

# AN ACT

To amend section 3318.31 of the Revised Code and to amend Section 41.21 of Am. Sub. H.B. 95 of the 125th General Assembly and to amend Section 41.13 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended, to enact as a separate act the provision of law exempting employees of the Ohio School Facilities Commission from the collective bargaining law, to make adjustments to the Department of Education's fiscal year 2005 budget, and to make an appropriation.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 3318.31 of the Revised Code be amended to read as follows:

Sec. 3318.31. (A) The Ohio school facilities commission may perform any act and ensure the performance of any function necessary or appropriate to carry out the purposes of, and exercise the powers granted under, Chapter 3318. of the Revised Code, including any of the following:

(1) Adopt, amend, and rescind, pursuant to section 111.15 of the Revised Code, rules for the administration of programs authorized under Chapter 3318. of the Revised Code.

(2) Contract with, retain the services of, or designate, and fix the compensation of, such agents, accountants, consultants, advisers, and other independent contractors as may be necessary or desirable to carry out the programs authorized under Chapter 3318. of the Revised Code, or authorize the executive director to perform such powers and duties.

(3) Receive and accept any gifts, grants, donations, and pledges, and receipts therefrom, to be used for the programs authorized under Chapter 3318. of the Revised Code.

(4) Make and enter into all contracts, commitments, and agreements, and execute all instruments, necessary or incidental to the performance of its duties and the execution of its rights and powers under Chapter 3318. of the Revised Code, or authorize the executive director to perform such powers

and duties.

(B) The commission shall appoint and fix the compensation of an executive director who shall serve at the pleasure of the commission. The executive director shall supervise the operations of the commission and perform such other duties as delegated by the commission. The executive director also shall employ and fix the compensation of such employees as will facilitate the activities and purposes of the commission, who shall serve at the pleasure of the executive director. ~~The employees of the commission shall be exempt from Chapter 4117. of the Revised Code and shall not be public employees as defined in section 4117.01 of the Revised Code. The~~ employees of the commission shall be exempt from Chapter 4117. of the Revised Code and shall not be public employees as defined in section 4117.01 of the Revised Code.

(C) The attorney general shall serve as the legal representative for the commission and may appoint other counsel as necessary for that purpose in accordance with section 109.07 of the Revised Code.

SECTION 2. That existing section 3318.31 of the Revised Code is hereby repealed.

SECTION 3. The amendment to section 3318.31 of the Revised Code as made in Am. Sub. H.B. 405 of the 124th General Assembly was held to violate the one-subject rule of Ohio Constitution, Article II, Section 15(D), in *State, ex rel. Ohio Civil Service Employees Assoc., AFSCME, Local 11, AFL-CIO v. SERB* (2004), 104 Ohio St.3d 122, 818 N.E.2d 688. The purpose of the amendment of section 3318.31 of the Revised Code by this act is to re-enact this amendment in a measure that does not violate the one-subject rule of the Ohio Constitution.

SECTION 4. That Section 41.21 of Am. Sub. H.B. 95 of the 125th General Assembly be amended to read as follows:

**Sec. 41.21. LOTTERY PROFITS EDUCATION RESERVE FUND**

(A) There is hereby created the Lottery Profits Education Reserve Fund (Fund 018) in the State Treasury. At no time shall the amount to the credit of the fund exceed \$75,000,000. Investment earnings of the Lottery Profits Education Reserve Fund shall be credited to the fund. Notwithstanding any provisions of law to the contrary, for fiscal years 2004 and 2005, there is appropriated to the Department of Education, from the Lottery Profits

Education Reserve Fund, an amount necessary to make loans authorized by sections 3317.0210, 3317.0211, and 3317.62 of the Revised Code. All loan repayments from loans made in fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, or 1999 shall be deposited into the credit of the Lottery Profits Education Reserve Fund.

(B) Notwithstanding any other provisions of law to the contrary, in fiscal year 2005, up to \$30,000,000 shall be transferred from the Lottery Profits Education Reserve Fund (Fund 018) to the Lottery Profits Education Fund (Fund 017). The amounts transferred are hereby appropriated to appropriation item 200-612, Base Cost Funding.

~~(B)(C)~~(1) On or before July 15, 2003, the Director of Budget and Management shall determine the amount by which lottery profit transfers received by the Lottery Profits Education Fund for fiscal year 2003 exceed \$637,722,600. The amount so certified shall be distributed in fiscal year 2004 pursuant to division ~~(C)~~(D) of this section.

(2) On or before July 15, 2004, the Director of Budget and Management shall determine the amount by which lottery profit transfers received by the Lottery Profits Education Fund for fiscal year 2004 exceed \$637,900,000. The amount so determined shall be distributed in fiscal year 2005 pursuant to division ~~(D)~~(E) of this section.

The Director of Budget and Management shall annually certify the amounts determined pursuant to this section to the Speaker of the House of Representatives and the President of the Senate.

~~(C)~~(D) In fiscal year 2004, if there is a balance in the Lottery Profits Education Fund, the moneys shall be allocated as provided in this division. Any amounts so allocated are appropriated.

An amount equal to five per cent of the estimated lottery profits of \$637,722,600 in fiscal year 2003 or the amount remaining in the fund, whichever is the lesser amount, shall be transferred to the Lottery Profits Education Reserve Fund within the limitations specified in division (A) of this section and be reserved and shall not be available for allocation or distribution during fiscal year 2004. Any amounts exceeding \$75,000,000 shall be distributed pursuant to division ~~(E)~~(F) of this section.

~~(D)~~(E) In fiscal year 2005, if there is a balance in the Lottery Profits Education Fund, the moneys shall be allocated as provided in this division. Any amounts so allocated are appropriated.

An amount equal to five per cent of the estimated lottery profits transfers of \$637,900,000 in fiscal year 2004 or the amount remaining in the fund, whichever is the lesser amount, shall be transferred to the Lottery Profits Education Reserve Fund within the limitations specified in division

(A) of this section and be reserved and shall not be available for allocation or distribution during fiscal year 2005. Any amounts exceeding \$75,000,000 shall be distributed pursuant to division ~~(E)~~(F) of this section.

~~(E)~~(F) In the appropriate fiscal year, any remaining amounts after the operations required by division ~~(C)~~(D) or ~~(D)~~(E) of this section, respectively, shall be transferred to the Public School Building Fund (Fund 021) and such amount is appropriated to appropriation item CAP-622, Public School Buildings, in the School Facilities Commission.

SECTION 5. That existing Section 41.21 of Am. Sub. H.B. 95 of the 125th General Assembly is hereby repealed.

SECTION 6. That Section 41.13 of Am. Sub. H.B. 95 of the 125th General Assembly, as most recently amended by Sub. H.B. 434 of the 125th General Assembly, be amended to read as follows:

Sec. 41.13. SPECIAL EDUCATION ENHANCEMENTS

Of the foregoing appropriation item 200-540, Special Education Enhancements, up to \$44,204,000 in fiscal year 2004 and up to \$45,441,712 in fiscal year 2005 shall be used to fund special education and related services at county boards of mental retardation and developmental disabilities for eligible students under section 3317.20 of the Revised Code. Up to \$2,452,125 shall be used in each fiscal year to fund special education classroom and related services units at institutions.

Of the foregoing appropriation item 200-540, Special Education Enhancements, up to \$2,906,875 in each fiscal year shall be used for home instruction for children with disabilities; up to \$1,462,500 in each fiscal year shall be used for parent mentoring programs; and up to \$2,783,396 in each fiscal year may be used for school psychology interns.

Of the foregoing appropriation item 200-540, Special Education Enhancements, \$3,406,090 in each fiscal year shall be used by the Department of Education to assist school districts in funding aides pursuant to paragraph (A)(3)(c)(i)(b) of rule 3301-51-04 of the Administrative Code.

The remainder of the foregoing appropriation item 200-540, Special Education Enhancements, after all other set asides in this section, in each fiscal year ~~2004 and \$78,384,498 in fiscal year 2005~~ shall be distributed by the Department of Education to county boards of mental retardation and developmental disabilities, educational service centers, and school districts for preschool special education units and preschool supervisory units in accordance with section 3317.161 of the Revised Code. The Department

may reimburse county boards of mental retardation and developmental disabilities, educational service centers, and school districts for related services as defined in rule 3301-51-11 of the Administrative Code, for preschool occupational and physical therapy services provided by a physical therapy assistant and certified occupational therapy assistant, and for an instructional assistant. To the greatest extent possible, the Department of Education shall allocate these units to school districts and educational service centers. The Controlling Board may approve the transfer of unallocated funds from appropriation item 200-501, Base Cost Funding, to appropriation item 200-540, Special Education Enhancements, to fully fund existing units as necessary or to fully fund additional units. The Controlling Board may approve the transfer of unallocated funds from appropriation item 200-540, Special Education Enhancements, to appropriation item 200-501, Base Cost Funding, to fully fund the special education weight cost funding.

The Department of Education shall require school districts, educational service centers, and county MR/DD boards serving preschool children with disabilities to document child progress using research-based indicators prescribed by the Department and report results annually. The reporting dates and methodology shall be determined by the Department.

Of the foregoing appropriation item 200-540, Special Education Enhancements, \$315,000 in each fiscal year shall be expended to conduct a demonstration project involving language and literacy intervention teams supporting student acquisition of language and literacy skills. The demonstration project shall demonstrate improvement of language and literacy skills of at-risk learners under the instruction of certified speech pathologists and educators. Baseline data shall be collected and comparison data for fiscal year 2004 and fiscal year 2005 shall be collected and reported to the Governor, OhioReads Council, Department of Education, and the General Assembly.

Of the foregoing appropriation item 200-540, Special Education Enhancements, up to \$500,000 in each fiscal year shall be used for the Research-Based Reading Mentoring Program.

Of the foregoing appropriation item 200-540, Special Education Enhancements, \$600,000 in each fiscal year shall be used to support the Bellefaire Jewish Children's Bureau.

SECTION 7. That existing Section 41.13 of Am. Sub. H.B. 95 of the 125th General Assembly, as most recently amended by Sub. H.B. 434 of the 125th General Assembly, is hereby repealed.

SECTION 8. All items in this section are hereby appropriated as designated out of moneys in the state treasury to the credit of the General Revenue Fund. For all appropriations made in this act, those in the first column are for fiscal year 2004, and those in the second column are for fiscal year 2005. The appropriations made in this act are in addition to any other appropriations made for the 2003-2005 biennium.

Appropriations

#### EDU DEPARTMENT OF EDUCATION

##### General Revenue Fund

|                                |    |   |    |             |
|--------------------------------|----|---|----|-------------|
| GRF 200-501 Base Cost Funding  | \$ | 0 | \$ | 150,000,000 |
| TOTAL GRF General Revenue Fund | \$ | 0 | \$ | 150,000,000 |
| TOTAL ALL BUDGET FUND GROUPS   | \$ | 0 | \$ | 150,000,000 |

SECTION 9. Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this act shall be accounted for as though made in Am. Sub. H.B. 95 of the 125th General Assembly.

The appropriations made in this act are subject to all provisions of Am. Sub. H.B. 95 of the 125th General Assembly that are generally applicable to General Revenue Fund appropriations.

#### SECTION 10. TAXABLE VALUE ADJUSTMENTS

Notwithstanding division (B) of section 3317.026, division (B) of section 3317.027, and division (C) of section 3317.028 of the Revised Code, the Department of Education shall make the payments required under sections 3317.026, 3317.027, and 3317.028 of the Revised Code for fiscal year 2005 on or before July 31, 2005.

#### SECTION 11. (A) As used in this section:

(1) "Foundation aid" means payments made by the Department of Education to school districts at least monthly in accordance with Chapter 3317. of the Revised Code and transfers made by the Department on behalf of educational entities that are included as "Other Adjustments" on the Department's Form SF-3.

(2) "Nonfoundation aid" means all other subsidy payments to school

districts not described in division (A)(1) of this section.

(B) If, in fiscal year 2005, appropriations from the General Revenue Fund and the Lottery Profits Education Fund for foundation aid are projected to be insufficient to fully fund calculated foundation aid to school districts, the Superintendent of Public Instruction shall do all of the following:

(1) Review and identify any non-General Revenue Fund sources available for use to fund the variance between calculated foundation aid and current appropriations for foundation aid from the General Revenue Fund and the Lottery Profits Education Fund. If the Superintendent identifies such amounts, the Superintendent shall request Controlling Board approval for the transfer of cash from the non-General Revenue Fund sources to the General Revenue Fund.

(2) Review and identify any available General Revenue Fund administrative appropriations from which transfers may be made to fund the variance between calculated foundation aid and current appropriations for foundation aid from the General Revenue Fund and the Lottery Profits Education Fund. If the Superintendent identifies such amounts, the Superintendent shall request Controlling Board approval for the transfer of appropriations.

(3) Review and identify any nonfoundation aid appropriations from the General Revenue Fund that may be transferred to fund the variance between calculated foundation aid and current appropriations for foundation aid from the General Revenue Fund and the Lottery Profits Education Fund. If the Superintendent identifies such amounts, the Superintendent shall request Controlling Board approval for the transfer of appropriations.

SECTION 12. Sections 4 through 12 of this act are not subject to the referendum. Therefore, under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, those sections go into immediate effect when this act becomes law.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 56

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_