



Final Analysis

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Legislative Service Commission

Sub. S.B. 321*

126th General Assembly
(As Passed by the General Assembly)

Sens. Carey, Niehaus, Stivers, Clancy, Austria, Gardner, Harris, Hottinger, Spada, Padgett, Mumper

Reps. Calvert, Trakas, Coley, Martin, Patton, T., Flowers, Buehrer, Combs, Evans, D., Hagan, Smith, G.

Effective date: June 5, 2006; certain provisions effective September 5, 2006

ACT SUMMARY

- Requires the Governor to calculate a state appropriation limitation on most (but not all) General Revenue Fund (GRF) appropriations for each fiscal year of the 2008-2009 biennium and for each fiscal year thereafter.
- Provides that the state appropriation limitation for fiscal year 2008 is to be the aggregate GRF appropriations for fiscal year 2007 increased by whichever of the following is greater: (1) 3.5% or (2) the sum of the inflation rate and rate of Ohio population change.
- Provides that, for each succeeding fiscal year, the growth factor is to be applied to the previous year's state appropriation limitation or, every fourth year, the previous year's aggregate GRF appropriations.
- Prohibits the Governor from proposing and the General Assembly from making aggregate GRF appropriations that exceed the state appropriation limitation for each fiscal year.

* *This analysis does not include appropriations or other fiscal provisions. See the Legislative Service Commission's Fiscal Note for Sub. S.B. 321 for an analysis of those provisions.*

- Provides limited exceptions to the prohibition imposed on the General Assembly.
- Requires OBM to determine a method incorporating zero-based budgeting principles into state agency budget request forms.
- Removes the Attorney General from the Tobacco Use Prevention and Control Foundation (TUPAC) Board of Trustees.
- Changes the quorum requirements for the TUPAC Board of Trustees to a majority of voting members instead of a majority of the members.
- Requires an affirmative vote of a majority of the voting members of the TUPAC Board, instead of an affirmative vote of a majority of the members, in order for it to take action.
- Provides that not more than 5% of the total "disbursements, encumbrances, and obligations" (rather than "expenditures") of certain Tobacco Master Settlement Agreement foundations and funds in a fiscal year may be used for administrative expenses in the same fiscal year.
- Makes changes to the law governing the Physician Loan Repayment Program, including changes to eligibility requirements, reimbursement for certain expenses associated with Program recruitment, and Advisory Board membership.
- Changes the requirements for participating in the Dentist Loan Repayment Program.
- Changes certain procedures of the Dentist Loan Repayment Advisory Board.
- Adds the phrase "but is not limited to" to the definition of "applicant" used in the law governing criminal records checks of applicants seeking employment with the Office of the State Long-Term Care Ombudsman program, including a regional program, in a position that involves providing ombudsman services to residents of long-term care facilities or recipients of community-based long-term care services.
- Authorizes the Director of Aging, rather than the Director of Health, to receive a copy of a criminal records check conducted of such applicants.

- Permits a city, exempted village, or local school district participating in a state-assisted classroom facilities project, as an alternative to levying a 1/2-mill maintenance tax for 23 years, to deposit annually for 23 years the same amount from other school district resources.
- Permits a Big-Eight school district participating in a state-assisted construction project to transfer from its project construction fund to a "special construction fund" investment earnings attributable to the district, as long as certain conditions are satisfied, to be used to acquire additional classroom facilities.
- Permits a school district to deposit state funds reimbursed under the Expedited Local Partnership Program into the district's general revenue and permanent improvement funds, to replace money that was used from those funds to pay for classroom facilities included in the district's project.
- Clarifies that unvoted debt issued by a school district to pay its portion of a state-assisted classroom facilities project does not count toward the district's overall debt limits.
- Removes the authority of the Department of Administrative Services to (1) contract for, operate, or superintend telephone, other telecommunication, and computer services for specified state agencies and (2) contract for bulk long distance telephone services to be made available to immediate family members of active duty military personnel, and confers that same authority upon the Office of Information Technology.
- Modifies the business personal property tax reimbursements for school districts where territory is transferred by allowing the district from which the territory is transferred to retain one-half of the replacement payments for five years.
- Modifies the business personal property tax reimbursements for school districts where uranium-related facilities have been located in order to preclude smaller reimbursements resulting from higher state school aid offsets.



- Makes tax credits authorized by the Ohio Venture Capital Authority for losses on loans made to the Ohio Venture Capital Program fully refundable credits.
- Increases the total amount of technology investment tax credits that may be approved from \$20 million to \$30 million.
- Authorizes the conveyance of certain state-owned real estate in Jefferson County that the Adjutant General has determined is no longer required for armory or military purposes to a buyer or buyers to be determined at a later date.
- Authorizes the conveyance of certain state-owned real estate in Franklin County that the Adjutant General has similarly so determined to The Ohio State University.
- Authorizes the conveyance of certain state-owned real estate in Ross County to the City of Chillicothe.

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CONTENT AND OPERATION

State appropriation limitation

(R.C. 107.032, 107.033, 107.034, 107.035, 131.55, 131.56, 131.57, 131.58, 131.59, and 131.60)

Introduction

The act requires the Governor to calculate a state appropriation limitation for each fiscal year of every biennium beginning with fiscal years 2008 and 2009 and obliges the General Assembly, when making aggregate General Revenue Fund (GRF) appropriations, to comply with the limitation. "Aggregate GRF appropriations" means all GRF appropriations made by the General Assembly except for (1) appropriations of money received from the federal government, (2) appropriations made for tax relief or refunds of taxes and other overpayments, and (3) appropriations of money received as gifts.

The limitation generally limits increases in such appropriations in succeeding fiscal years through special calculations that rely on appropriation and various other data from the preceding fiscal year.



Governor establishes limitations for each fiscal year

As part of the state budget the Governor must submit at the beginning of each new General Assembly, the act requires the Governor to include the state appropriations limitations the General Assembly cannot exceed when making aggregate GRF appropriations for each respective fiscal year of the biennium covered by that budget. The aggregate GRF appropriations the Governor proposes in the submitted budget also cannot exceed those limitations.

Calculating the limitations

The Governor establishes the limitations using one of three methods. The fiscal year for which a limitation is to be calculated determines the method of calculation. There are three calculation methods: initial fiscal year, recast fiscal year, and non-recast fiscal year. Under the act, the initial fiscal year is 2008 (July 1, 2007 to June 30, 2008). A "recast fiscal year" means fiscal years 2012, 2016, 2020, and each fourth year thereafter. A non-recast fiscal year is every other year not already described. Stretched out as a time line, the calculation sequence appears as follows: 2008 (initial fiscal year), 2009, 2010, 2011 (non-recast fiscal years), 2012 (recast fiscal year), 2013, 2014, 2015 (non-recast fiscal years), 2016 (recast fiscal year), and so on.

Initial fiscal year. This method of calculation is used only once and provides the starting point for the following recast and non-recast fiscal year state appropriation limitations. So, for fiscal year 2008, the state appropriation limitation is the sum of (1) the *aggregate GRF appropriations* for fiscal year 2007, plus (2) the *aggregate GRF appropriations* for fiscal year 2007 multiplied by either 3.5 %, or the sum of the rate of inflation plus the rate of population change, whichever is greater. ¹

Non-recast fiscal year. For each fiscal year that is not the initial fiscal year or a recast fiscal year, the state appropriation limitation is the sum of (1) the *state*

¹ "Rate of inflation" as used in the act means the percentage increase or decrease in the Consumer Price Index over a one-year period, based on the most recent Consumer Price Index for all urban consumers, Midwest region, all items, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor or, if that index is no longer published, a generally available comparable index.

"Rate of population change" is defined by the act to mean the percentage increase or decrease in the population of Ohio over a one-year period, based on the most recent population data available for Ohio published by the Bureau of the Census of the U.S. Department of Commerce, or its successor in responsibility, in the population estimates program, or its successive equivalent.

appropriation limitation for the previous fiscal year, plus (2) the *state appropriation limitation* for the previous fiscal year multiplied by either 3.5 %, or the sum of the rate of inflation plus the rate of population change, whichever is greater.

Recast fiscal year. For each recast fiscal year, the state appropriation limitation is the sum of (1) the *aggregate GRF appropriations* for the previous fiscal year, plus (2) the *aggregate GRF appropriations* for the previous fiscal year multiplied by either 3.5%, or the sum of the rate of inflation plus the rate of population change, whichever is greater.

Data used for calculations

Estimates and updates. The act provides that the Governor, in determining the state appropriations limitation for fiscal year 2008, must use estimates regarding the aggregate GRF appropriations for fiscal 2007. For the first fiscal year of any biennium, the Governor must use the most recent published data available regarding the rates of inflation and population change. For the second fiscal year of any biennium, the Governor must use estimated rates of inflation and population change.

When determining the state appropriation limitations for each fiscal biennium after the 2008-2009 biennium that begins with a non-recast fiscal year, the Governor must do the following:

- Update the rates of inflation and population change used in the determination of the state appropriation limitation for the second fiscal year of the previous biennium to reflect the most recent published data;
- Recalculate the second fiscal year's limitation based on the update; and
- Use the recalculated limitation for determining the state appropriation limitations for the ensuing biennium to be included in the budget the Governor submits to the General Assembly.

When determining the state appropriation limitations for each fiscal biennium after the 2008-2009 biennium that begins with a recast fiscal year, the Governor must do the following:

- Update the rates of inflation and population in the same manner as described above for non-recast fiscal years;

- Update the aggregate GRF appropriations amount for the second fiscal year of the previous biennium;
- Recalculate the second fiscal year's limitation based on the updates; and
- Use the recalculated limitation for determining the state appropriation limitations for the ensuing biennium to be included in the budget the Governor submits to the General Assembly.

The act permits the Governor to designate the Director of Budget and Management to perform the Governor's duties as described above regarding the estimates and updates.

Restriction on moving items off budget. Under the act, any appropriation that, for fiscal year 2007, was an aggregate GRF appropriation, must be considered an aggregate GRF appropriation for each succeeding fiscal year with respect to the state appropriation limitation determination, even if it is made from a different fund. Any new GRF appropriation made in a fiscal year after fiscal year 2007 must also be considered an aggregate GRF appropriation for each succeeding fiscal year after it is first made with respect to the state appropriation limitation determination, even if it is made from a different fund.

General Assembly may exceed the limitation

The act provides that the General Assembly may exceed the state appropriation limitation for a fiscal year if either of the following apply:

(1) The excess appropriations are made in response to the Governor's proclamation of an emergency concerning such things as an act of God, a pandemic disease, an infestation of destructive organisms, repelling invasion, suppressing insurrection, defending the state in time of war, or responding to terrorist attacks, and can be used only for that emergency; or

(2) The General Assembly passes a bill by an affirmative vote of two-thirds of the members of each house that specifically identifies the purpose of each excess appropriation and states whether the appropriations are to be included as aggregate GRF appropriations with respect to future determinations of the state appropriation limitation.

The act also provides that the appropriations described in (1) above are not to be included as aggregate GRF appropriations for purposes of determining the state appropriation limitation. That same exclusion applies for appropriations described in (2) above that specifically state they are not to be included as

aggregate GRF appropriations for purposes of determining the state appropriation limitation.

Debt service payments and encumbrances unaffected

The act provides that nothing in the provisions establishing the state appropriation limitation can be construed to affect in any way the state's obligation to make debt service payments.

The act also provides that the provisions establishing the state appropriation limitation do not apply to reappropriations of the unexpended balances of appropriations that a state agency has encumbered prior to the close of a fiscal year.

Zero-based budgeting

(R.C. 126.02)

Under continuing law, the Director of Budget and Management is required to prepare and submit to the Governor, biennially before the convening of the General Assembly, state budget estimates of revenues and expenditures for each state fund and budget estimates for each state agency. In preparation of the revenue and expenditure estimates, the Director must distribute forms to each state agency so they may prepare their budget requests. The act requires the Director to determine a method to incorporate the principles of zero-based budgeting into those forms.

Tobacco Use Prevention and Control Foundation (TUPAC) changes

Background

Ohio law establishes the Tobacco Use Prevention and Control Foundation (TUPAC). The purpose of the Foundation is to reduce tobacco use by Ohioans, with emphasis on reductions by youth, minority and regional populations, pregnant women, and others who may be disproportionately affected by tobacco use. The reduction in use is to be accomplished through a plan created by the Foundation that provides, among other things, for grants for research and programs related to tobacco use prevention and cessation. Grants are funded primarily using money distributed to the state pursuant to the Tobacco Master Settlement Agreement entered into between the state and leading United States tobacco product manufacturers on November 23, 1998.

The general management of the Foundation is vested in what was a 24-member board of trustees under prior law (20 voting members and four nonvoting members). The Attorney General was an ex officio member and one of the 20



voting members. Also under prior law, a majority of the members of the board constituted a quorum, and no action could be taken without the affirmative vote of a majority of the members.

Removal of Attorney General from Board of Trustees

(R.C. 183.04)

The act removes the Attorney General from the TUPAC Board.

Change of Board of Trustees quorum requirement

(R.C. 183.05)

The act changes the quorum requirement for the TUPAC Board of Trustees to a majority of voting members, instead of a majority of the members. This change coupled with the removal of the Attorney General from the board results in the quorum number requirement changing from 13 to 10.

Change of vote requirement for Board of Trustees action

(R.C. 183.05)

The act provides that the TUPAC Board of Trustees cannot take action without an affirmative vote of a majority of the voting members of the board, instead of an affirmative vote of a majority of the members.

Administrative expense limitations regarding certain Tobacco Master Settlement Agreement foundations and funds

(R.C. 183.30)

Under continuing law, the money received by the state through the Tobacco Master Settlement Agreement is divided up and distributed to various funds and foundations that include, for example, the Tobacco Use Prevention and Control Foundation, the Southern Ohio Agricultural and Community Development (SOACD) Foundation, and the Biomedical Research and Technology Transfer Trust Fund (BRTTTF). With respect to the TUPAC and SOACD Foundations, prior law provided that no more than 5% of each foundation's total expenditures in a fiscal year could be for its administrative expenses. Additionally, prior law provided that no more than 5% of the total expenditures of the BRTTTF by the

Third Frontier Commission in a fiscal year could be used for the Commission's administrative expenses.²

The act alters the 5% limitation by substituting "total disbursements, encumbrances, and obligations" for "total expenditures." The act also specifies that the 5% limitation in a fiscal year applies to the administrative expenses in the same fiscal year. Finally, the act provides that the 5% limitation for the BRTTTF applies to expenses relating to the administration of that fund by the Third Frontier Commission, instead of applying to any Commission administrative expenses.

Physician Loan Repayment Program

Background

(R.C. 3702.71 through 3702.81)

Under the Physician Loan Repayment Program, primary care physicians³ agree to provide primary care services⁴ 40 hours per week in a "health resource shortage area."⁵ They also agree to treat a percentage of Medicaid and Medicare

² *The Third Frontier Commission administers the BRTTTF pursuant to continuing law governing the Commission. (R.C. 183.18 and Chapter 184.)*

³ *A "primary care physician" is an individual authorized under continuing Ohio law to practice medicine and surgery or osteopathic medicine and surgery who is board-certified or board-eligible in a primary care specialty. (R.C. 3702.71(A).) The terms "board-certified" and "board-eligible" are not defined in the Revised Code. However, according to the American Board of Medical Specialties (ABMS), a physician who is board-certified has completed an approved educational training program and an evaluation process including an examination designed to assess the knowledge, skills, and experience necessary to provide quality patient care in that specialty. A physician who is board-eligible is in the process of becoming board-certified, although the ABMS discourages the use of this description. ABMS, FAQs (visited Mar. 2, 2004) <<http://www.abms.org/faq.asp#WBE>>.*

⁴ *"Primary care services" means professional comprehensive personal health services, which may include health education and disease prevention, treatment of uncomplicated health problems, diagnosis of chronic health problems, and overall management of health care services for an individual or a family, and the services of a psychiatrist. "Primary health care services" also includes providing the initial contact for health care services and making referrals for secondary and tertiary care and for continuity of health care services. (R.C. 3702.71(B).)*

⁵ *The Director of Health has designated the following areas as health resource shortage areas:*

patients equal to the percentage in their service areas. In return for their service, the physicians receive repayment of up to \$80,000 of medical school debt (\$20,000 annually over a four-year period).⁶

Program participants contract to provide an initial two years of service, then either enter into one follow-up contract for two years of service or two follow-up contracts for one year of service each.⁷ The Director of Health may approve a physician for the Program only if the General Assembly appropriates funds for the Program, the Director finds that the physician is eligible for participation, and the physician's primary care specialty⁸ is needed in a health resource shortage area.⁹

Eligibility to apply for Program

(R.C. 3702.72)

Under prior law, a primary care physician was eligible for participation in the Physician Loan Repayment Program if the physician had not received national health service corps tuition or student loan repayment assistance and met one of the following alternative requirements:

-
- *A geographical area, facility, or population group in Ohio that has been designated by the United States Secretary of Health and Human Services as a health manpower shortage area under Title III of the "Public Health Services Act." (Title III now classifies a "health manpower shortage area" as a "health professional shortage area.")*
 - *A geographical area, facility, or population group in Ohio that meets both of the following criteria: (1) has a population to primary care physician ratio exceeding two thousand to one, and (2) has previously been designated to be a health manpower shortage area by the United States Secretary of Health and Human Services, but the Director of Health has determined no longer meets the criteria to be a health manpower shortage area.*

(O.A.C. 3701-6-04.)

⁶ *Ohio Department of Health, Physician Loan Repayment--Ohio* (visited May 1, 2006) <<http://www.odh.ohio.gov/odhPrograms/chss/phyloan/ploan1.aspx>>.

⁷ *Id.*

⁸ *"Primary care specialty" means general internal medicine, pediatrics, obstetrics and gynecology, psychiatry, or family practice. (R.C. 3702.71(C).)*

⁹ *R.C. 3702.73.*

(1) Had enrolled in the final year of an accredited program required for Board certification in a primary care specialty.

(2) Was enrolled in the final year of a fellowship program in a primary care specialty.

(3) Had been engaged in the practice of medicine and surgery or osteopathic medicine and surgery in Ohio for not more than three years prior to submitting the application.

The act eliminates the restriction that an applicant for the Program cannot have received national health service corps tuition or student loan repayment assistance and replaces it with a restriction that the applicant cannot have an outstanding obligation for medical service to the federal government, a state, or other entity at the time of Program participation. The act also replaces the alternative requirement that the applicant has been practicing as a physician in Ohio for less than three years with a new alternative requirement that the applicant holds a valid certificate to practice medicine and surgery or osteopathic medicine and surgery from the State Medical Board. The act retains the other alternative requirements.

Reimbursement for travel, meals, and lodging; referral to association

(R.C. 3702.73)

Under prior law, the Director of Health, when recruiting an applicant for the Program, was permitted to pay costs incurred by the applicant and spouse for travel, meals, and lodging in making one visit to one health resource shortage area. Prior law also permitted the Director to refer the applicant to the Ohio Primary Care Association, Inc., for assistance in being recruited to a site within a health resource shortage area at which the applicant agrees to be placed.

The act eliminates the Director's authority to do these things.

Advisory board

(R.C. 3702.81; R.C. 3702.79 and 3702.80 (not in the act))

Law unchanged by the act provides for a Physician Loan Repayment Advisory Board that, with the Ohio Board of Regents, must provide consultative services to the Director of Health when the Director adopts rules governing the Program. The Advisory Board must also submit an annual report to the Governor and General Assembly describing the operations of the Program during the previous calendar year.

The Board consists of 11 members including a representative of the Ohio Primary Care Association, Inc. appointed by the Governor.

Prior law specified that Board members could be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties.

The act replaces the requirement that the Board include a representative of the Ohio Primary Care Association, Inc., with a requirement that one of the members be a representative of the Ohio Association of Community Health Centers appointed by the Governor. The act also eliminates the provision under which Board members could be reimbursed for expenses.

Dentist Loan Repayment Program

(R.C. 3702.89 and 3702.92)

The Dentist Loan Repayment Program provides loan repayment on behalf of individuals who agree to provide dental services in areas designated as dental health resource shortage areas by the Director of Health. The Department of Health is required to administer the program in cooperation with the Board of Regents and the Dentist Loan Repayment Advisory Board.

The act changes the requirements for participating in the Program by specifying the following:

- (1) That the individual is not receiving certain assistance in student loan repayment, instead of has never received such assistance;
- (2) That, if practicing dentistry, has been in practice for less than three years, instead of less than three years in this state.

The Dentist Loan Repayment Advisory Board consists of seven members: a member of the House of Representatives, a member of the Senate, a representative of the Ohio Board of Regents, the Director of Health or an employee of the Department of Health, and three representatives of the dental profession.

The act reduces from six to four the number of members of the Board that constitute a quorum and that are required to compel the chairperson to call a special meeting of the Board.

Criminal records checks of ombudspersons

(R.C. 173.27)

The Department of Aging operates the Office of the State Long-Term Care Ombudsperson Program, which consists of the State Long-Term Care Ombudsperson, the Ombudsperson's staff, and regional long-term care ombudsperson programs. Am. Sub. H.B. 530 of the 126th General Assembly requires that the Ombudsperson or a designee request that the Superintendent of the Bureau of Criminal Identification and Investigation conduct a criminal records check with respect to each job applicant under final consideration for employment with the Office, including a regional program, in a position that involves providing ombudsperson services to residents of long-term care facilities or recipients of community-based long-term care services. The Director of Aging is to request the criminal records check of an applicant under final consideration for employment as the Ombudsperson.

H.B. 530 defined "applicant" as including a person who is under final consideration for employment as the State Long-Term Care Ombudsperson or the head of a regional long-term care ombudsperson program. The act provides that the term "applicant" includes, but is not limited to, such persons.

The act removes the Director of Health and Director's representative from the individuals who may receive a copy of a criminal records check conducted of a job applicant for the long-term care ombudsperson program. Instead, the Director of Aging and the Director's representative may receive a copy of such a criminal records check.

Changes in School Facilities Commission programs

Background

The Ohio School Facilities Commission administers several programs that provide state funds to school districts to construct or renovate 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 its priority for funding are based on the district's relative property wealth. All districts are ranked from lowest to highest wealth per pupil and placed in percentiles. Generally, lower percentile districts are served first and receive a greater amount of state assistance than higher percentile districts when it is their turn to be served.

School district maintenance tax alternative

(R.C. 3318.05, 3318.051, 3318.06, 3318.063, 3318.08, 3318.18, and 3318.36)

Continuing law. In addition to paying its share of the cost of constructing classroom facilities in a state-assisted construction project, a school district also must generate and set aside a specified amount for maintenance of those facilities. Generally, each city, exempted village, and local school district that participates in a state facilities program must levy at least 1/2 mill for 23 years for maintenance. As an alternative, a district may either earmark other existing taxes or make a one-time deposit of a designated "local donated contribution" to meet its maintenance obligation.¹⁰

The new alternative. The act authorizes a new alternative mechanism for a city, exempted village, or local school district to meet its maintenance obligation. Under the act, a district commencing its project on or after the act's effective date may deposit into its maintenance fund, annually for 23 years, an amount from other district resources equal to 1/2 mill of the district's tax valuation, instead of levying the maintenance tax. To avail itself of this alternative, a district board must pass a resolution petitioning the Ohio School Facilities Commission to approve the arrangement. The Commission's decision to approve or not approve the petition is final and not subject to appeal. The act specifies that the Commission is not responsible for errors or miscalculations in deciding whether to approve a petition.

The district treasurer annually must certify to the Commission and the Auditor of State that the amount required for the year has been transferred into the maintenance fund. The Auditor of State must include verification of the transfer as part of any audit of the district. If the Auditor of State finds that less than the required amount has been deposited, the Auditor must notify the district board in writing and require the board to deposit the necessary money within 90 days after the notice. If the district board fails to demonstrate to the Auditor's satisfaction that it has made the required deposit, the Auditor must notify the Department of Education. Upon that notice, the Department must withhold 10% of the district's state operating funds for the current fiscal year, until the Auditor notifies the

¹⁰ R.C. 3318.05 and 3318.084, latter section not in the act. Certain very low-wealth school districts are not required to levy the 1/2 mill maintenance tax (R.C. 3318.055, not in the act). Joint vocational school districts that participate in a state facilities program, annually for 23 years, must deposit into a maintenance account an amount equal to 1.5% of the current insurance value of the acquired facilities (R.C. 3318.43, not in the act).

Department that the Auditor is satisfied that the board has made the required transfer.

If a district board determines that it can no longer continue making the annual transfers, the act allows a district board to rescind its decision, but only if the district's voters approve the levy of a maintenance tax. The levy must be in effect for the remainder of the 23-year maintenance period (23 years minus the number of years that the district made transfers) and must be for not less than 1/2 mill for each dollar of district valuation. The act prescribes the ballot language to be used.

A district electing to make the transfers authorized by the act is not relieved from its obligation to make annual deposits into its general "capital and maintenance fund," which applies to all districts under continuing law.¹¹

No maintenance equalization payments (R.C. 3318.18). The act provides that districts electing to make the transfers, instead of levying the maintenance tax, may not receive the new state maintenance equalization payments. (Beginning in fiscal year 2007, the School Facilities Commission is required to pay an equalized subsidy to city, exempted village, and local school districts that participate in state-assisted facilities programs and have tax valuations per pupil below the statewide average. The subsidy equalizes to the statewide average the per pupil amount each eligible district raises from its 1/2-mill maintenance levy.)

Transfer to a Big-Eight district's special construction fund

(R.C. 3318.121)

Both the state's contribution and a school district's contribution toward the cost of a state-assisted facilities project must be deposited into a "project construction fund." The act permits a Big-Eight school district to transfer from the district's project construction fund to a "special construction fund" an amount of the investment earnings attributable to the district's contribution, as long as certain conditions are satisfied. Money in this special construction fund (including investment earnings of that fund) may be used to acquire classroom facilities in later segments of the district's project or to acquire classroom facilities that were included in the district's master facilities plan prior to a reduction in scope of the project. After a district's entire project has been completed, any investment earnings remaining in the special construction fund must be transferred to the

¹¹ Under R.C. 3315.18, not in the act, each school district must deposit into a capital and maintenance fund an amount equal to 3% (or another percentage if established by the Auditor of State) of the base-cost formula amount for the preceding fiscal year, multiplied by the district's student population.

district's maintenance fund to be used solely for maintaining the facilities included in the project.

The transfers may be made only if the school district and the School Facilities Commission, or its designated representative, determine that, due to reductions in project scope, the sum of (1) the unspent amount of the district's contribution to the project construction fund, including any investment earnings on that contribution that are not to be transferred, and (2) the principal amount of any additional securities authorized by the district's voters that have not yet been issued, is projected at the time of the transfer to be not less than 110% of the district's entire remaining portion of the project cost.

These provisions apply to any Big-Eight district that satisfies the conditions, whether it is participating in the Accelerated Urban Program (Akron, Dayton, Cincinnati, Cleveland, Columbus, and Toledo) or the regular Classroom Facilities Assistance Program (Canton and Youngstown).

Expedited Local Partnership Program reimbursements

(R.C. 3318.36(E)(2))

The Expedited Local Partnership Program provides a way for districts to start their approved school building projects using local funds while they wait for their turn for state funding under the main CFAP program. Once a district is eligible for CFAP, it may apply this advance expenditure of local resources toward its portion of the cost of its total CFAP project. If a district has spent more than its share of its CFAP project while proceeding under the Expedited Program, the School Facilities Commission must reimburse the district the amount of the over-expenditure. The district must use the reimbursement to pay debt service on classroom facilities constructed under the Expedited Program before any other purpose.

The act makes an exception to this restriction on use of the reimbursement. Under the act, a district first may deposit reimbursed money into either the district's general fund or a permanent improvement fund to replace local resources the district withdrew from those funds for constructing classroom facilities included in the district's CFAP project. The remainder of the reimbursement is subject to the restriction that prioritizes paying debt service.

Unvoted debt for state-assisted school facilities projects

(R.C. 3318.052)

Generally, a school district's unvoted net indebtedness (that is, debt that may be incurred without approval of the district's voters) is limited to not more

than 1/10 of 1% of the district's tax valuation.¹² Nevertheless, a district may incur (1) unvoted debt of up to an additional 9/10 of 1% of its tax valuation to install energy conservation measures¹³ and (2) an unlimited amount of unvoted debt for the district's share of its state-assisted classroom facilities project.¹⁴

Under the latter exception, a school district may use an existing property tax or school district income tax that properly can be used for school construction to leverage securities to pay all or part of the district's share of a state-assisted construction project. This is an alternative to the usual method of financing a district's share by requesting a voter-approved bond issue and tax levy. Prior law appeared to inadvertently subject this alternative to the 1% limit (due to the intersection of three sections of law that made differing references to a district's authority to issue unvoted debt). However, recent amendments specified that unvoted debt issued to pay a school district's portion of its school facilities project does not count toward the 1% limit on unvoted debt otherwise imposed by law.¹⁵

The act changes the wording of some of the recently enacted language to further clarify that unvoted debt issued to pay a school district's portion of a state classroom facilities project also does not count toward the district's overall debt limit (9% of valuation) and the limit on ballot questions to issue debt without the consent of the Tax Commissioner and the Superintendent of Public Instruction (4% of valuation).¹⁶ This clarification does not appear to substantively change the law.

Additional authority for the Office of Information Technology

(R.C. 125.021)

Background information: Office of Information Technology

Continuing law establishes the Office of Information Technology and houses it within the Department of Administrative Services (DAS). The Office is under the supervision of a Chief Information Officer appointed by the Governor.

¹² R.C. 133.06(A), not in the act.

¹³ R.C. 3313.372, not in the act.

¹⁴ R.C. 3318.052.

¹⁵ R.C. 133.06(G), 3313.372(C), and 3318.052(E) as amended by Am. Sub. H.B. 530 of the 126th General Assembly, effective March 30, 2006.

¹⁶ R.C. 133.06(B) and (C).

The Chief Information Officer serves as the Office's director, must advise the Governor regarding the superintendence and implementation of statewide information technology policy, and must lead, oversee, and direct state agency activities related to information technology development and use. In the latter regard, the Chief Information Officer must (1) coordinate and superintend statewide efforts to promote common use and development of technology by state agencies, (2) establish policies and standards for the acquisition and use of information technology by state agencies (e.g., hardware, software, technology services, and security) with which state agencies must comply, and (3) establish criteria and review processes to identify state agency information technology projects that require alignment or oversight. (R.C. 125.18(A), (B), and (C)--not in the act.)

The Office has the same authority as DAS under specified sections of the State Purchasing Law for the purchase of information technology supplies and services for state agencies. The statute amended by the act, R.C. 125.021, is not included among the listed sections. (R.C. 125.18(D)--not in the act.)

The Office also may make contracts for, operate, and superintend technology supplies and services for state agencies in accordance with the State Purchasing Law and may establish cooperative agreements with federal and local government agencies and state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects (R.C. 125.18(E) and (F)--not in the act).

For purposes of the Office's provisions, a "state agency" means every organized body, office, or agency established by Ohio law for the exercise of any function of state government, *other than* any state-supported institution of higher education, the office of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, the State Highway Patrol Retirement System, the General Assembly or any legislative agency, or the courts or any judicial agency (R.C. 125.18(G)--not in the act).

DAS telecommunications and computer services contracts

Former law. Under former law, DAS *generally* was permitted to contract for, operate, and superintend *telephone, other telecommunication, and computer services for state agencies*, the exceptions being the military department, the General Assembly, the Bureau of Workers' Compensation, the Industrial Commission, and institutions administered by boards of trustees. The Bureau and the Commission, however, could contract with DAS to authorize it to contract for,

operate, or superintend those services for the Bureau or the Commission. (R.C. 125.021(A).)

Also, under former law, DAS could enter into a contract to purchase *bulk long distance telephone services* and make them available at cost, or could make bulk long distance telephone services available at cost under any existing contract DAS had entered into, to members of the immediate family of persons deployed on military active duty so that those family members could communicate with the persons so deployed. Following the adoption of rules under the Administrative Procedure Act, DAS could exercise either of these contracting options. The contracts could be entered only in accordance with the State Purchasing Law and only in a nondiscriminatory manner that did not place any potential vendor at a competitive disadvantage. (R.C. 125.021(B).)

Changes made by the act. As noted above, under the Office of Information Technology Law, the Office has the same authority as DAS under *specified sections* of the State Purchasing Law for the purchase of information technology supplies and services for state agencies. That listing of State Purchasing Law sections does not include R.C. 125.021 and its above-described DAS contracting authority.

The act amends R.C. 125.021 to remove DAS' authority to perform the described contracting functions and to substitute the Office as the state entity authorized to perform those contracting functions (R.C. 125.021(A) and (B)).

Business personal property tax replacement payments

The act makes two changes to the computation of school district reimbursements to replace business personal property tax revenue as a result of the previously enacted phase-out and elimination of those taxes. One change addresses the payments made when territory is transferred from one school district to another, and the other change addresses the computation for a school district where uranium enrichment-related property is or was located.

Transferred territory

(R.C. 5751.21(H)(2))

Under continuing law, school districts and other taxing units receive state payments to reimburse them for the decline in property tax revenue caused by the phase-out and repeal of business personal property taxes. Generally, the payments are computed on the basis of the taxable value of the property in the year before the phase-out begins. There are special adjustments for cases where school districts are merged or where part of the territory of one school district is

transferred to another school district (including joint vocational school district mergers or transfers). The adjustment for transferred territory is designed to ensure that reimbursement payments from fixed-rate levies "follow" the value of property in the transferred territory, computed in relation to all property in the school district from which the territory is transferred.

The act changes this computation by allowing the district from which the territory is transferred to retain one-half of the payments arising from property in the transferred territory during the first five years after the transfer. Under prior law, the district receiving the territory received all the payments arising from the property located within the transferred territory. The payments are to be computed by using the fixed-rate tax rate of the district from which the territory is transferred. The act's change applies only if the tax rate in the receiving district is less than the tax rate in the other district. The new computation applies through fiscal year 2012.

The act also expressly provides for the tax value loss associated with property in transferred territory to follow the property to the receiving district in order to ensure that the computation of each district's reimbursement incorporates the state school funding effects of the tax value loss. (Under ongoing law, tax value losses can increase a district's state formula aid by a factor of \$23 per \$1,000 reduction in value; this indirect aid increase is subtracted from the district's direct reimbursement payment.)

Uranium enrichment-related property

(R.C. 5751.20(C)(5))

Under ongoing law, a special reimbursement provision applies to school districts and other taxing units where a uranium enrichment or commercialization facility was located and where personal property tax values declined by at least 50% in one year between 2001 and 2004. The provision permits such a district or taxing unit to substitute its 2000 tax values for its (presumably lower) 2004 tax values. This substitution is intended to result in a greater reimbursement than if the 2004 values are used.

The act modifies the provision for school districts by specifying that the 2000 tax value losses are to be substituted only for the purpose of computing the revenue losses and the direct reimbursement payments, and not for the purpose of the indirect reimbursement occurring under the state aid formula. This change precludes reductions in the indirect reimbursement that would be caused from using the higher 2000 tax values, and therefore precludes the possibility that the reduction in indirect reimbursement offsets the increased direct reimbursement



brought about by the substitution of the 2000 tax values to compute direct reimbursement.

Tax credits under the Ohio Venture Capital Program made fully refundable

(R.C. 150.07, 5707.031, 5725.19, 5725.98, 5727.241, 5729.08, 5729.98, 5733.01, 5733.49, 5733.98, 5747.80, and 5747.98)

Under the Ohio Venture Capital Program administered by the Ohio Venture Capital Authority, moneys in a "program fund" are invested in venture capital funds, which in turn invest in Ohio-based businesses that are in seed or early stages of development or in established Ohio-based businesses that are developing new methods or technologies. The program fund is funded through investments from private investors. Some of the profits from the program are put into the Ohio Venture Capital Fund (OVCF), which is used to secure the private investors against losses. To the extent the moneys in the OVCF are not adequate to secure an investor against losses, the investor is eligible for a tax credit granted by the Authority. The credit is available against any of the following taxes: personal income tax, corporation franchise tax, insurance company franchise taxes, dealers in intangibles tax, and public utility excise tax.

Under prior law, taxpayers could elect to receive a refundable or a nonrefundable credit from the Authority. Refundable credits approved by the Authority were only 75% refundable. So, if a taxpayer elected a refundable credit and that taxpayer's tax liability for any given reporting period was less than the amount of the credit, the taxpayer received a refund equal to 75% of the amount by which the credit exceeded the tax liability.

The act makes all tax credits approved by the Authority refundable and removes a taxpayer's option of electing a nonrefundable credit. The act also makes the credit fully refundable, which means that taxpayers are no longer limited to 75% of the amount by which their refundable credits exceed their tax liabilities.

Technology investment tax credits

(R.C. 122.151)

Under continuing law, investors who make investments in certain qualified technology-based businesses may apply to an Edison Center¹⁷ for a tax credit that

¹⁷ *An Edison Center is an entity that receives funding through the Thomas Alva Edison Grant Program, which provides grants to nonprofit organizations, colleges, and universities to fund technology-based research and development.*

is equal to 25% of the amount of the investment (or 30% if the investment is made in a business certified as being economically and socially disadvantaged or a business located in a distressed area of the state). An Edison Center makes recommendations on the tax credits to a committee of the Industrial Technology and Enterprise Advisory Council, which makes a final determination as to whether a tax credit should be approved. Prior law prohibited the issuance of more than \$20 million in technology investment tax credits. The act increases this maximum amount to \$30 million.

Conveyance of state-owned real estate

Conveyance in Jefferson County

(Section 483.03)

Authorization. The act authorizes the Governor to convey certain real estate in Jefferson County that the Adjutant General has determined is no longer required for armory or military purposes to a buyer or buyers to be determined in accordance with the procedure discussed below. The conveyance is pursuant to continuing law authorizing the Governor and the Adjutant General, when authorized by an act of the General Assembly, to sell vacant armories. (Division (A).)

Assistance and appraisal. The act requires the Director of Administrative Services to assist in the sale of the parcel of real estate at the request of the Adjutant General. And, the Adjutant General must appraise the parcel or have it appraised by one or more disinterested persons for a fee to be determined by the Adjutant General. (Divisions (B) and (C).)

Procedure for sale. The Adjutant General is required to offer the parcel for sale as follows (division (C)):

(1) The Adjutant General first must offer the parcel for sale at its appraised value to the township in which the property is located (Township of Steubenville).

(2) If, after 60 days, the township has not accepted the offer to purchase the parcel at the appraised value or if the township has accepted the offer but has failed to complete the purchase, the Adjutant General must offer the parcel at the appraised value to the county in which the parcel is located (Jefferson County).

(3) If, after 60 days, the county has not accepted the offer to purchase the parcel at the appraised value or if the county has accepted the offer but has failed to complete the purchase, a public auction must be held, and the parcel must be sold to the highest bidder at a price acceptable to the Adjutant General. The Adjutant General may reject any and all bids for any reason whatsoever.



The Adjutant General must advertise each public auction in a newspaper of general circulation within the county once a week for two consecutive weeks before the auction. The terms of sale must be payment of 10% of the purchase price, as bid by the highest bidder, in cash, bank draft, or certified check on the date of sale, with the balance payable within 60 days after that date. If the purchaser does not timely complete these conditions of sale, the purchaser will forfeit the 10% of the purchase price to the state as liquidated damages. And, if the purchase is not completed and the sale is voided, the Adjutant General may sell the parcel to the second highest bidder at the public auction. (Division (C).)

Costs payment. Advertising costs, appraisal fees, and other costs of the sale of the parcel of real estate must be paid by the Adjutant General's Department (division (D)).

Deed preparation and sale proceeds deposit. The act specifies the procedure for preparation of a deed to the parcel upon the payment of the 10% of the purchase price by the purchaser at a public auction or upon notification from the Adjutant General's Department that the parcel has been sold to a township or county in accordance with the act's priority sale provisions (divisions (A) and (E)). The act requires the purchaser to pay the balance of the purchase price before the deed is delivered to the purchaser, who must record it in the Jefferson County Recorder's office (division (E)).

The net proceeds of the sale must be deposited in the state treasury to the credit of the Armory Improvements Fund (division (F)).

Political subdivision subsequent sale caveat. The act specifies that, if the parcel of real estate is sold to a township or county, and if that political subdivision sells the parcel within two years after its purchase, the political subdivision must pay to the state, to the credit of the Armory Improvements Fund, an amount representing one-half of any net profit derived. The net profit must be computed by subtracting the price at which the political subdivision bought the parcel from the price at which the political subdivision sold the parcel, then subtracting from that remainder the amount of any expenditures the political subdivision made for improvements to the parcel (division (G)).

Expiration. This conveyance authority expires five years after the provisions' effective date (division (H)).

Conveyance in Franklin County

(Section 483.04)

Authorization and consideration. The act authorizes the Governor, again pursuant to continuing law governing the sale of vacant armories, to execute a deed in the name of the state conveying to The Ohio State University and its successors and assigns all of the state's right, title, and interest in specified state-owned real estate in Franklin County that the Adjutant General has determined is no longer required for armory or military purposes (division (A)). The consideration for the conveyance is a purchase price acceptable to the Adjutant General, based on the real estate's fair market value (division (B)).

Deed preparation, sale proceeds deposit, and costs payment. The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon payment of the purchase price. The net proceeds of the sale must be deposited in the state treasury to the credit of the Armory Improvements Fund. The Ohio State University must pay the costs of the conveyance. (Divisions (C), (D), and (E).)

Expiration. This conveyance authority expires two years after the provisions' effective date (division (F)).

Conveyance in Ross County

(Section 483.05)

Negated authorization and new authorization. The act states that the sale provisions specified in Section 2 of Am. Sub. S.B. 234 of the 125th General Assembly do not apply to Parcel No. 10, Chillicothe Armory.¹⁸ Instead, the act authorizes the Governor, again pursuant to continuing law governing the sale of vacant armories, to execute a deed in the name of the state conveying to the City of Chillicothe and its successors and assigns all of the state's right, title, and interest in that specified state-owned real estate in Ross County. (Division (A).)

Consideration. The consideration for the conveyance is the complete and usable sewer system connecting the National Guard Readiness Center at Camp Sherman, including any tap in-fees or other fees to access the sewer line, and the purchase price of one dollar (division (B)).

¹⁸ See LSC's Final Analysis of that act for a summary on its pages 4 and 5 of the sale provisions no longer applicable to the parcel in question.

Deed preparation and costs payment. The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon payment of the purchase price. The City of Chillicothe must pay the costs of the conveyance. (Divisions (C) and (D).)

Expiration. This conveyance authority expires one year after the provisions' effective date (division (E)).

NOTE ON EFFECTIVE DATES

(Sections 509.03 and 512.03)

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a codified or uncodified section in the act is not subject to the referendum and takes effect immediately. The act also includes exceptions to the default provision which provide that specified codified provisions are subject to the referendum and go into effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

HISTORY

ACTION	DATE
Introduced	05-02-06
Reported, S. Finance & Financial Institutions	05-10-06
Passed Senate (31-0)	05-10-06
Reported, H. Finance & Appropriations	05-23-06
Passed House (65-30)	05-23-06
Senate concurred in House amendments (21-12)	05-23-06

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