunities, in Lucas County, adjacent counties, and counties contiguous to those counties. The section also gave the Director of Development, upon request, the authority to designate additional agencies or to expand existing agency designations and to reduce or expand those regions of the state within which any designated agency operates, provided that no regions could overlap.

The bill provides that the provisions of Section 56.09 pertaining to such designations, and every designation of an agency made under that section, remain in full force and effect as a continuing grant of authority to create and preserve jobs and employment opportunities and to finance projects intended to create or preserve jobs and employment opportunities. In addition, the bill provides the Director new authority to designate any governmental entity as an agency of the state to act within a specified region of the state for the same job and employment creation and preservation purposes. The bill also provides that each agency designated under Section 56.09 or the new authority may exercise within its

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perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office."

specified region any statutory powers it has under any other section of the Revised Code to accomplish the job and employment creation and preservation purposes. The new authority provides that the regions served by agencies may not overlap and that the Director may reduce, expand, or otherwise modify the regions served by, or limit the authority of, any agency.

City designated as an urban cluster in a rural statistical area prohibited from designating enterprise zones

(R.C. 5709.61(A)(1)(a), 5709.62(A), and 5709.632(A)(1) and (3)(b); Section 41.01)

Continuing law permits the legislative authorities of certain municipalities and the boards of county commissioners of certain counties to designate areas within the municipality or county as "enterprise zones." After designating an area as an enterprise zone, the municipality or board must petition the Director of Development for certification of the designated enterprise zone. Under continuing law, if the Director certifies a designated enterprise zone, the municipality or board may then enter into an enterprise zone agreement with a business for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives.

Existing law authorizes two types of municipalities to designate enterprise zones and enter into enterprise zone agreements with respect to those zones: (1) a municipality defined by the United States Office of Management and Budget as a principal city of a metropolitan statistical area, and (2) a city designated as an urban cluster in a rural statistical area. (Existing law does not define the phrase "urban cluster in a rural statistical area." Nor does existing law specify the entity that designates cities as such.)

The bill removes the authority granted to a city designated as an urban cluster in a rural statistical area to designate areas within the city as enterprise zones. Accordingly, under the bill, the only cities that would have authority to designate enterprise zones and enter into enterprise zone agreements with respect to those zones are municipalities defined by the United States Office of Management and Budget as a principal city of a metropolitan statistical area.

The bill does not apply to any area in a city designated as an urban cluster in a rural statistical area if the Director of Development certified the area as an enterprise zone between June 26, 2003, and the bill's effective date. A city designated as an urban cluster in a rural statistical area may continue to enter into enterprise zone agreements with respect to these specific enterprise zones.

Use of "excess" delinquent property tax collection funds

(Section 40.01)

Under existing law, 5% of delinquent property tax collections in each county are credited to the county's delinquent tax and assessment collection fund (or "DTAC" fund).[15] Money in the fund is divided equally among the county treasurer's office and county prosecutor's office to support their delinquent property tax collection responsibilities.

The bill authorizes certain smaller-population counties with excess balances in their DTAC funds to distribute some of the balance among the taxing units in the county. The bill's authority applies to counties having a 2000 census population of less than 64,000 and having a DTAC fund balance of more than $650,000. To exercise the authority, the county treasurer and county prosecutor must jointly determine that not all of the DTAC fund balance is needed to collect delinquent taxes. If the treasurer and prosecutor make that determination, they must give written notice to the board of county commissioners. The board, after consulting with all the taxing units in the county, then may adopt a resolution directing the county auditor to distribute money in the DTAC fund to the taxing units. The maximum amount that may be distributed is the amount that was credited to the DTAC fund during 2001, 2002, 2003, and 2004. The amount to be distributed to each taxing unit must be in the same proportions and amounts as if the distribution were the proceeds from taxes.

The authority expires after 60 days from the bill's effective date. The authority goes into effect immediately when the bill becomes law.

Tax increment financing

Use of TIF money

(R.C. 5709.75)

Under existing law, counties, townships, and municipal corporations are authorized to exempt new construction from all property taxes, levy a charge in lieu of the taxes on the property owner, and use the proceeds to finance public improvements that benefit the exempt property or, in some cases, to finance housing development. The arrangement is known as "tax increment financing" or "TIF." The charges, known as "payments in lieu of taxes" or "service payments," must be credited to a special TIF fund and used to finance public improvements or

[15] *This includes delinquent taxes on manufactured homes and mobile homes and delinquent special assessments.*

housing development. The subdivision levying the payments in lieu of taxes also may earmark some of the payment for the local school district that otherwise would have received some of the taxes from the property.

The bill permits certain townships to temporarily use money in a special TIF fund to pay for current public safety expenses. Only money that is not encumbered may be applied to such expenses. The township must reimburse the fund fully by the time the property tax exemption expires. (TIF property tax exemptions may last for up to 30 years.) To qualify for the provision, the board of township trustees must have enacted its TIF resolution before January 1, 1995, and must have entered into a "hold harmless" agreement with the local school board to pay the school district an amount equal to the property taxes that would have been due from the exempted property if it were taxable. The board of township trustees must appropriate and spend the funds for public safety expenses by January 1, 2007.

Enforcement of "minimum" service payments

(R.C. 5709.91)

Under existing law, a lien attaches to property subject to a TIF arrangement to secure payments in lieu of taxes owed by the property owner or another party. The lien has the same legal status and priority as a lien for real property taxes and is enforceable in the same way. Like a real property tax lien, a lien for payments in lieu of taxes has the highest priority (except for some federal tax liens) and is enforceable by civil action undertaken by the county treasurer; ultimately, the lien is enforceable by a forced tax sale of the property.

The bill grants the same lien status to "minimum service payment obligations," which the bill defines as an obligation (including a contingent obligation) under a TIF arrangement for the property owner or another person to pay money to a political subdivision to ensure the subdivision has sufficient funds to finance the public improvements or housing development provided by the TIF arrangement. Under the bill, a lien would attach to property for minimum service payment obligations and would have the same status as a lien for property taxes and payments in lieu of taxes.

Release of liens for environmental cleanup

(R.C. 5715.70 and 5715.701)

The bill permits a county board of revision to release a lien imposed on real property situated within the county if all the following apply:

- The lien has existed for at least five years;

- The lien is for a debt resulting from the cost of environmental cleanup of the property paid from state or local government funds;

- The amount of the lien is equal to or greater than 12 times the fair market value of the property;

- The board determines the debt is uncollectible.

If the board gives the release, it must reduce it to writing that the county treasurer must sign and then deliver to the property owner. The county recorder is required to discharge the lien when presented with the release. The discharge must be noted on the recorder's records and in a book kept for that purpose by the recorder. The recorder is entitled to a fee for the recording that is the same as that imposed for recording deeds.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-25-05	p. 82
Reported, H. Finance & Appropriations	01-26-05	pp. 91-92
Passed House (92-2)	01-26-05	pp. 126-175

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