



Am. Sub. H.B. 640

123rd General Assembly

(As Passed by the General Assembly)

(excluding appropriations, fund transfers, and similar provisions)

Reps. Corbin, Coughlin, Barrett, Peterson, Metzger, Vesper, R. Miller, Boyd, Perry, Stapleton, Hoops, Healy, Goodman, DePiero, Evans, Jolivette

Sens. Carnes, White, Kearns, Ray, Spada, Drake, Johnson, Prentiss

Effective date: *

ACT SUMMARY

- Implements Section 2n of Article VIII of the Ohio Constitution by granting to the Ohio Public Facilities Commission authority to issue general obligations of the state for the purposes of paying costs of facilities for the state system of common schools and facilities for state-supported and state-assisted institutions of higher education.
- Transfers to the Ohio Public Facilities Commission from the Board of Commissioners of the Sinking Fund the authority to issue general obligations of the state for coal research and development projects and for state and local parks and other natural resources capital improvements.
- Transfers to the Treasurer of State from the Board of Commissioners of the Sinking Fund the authority to issue general obligations of the state for highway capital improvements.
- Transfers to the Treasurer of State from the Ohio Public Facilities Commission the authority to issue obligations of the state that are *not* general obligations to pay costs of capital facilities for mental health and retardation, state-supported and state-assisted institutions of higher education, and parks and recreation (but retains the Commission as the property and lease administrator for the facilities).

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Implements the new "5% limitation" on the amount of direct obligation debt the state can issue (Section 17 of Article VIII of the Ohio Constitution) by requiring the Governor or the Governor's designee to compute the amounts required to determine compliance with the limitation.
- Expands the Director of Budget and Management's authority over scheduling the issuing of state obligations and approving information used in offering documents, disclosure filings, and other materials related to such obligations.
- Requires the Office of Budget and Management to study the comparative financial impact on the state of negotiated versus competitively bid sales of obligations, and to report its findings by April 30, 2003.
- Creates within the Department of Commerce, a Division of and Superintendent of Labor and Worker Safety, on July 1, 2000.
- Changes procedures for contracts to maintain, control, or manage the state's public works and for determining and then repairing, removing, or preventing public exigencies related to the state's public works.
- Increases from \$10,000 to \$50,000 the aggregate cost of public works and other state-related construction projects or equipment installations that require architectural or engineering plans, estimates, and cost analyses.
- Increases the hourly rates paid to exempt employees, beginning on the first day of the pay period that includes July 1, 2000, July 1, 2001, and July 1, 2002, by approximately 3%, 3½%, and 4% respectively; eliminates the compensation tables that apply only to exempt employees of the Treasurer of State's office; adds a step 7 to pay ranges 12 through 18 in Salary Schedule E-1; and reduces the hourly rates for Step 1 of Salary Schedule E-1 beginning on the first day of the pay period that includes July 1, 2000.
- Requires step advances for exempt employees in Salary Schedule E-1 only if the employee satisfies performance criteria established by the employee's appointing authority.
- Provides that a probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the

removal or reduction to the State Personnel Board of Review or to a municipal civil service commission or civil service township civil service commission, as applicable.

- Requires that an employee paid by warrant of the Auditor of State who retires in accordance with any state retirement plan be paid for each hour of the employee's accumulated sick leave balance at a rate of 55% of the employee's last base rate of pay.
- Makes eligible for disability leave benefits an employee who (1) has completed one year of continuous state service immediately prior to the date of the disability, (2) is a part-time permanent employee who has worked at least 1,500 hours within the 12-month period immediately preceding the date of the disability, and (3) is eligible for sick leave credit under the law that grants sick leave to employees paid by warrant of the Auditor of State.
- Requires that each part-time permanent exempt employee, and certain other part-time permanent employees exempt from collective bargaining coverage, receive a pro-rated personal leave credit as established by rule of the Director of Administrative Services.
- Provides that (1) an employee receiving occupational injury leave accumulates sick leave and personal leave, (2) when such an employee's disability extends beyond 120 work days the employee becomes eligible for disability leave benefits, and (3) such an employee's occupational injury leave must be paid at the employee's total rate of pay.
- Creates the Professional Development Fund and requires the Director of Administrative Services to use money credited to the fund to pay for programs that provide professional development opportunities for employees who are exempt from collective bargaining coverage and paid by warrant of the Auditor of State.
- Allows the maximum maturity of general obligations issued for sports facilities to be 35 years.
- Provides that an administrative employee of a county historical society who has an account in the Public Employees Retirement System (PERS)

Employees' Savings Fund on the act's effective date may elect to remain a contributing member of PERS by giving notice to PERS.

- Provides compensation to six members of the Ohio Bicentennial Commission's executive committee who are appointed by the Governor, in the amount of \$3,000 per year, but only if those members attend at least two-thirds of the meetings of the executive committee in a given calendar year.
- Exempts from the Unclaimed Funds Law certain payments and credits resulting from business to business transactions, and specifies that certain credits to be refunded to a retail customer are "unclaimed funds" if left unclaimed for three years.
- Abolishes the Ohio Coal Development Fund.
- Eliminates the restriction of current law that joint vocational school districts be paid only 75% of the base-cost amount for students residing outside their territories whom they accept under open enrollment policies.
- Makes more explicit the requirement of current law that vocational education students be counted on a full-time-equivalent basis for purposes of calculating state vocational education payments to school districts.
- Requires that state vocational education payments follow open enrollment students to the districts where they enroll.
- Authorizes the State Board of Education to include day-care, child development courses, and summer enrichment courses in its educational program for preschool-age children who are deaf or hard of hearing and their parents.
- Authorizes the Superintendent of the State School for the Deaf (1) to allow children who are not deaf or hard of hearing to participate in programs designed for preschool-age children to help deaf and hard of hearing children establish communication skills and (2) charge reasonable fees to participate in programs for preschool-age children.
- Modifies the Ohio Arts and Sports Facilities Commission Law with regard to local historical facilities, local contribution requirements, and certain contracting requirements.

- Lowers, through fiscal year 2005, the amount the Department of Health may require counties to provide for the program for medically handicapped children.
- Provides that rules the Public Health Council may adopt concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) may provide for civil money penalties for violations of the rules.
- Requires the Department of Health, if it determines that a vendor has committed an act with respect to WIC that federal or state law prohibits, to take action against the vendor in the manner required by federal regulations or Public Health Council rules.
- Provides that, of the fee collected for testing newborn children for genetic, endocrine, and metabolic disorders, *not less than* a specific amount, rather than the specific amount, is earmarked for the newborn testing program, phenylketonuria programs, and the Director of Health's duties regarding sickle cell disease.
- Expands the rule-making authority of the Superintendent of the Division of Industrial Compliance relative to the regulation of elevators.
- Modifies requirements that must be satisfied to obtain a certificate of operation or a renewal certificate necessary for the operation of an elevator.
- Eliminates the requirement that the Board of Examiners of Nursing Home Administrators hold examinations for licensure as a nursing home administrator at least two times each year, at such times and places as the Board designates, and provides instead that the Board may administer the examinations or contract with a government or private entity to administer the examinations.
- Provides that the fee an applicant for licensure as a nursing home administrator must pay to be admitted to the licensing examination is the amount charged by the Board of Examiners of Nursing Home Administrators, or a government or private entity under contract with the Board to administer the examination, rather than \$150.

- Reduces one of the fees assessed for inspection of pressure piping systems from 2% of the system's cost to 1.8% for the next fiscal year, and to 1% beginning July 1, 2001.
- Resolves harmonization problems and effective date issues relating to gas and electric company taxation, adds natural gas companies to the "combined company" provision and other laws enacted by Am. Sub. S.B. 3 so that a combined company's gross receipts from a natural gas company activity are attributed to that activity and the correct tax is applied to those receipts, clarifies tax payments and reporting periods under the public utility excise tax and new natural gas company excise tax laws, and eliminates duplicative terms and phrases.
- Narrows the kinds of groups that must claim the new manufacturing machinery and equipment tax credit as a single taxpayer to corporate groups that are related through stock ownership or control.
- Revises the new manufacturing machinery and equipment tax credit so that partnerships claiming it must use the general computation method established for most tax credits by existing corporation franchise tax law.
- Exempts from the sales tax certain sales of labels and equipment and supplies used in labeling or making labels for packages or products.

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CONTENT AND OPERATION

PROVISIONS RELATING TO THE IMPLEMENTATION AND CONSOLIDATION OF DEBT ISSUANCE DUTIES

**Background: Sections 2n and 17 of Article VIII of the Ohio Constitution,
S.B. 206**

In November, 1999, the state's electors approved Sections 2n and 17 of Article VIII of the Ohio Constitution. Section 2n allows the state to issue general obligation bonds to pay the costs of constructing, acquiring, or improving facilities for "a system of common schools throughout the state" and for "state-supported and state-assisted institutions of higher education." Section 17 imposes a limitation on the state's overall authority to incur debt, by prohibiting the issuance of new bonds under Article VIII if the amount of debt service on the state's direct obligations (obligations on which the state is the primary or only obligor) that must be paid in any future fiscal year from the General Revenue Fund (GRF) and net lottery proceeds would exceed 5% of total estimated GRF and net lottery proceeds revenue during the fiscal year of issuance. (The General Assembly can waive the limitation by the vote of at least 3/5 of the members of each house.) Section 17 also requires the General Assembly to provide by law for computing the amounts required for debt service payments for the purposes of the 5% limitation.

Am. S.B. 206 of the 123rd General Assembly, effective December 10, 1999, provided temporary authority under Section 2n for the Treasurer of State to issue up to \$150 million of state general obligations for common school facilities and for the Ohio Public Facilities Commission to issue up to \$150 million of state general obligations for higher education facilities. For these obligations, S.B. 206 required the Governor to compute the amounts required for debt service payments for purposes of the Section 17 "5%" limitation.

Codified implementation of Section 2n

(R.C. 151.01, 151.03, 151.04, and 3770.06)

The act grants the Ohio Public Facilities Commission authority to issue general obligations of the state for the purposes of paying costs of facilities for the state system of common schools and facilities for state-supported and state-assisted institutions of higher education.¹ The obligations are to be issued in principal amounts authorized by the General Assembly, and used to pay costs of facilities or projects identified by or pursuant to actions of the General Assembly.

The net proceeds of obligations for common schools must be deposited into the School Building Program Assistance Fund, which is for the use of the Ohio School Facilities Commission (R.C. 3318.25). Likewise, the net proceeds of obligations for higher education must be deposited into the Higher Education Improvement Fund, which contains the proceeds of obligations the Public Facilities Commission issues for higher education purposes (R.C. 154.21). Both funds already exist, having been created by prior legislation.

The Ohio Public Facilities Commission is authorized to sell the obligations at public or private sale. The state's full faith and credit, revenue, and taxing power are pledged to the timely payment of debt service on the obligations. Net state lottery proceeds can be used to pay debt service on common school obligations, but not higher education obligations. Revenue relating to the registration, operation, use, or fueling of vehicles on public highways cannot be used to pay debt service on any of the obligations. State revenue pledged to repay common school obligations must be credited to the Common Schools Capital Facilities Bond Service Fund, and state revenue pledged to repay higher education obligations must be credited to the Higher Education Capital Facilities Bond Service Fund. (S.B. 206 created both of these funds in the state treasury.) Debt service payments for the respective obligations are to be made from those funds.

S.B. 206 provisions superseded

(Section 52.05)

¹ For the act's purposes, a "state-supported or state-assisted institution of higher education" means one of the 13 state universities, a community college district, a technical college district, a university branch district, a state community college, the Northeastern Ohio Universities College of Medicine, or the Medical College of Ohio at Toledo, or any other institution for education beyond high school (including technical education) that receives state support or assistance for its operating expenses.

The act provides that on and after its effective date, the authority it grants to the Ohio Public Facilities Commission supersedes any equivalent authority granted to the Commission or Treasurer of State in S.B. 206. The Commission is authorized to use the appropriations made in S.B. 206 to pay debt service on the higher education and common school obligations issued by the Commission or Treasurer of State under that act. The Treasurer must transfer to the Commission any documents and records relating to those obligations.

Consolidation of debt issuance duties

Background: composition of the Board of Commissioners of the Sinking Fund and the Ohio Public Facilities Commission

The act makes changes to the debt-related responsibilities of the Board of Commissioners of the Sinking Fund, the Ohio Public Facilities Commission, and the Treasurer of State. The Board of Commissioners of the Sinking Fund consists of the Governor, Treasurer of State, Auditor of State, Secretary of State, and Attorney General. The Auditor of State is the president of the Board, and the Secretary of State is the secretary.² The Ohio Public Facilities Commission consists of these same five officers plus the Director of Budget and Management. The Governor serves as the chairperson of the Commission, and the Director of Budget and Management as its secretary.³

Changes to general obligation bonding authority

(R.C. Chapter 151.; R.C. 129.41, 129.42, 129.45, 129.46, 129.50, 129.52 to 129.57, 129.60, 129.62 to 129.65, 129.72, 129.73, 135.14, 164.01, 164.08, 164.09, 164.10, 164.11, 1555.02, 1555.03, 1555.05, 1555.08 to 1555.15, 1557.01 to 1557.05, 3318.21, 3318.25, 5528.32, 5528.36, 5528.51, 5528.53 to 5528.57, 5735.05, 5735.23, 5743.02, 5743.023, 5743.32, and 5743.322; Section 52.08)

The act transfers to the Ohio Public Facilities Commission from the Board of Commissioners of the Sinking Fund the authority to issue general obligations of the state for state and local parks, land and water management projects, and other natural resources capital improvements pursuant to Section 21 of Article VIII of the Ohio Constitution, and for coal research and development projects pursuant to Section 15 of Article VIII of the Ohio Constitution.

² *Section 8, Article VIII, Ohio Constitution, and R.C. 129.01.*

³ *R.C. 154.04 in existing law, and R.C. 151.02 in the act.*

In addition, the act transfers to the Treasurer of State from the Board of Commissioners of the Sinking Fund the authority to issue general obligations of the state for highway capital improvements pursuant to Section 2m of Article VIII of the Ohio Constitution.

As a result of these changes and the act's granting of authority to the Public Facilities Commission to issue common school and higher education general obligations (see above), the Commission is the issuing agency for four of the state's six categories of general obligations. The Treasurer of State, in addition to being the issuer of highway general obligations, remains the issuing authority for the Ohio Public Works Commission's local government infrastructure obligations (also known as "Issue Two" bonds) pursuant to Section 2m of Article VIII of the Ohio Constitution. The act locates the authority to issue all of these obligations in a new chapter of the Revised Code (Chapter 151.), in effect creating a State General Obligation Bond Law.

With respect to the issuance of obligations at public or private sale, the costs that can be paid with bond proceeds, and the rights, remedies, powers, and duties of the state and the bondholders, the new authority of the Treasurer of State and the Public Facilities Commission to issue general obligations parallels the authority that the Commissioners of the Sinking Fund (and the Treasurer of State and Public Facilities Commission under S.B. 206) already have to issue general obligations for the same purposes.

For all general obligation bonds, the act specifies that payments received by the state under interest rate hedges entered into as credit enhancement facilities must be deposited to the credit of the bond service fund for the obligations to which the credit enhancement facilities relate.

Transition provisions

(Sections 52, 52.01, and 52.06)

The act provides that on and after its effective date, the authority and duties of the Treasurer of State and the Ohio Public Facilities Commission supersede any prior authority and duties of the Board of Commissioners of the Sinking Fund for issuing general obligations for highways, parks and natural resources, and coal research and development. Appropriations already made to the Sinking Fund for purposes related to outstanding obligations are to be made available to the Treasurer and Commission to be used for the same purposes. The Board must transfer to the Treasurer or Commission any documents and records relating to the outstanding obligations that are requested by the Treasurer or Commission, and can meet by June 30, 2001, to wind up its affairs related to the obligations.

The act also provides that the State Capital Improvements Bond Service Fund, which is used to pay debt service on the Treasurer of State's "Issue Two" bonds, is to be used for the same purpose after the Treasurer's authority to issue those obligations is transferred from R.C. Chapter 164. to R.C. Chapter 151. The act specifies that such debt service charges can include costs of or payments under credit enhancement facilities for obligations, including credit enhancement facilities for obligations that may be issued in 2000 before the statutory relocation takes effect.

Changes to other bonding authority (nongeneral obligations)

(R.C. 101.68, 151.02, 154.01 to 154.12, 154.14 to 154.23, 3318.26, 3318.41, and 3333.13; Section 52.04)

The act transfers to the Treasurer of State from the Ohio Public Facilities Commission the authority under Section 2i of Article VIII of the Ohio Constitution to issue obligations of the state that are *not* general obligations, to pay costs of capital facilities for mental health and retardation, state-supported and state-assisted institutions of higher education, and parks and recreation. While in practice debt payments for these kinds of obligations may be made from state tax revenues paid into the GRF, the holders of the obligations do not have the right to demand that the state levy taxes to make the payments. Section 2i provides that such obligations can be secured by revenues such as charges for services, user fees, and rents generated in connection with the facilities. They are commonly referred to as lease-rental obligations.

The Treasurer of State must issue the 2i obligations, when authorized by the General Assembly, subject to the same general requirements and conditions as were imposed on the Ohio Public Facilities Commission. The act provides that on and after its effective date, the authority and duties of the Treasurer of State supersede any prior authority and duties of the Public Facilities Commission for issuing the obligations. Appropriations made to the Commission for purposes related to outstanding obligations are to be made available to the Treasurer to be used for the same purposes. Upon the request of the Treasurer, the Commission must transfer to the Treasurer copies of any documents and records that relate to issuing obligations. The act specifies that the Treasurer is responsible for keeping records, making reports, and making payments related to arbitrage compliance and rebate requirements for lease-rental obligations.

With respect to facilities financed by the 2i obligations, the act retains the Public Facilities Commission as property manager and administrator of leases and other agreements entered into by the Ohio Board of Regents, Department of

Mental Health, Department of Mental Retardation and Developmental Disabilities, and Department of Natural Resources.

The act eliminates authority for the Public Facilities Commission to issue nongeneral obligations under Section 2i of Article VIII of the Ohio Constitution to pay for facilities to house branches and agencies of state government. Under law unchanged by the act, the Ohio Building Authority continues to have authority to issue such obligations.

The act also eliminates authority for the Ohio Building Authority to issue nongeneral obligations to pay for public elementary and secondary schools for school districts designated as state agencies. Relatedly, the act provides that the Treasurer of State's authority to issue and service nongeneral obligations for School Facility Commission projects applies only to obligations issued before December 1, 1999.

Codified implementation of Section 17 debt service computation

(R.C. 126.16)

As mentioned above under "**Background: Sections 2n and 17 of Article VIII of the Ohio Constitution, S.B. 206**," Section 17 of Article VIII of the Ohio Constitution requires the General Assembly to provide by law for computing the amounts required for debt service payments for the purposes of the 5% limitation on the amount of direct obligation debt the state can issue. The act prescribes the manner in which the Governor or the Governor's designee is to make the computation.

The act states that debt service, for purposes of the computation, includes debt service payable on bonds that are direct obligations of the state issued under Article VIII of the Ohio Constitution (and on bonds anticipated by bond anticipation notes), to the extent the debt service is anticipated to be paid from the GRF or net state lottery proceeds.⁴ An example given by the act of bonds for which debt service is not anticipated to be paid from either the GRF or net lottery proceeds is state bonds for highway purposes issued under Section 2i or 2m of Article VIII of the Ohio Constitution. These bonds, although general obligations of the state, have been and are anticipated to be paid from highway user receipts and not from the GRF or net lottery proceeds.

⁴ "Debt service" is defined to mean principal (including any mandatory sinking fund deposits and mandatory redemption payments) and interest or interest equivalent payable on securities, as those payments are stated to come due and to be payable.

Absent any other applicable constitutional or statutory provision, the amount of debt service on bonds anticipated by bond anticipation notes is to be estimated by the Governor or the issuing authority by taking the amount that would have been payable on bonds maturing serially in each fiscal year after the fiscal year of issuance over the maximum period of maturity authorized for the bonds, as if the bonds had been issued without the prior issuance of the notes, and computed on a substantially level debt service basis applying an interest rate or rates certified to be market rates at the time of issuance of the notes. For securities issued to refund or retire other securities, the debt service on the new securities is to be counted and the debt service on the securities being refunded or retired is not to be counted.

With regard to the Section 17 limitation, the act requires the Governor to determine and certify all of the following:

--The fiscal year amounts required to be applied or set aside for payment of debt service, including debt service on any variable rate bonds;

--The securities to which the debt service relates;

--The total state GRF revenues and net state lottery proceeds during the fiscal year in question, as estimated by the Office of Budget and Management;

--Any other financial data necessary or appropriate for the purpose of the computations required by Section 17 and the act.

The Governor must file the determinations and certifications with the Director of Budget and Management, the Treasurer of State, and the issuing authority for the particular obligations, at or prior to the time the securities are issued. The Governor can designate the Director or Assistant Director of Budget and Management or any employee or official of the Governor's office to perform the Governor's functions under the act.

Scheduling sales of public debt offerings

(R.C. 126.11)

The Director of Budget and Management, in consultation with the Treasurer of State, already has the statutory duty to provide assistance to the state's debt issuing agencies in coordinating the timing of issues on which the state or a state agency is the direct obligor or source of money for payment. The act expands the control of the Director over such scheduling.

Under the act, the Director, upon consultation with the Treasurer of State, is required to coordinate and approve the scheduling of initial sales of publicly offered state securities and publicly offered fractionalized interests in or securitized issues of state public obligations.⁵ This requirement applies to obligations on which the state or a state agency is the direct obligor or obligor on any backup security or related credit enhancement facility, or source of money subject to state appropriations that is intended for payment of the obligations. From time to time, the Director is to develop and distribute to state issuers an approved sale schedule for such obligations.

The act also expands the amount of information the issuers of state obligations must submit to the Director about their issues. The Ohio Public Facilities Commission and the Ohio Building Authority must submit to the Director all of the following:

--For review and approval: (1) the projected sale date, amount, and type of obligations proposed to be sold, (2) the purpose, security, and source of payment for the obligations, and (3) the proposed structure and maturity schedule;

--For review and comment: (1) the authorizing order or resolution, (2) preliminary and final offering documents and pricing information, (3) the method of sale, and (4) any written reports or recommendations of financial advisors or consultants related to the obligations;

--Promptly after each sale of obligations: (1) final terms, including sales price, maturity schedule and yields, and sources and uses, (2) names of the original purchasers or underwriters, (3) copies of the final offering document and a transcript of the proceedings, and (4) other pertinent information requested by the Director.

The act requires the Treasurer of State to submit this information to the Director in connection with the Treasurer's issuance of general obligation highway and "Issue Two" bonds; nongeneral "Section 2i" obligations for mental health and retardation, higher education, and parks and recreation; and nongeneral obligations for primary and secondary schools. But the Treasurer's issuances for these purposes are not expressly subject to the approval of the Director. Instead, for

⁵ *"Fractionalized interests in public obligations" are defined as "participations, certificates of participation, shares, or other instruments or agreements, separate from the public obligations themselves, evidencing ownership interests in public obligations or of rights to receive payments of, or on account of, principal or interest or their equivalents payable by or on behalf of an obligor pursuant to public obligations. (R.C. 133.01, not in the act.)*

each proposed sale, the Director and the Treasurer must come to mutual agreement on the date, amount, and type of obligations, and the purpose, security, source of payment, structure, and maturity schedule for the obligations.

The act establishes less extensive requirements in connection with the issuance of other categories of obligations that are not to be secured by or repaid with GRF revenues. Such obligations are issued by the Treasurer of State (development bonds under R.C. Chapter 166. that are secured by state liquor profits, and bonds secured by the Department of Transportation's State Infrastructure Bank), the Ohio Water Development Authority (for wastewater facilities), the Ohio Rail Development Commission, and transportation improvement districts. The act requires these issuers to submit to the Director of Budget and Management all of the following:

--For review and comment: (1) the projected sale date, amount, and type of obligations proposed to be sold, (2) the purpose, security, and source of payment for the obligations, and (3) preliminary and final offering documents;

--Promptly after each sale of obligations: (1) final terms, including a maturity schedule, (2) names of the original purchasers or underwriters, (3) a copy of the complete continuing disclosure agreement required under federal Securities and Exchange Commission rules, and (4) other pertinent information requested by the Director.

Other issuers of various revenue-bond-type obligations authorized by state law, to the extent not subject to the above requirements, must submit to the Director of Budget and Management copies of the preliminary and final offering documents for their obligations. This requirement applies to the Treasurer of State for development bonds issued under R.C. Chapter 122. and student loan bonds issued under R.C. Chapter 3366., the Director of Development for industrial development bonds under R.C. Chapter 165., the Ohio Water Development Authority for obligations issued for energy redevelopment or solid waste facilities, the Ohio Housing Finance Agency, state universities, the Ohio Higher Educational Facility Commission, the Air Quality Development Authority, the Petroleum Underground Storage Tank Release Compensation Board, and the Ohio Turnpike Commission. Such obligations are repaid by revenues generated either by the facilities or by other purposes to which proceeds of the obligations are devoted.

Submission of annual sale plans and fractionalized interest reports

(R.C. 126.11(A)(5) and (C))

The act requires all of the issuers mentioned in the preceding section of this analysis to submit to the Director of Budget and Management and the Treasurer of

State, within the first 30 days of each fiscal year, a sale plan for that year for each type of obligation it issues. The plan must project the amount and term of each issuance, the method of sale, and the month of sale.

The act also requires every state agency obligated to make payments on outstanding public obligations with respect to which fractionalized interests have been publicly issued to submit a report to the Director by January 1 each year. The report must specify amounts payable from state appropriations under those obligations during the then current and next two fiscal years, and identify the appropriation or intended appropriation from which payment is expected to be made.

OBM approval of offering and disclosure documents

(R.C. 126.11(D) and (E))

The Director of Budget and Management or the Director's designee already has the statutory duty to approve as to format and accuracy any statements or tables relating generally to the demographics, economy, financial condition, or funds of the state to be contained in any official statement, offering circular, prospectus, or similar document prepared, approved, updated, authorized, or committed to be provided by an issuer or state obligor in connection with the original issuance and sale of most state obligations, before the information is published in preliminary, draft, or final form or publicly filed. The act extends the Director's approval authority for information relating to these subjects to (1) information on general operations of the state and descriptions of any state contractual obligations relating to public obligations, (2) information to be contained in a continuing disclosure document or written presentation prepared, approved, or provided by an issuer, and (3) information used in connection with rating, remarketing, or credit enhancement facilities relating to public obligations. The act specifies the approval must be obtained before the information is presented or disseminated in preliminary, draft, or final form, or publicly filed in paper, electronic, or other format. The requirement does not apply to issuers of revenue bonds that are not subject to the control or review of the Director when scheduling their sales (see above).

The act states that it does not "inhibit" direct communication between an issuer and a rating agency, remarketing agent, or credit enhancement provider concerning an issuance of public obligations or matters associated with that issuance, except with respect to the kinds of information that must be approved by the Director before being used in an offering document, continuing disclosure document, or written presentation.

The act states that the materials approved by the Director are the information relating to the particular subjects provided by the state or state agencies that are required or contemplated by any applicable state or federal securities laws and any commitments by the state or state agencies made under those laws. Reliance should not be placed on any other information publicly provided by a state agency for other purposes, and a statement to that effect must be included in the approved materials.

The act specifies that with respect to information the Director of Budget and Management must approve, the Director is responsible for making all filings necessary for compliance with applicable lawful disclosure requirements related to obligations of the state, including fractionalized interests in those obligations. The act allows the Director to designate an employee of the Office of Budget and Management to be responsible for this duty and for any of the Director's other duties regarding scheduling and approving sales of obligations.

OBM study of negotiated and competitively bid sales

(Section 52.07)

Under the act, the General Assembly recommends that a portion of the sales of state general obligation bonds beginning on the act's effective date and continuing through December 31, 2002, be by negotiated sale and a portion by competitive public bid sale. The Office of Budget and Management is to study and determine the comparative financial impact on the state of both methods of sale. By April 30, 2003, the Office is to report its findings to the applicable bond issuing authorities and to the finance committees of both houses of the General Assembly.

OTHER PROVISIONS

Creation of the Division of and Superintendent of Labor and Worker Safety

(R.C. 121.04 and 121.08; Section 85)

The act creates, within the Department of Commerce, a Division of and Superintendent of Labor and Worker Safety, on July 1, 2000. It requires the Superintendent to exercise the powers and perform the duties delegated to the Superintendent by the Director of Commerce under the Employment of Minors Law (R.C. Chapter 4109.), Minimum Wage Law (R.C. Chapter 4111.), Prevailing Wage Law (R.C. Chapter 4115.), and Public Employment Risk Reduction Program (R.C. Chapter 4167.). (The act mistakenly refers to Chapters 4109., 4111., 4115., and 4167.)

State public works contracts

(R.C. 123.15, 123.20, 123.21, and 126.14)

The Director of Administrative Services may contract for labor, materials, or construction to maintain, control, or manage the state's public works. Whenever the Director so contracts, the Director must require a bond of not less than one-half of the contract price. In addition, except in emergencies (or "extreme public exigency"), if the cost of an improvement or repair is greater than \$500, the Director must advertise in a specified manner for bids and award the contract to the lowest responsive and responsible bidder. If an emergency ("public exigency") occurs, the Director may use eminent domain procedures to take possession of lands, materials, or other property necessary for the maintenance, protection, or repair of the state's public works. (R.C. 123.15 and 123.21.)

The act removes the special bonding, advertisement for bids, and contract awarding requirements for these state public works contracts and instead generally requires the Director to follow the procedures in the Public Improvements Law (R.C. Chapter 153.) in advertising, awarding, and administering those contracts unless a "public exigency" (see below) is involved.

The act provides a procedure for the Director to follow in certain emergency situations (public exigencies) related to the state's public works. Whenever an injury or obstruction occurs in any public works that materially impairs its immediate use or places property adjacent to it in jeopardy, or whenever there is an immediate danger of such an injury or obstruction, or whenever an injury or obstruction, or an immediate danger of an injury or obstruction, occurs during the process of construction of any public works that materially impairs its immediate use or places in jeopardy property adjacent to it, the Director may declare a public exigency. The Director may do this on the Director's own initiative or upon the request of the director of any other state agency. That declaration must identify the specific injury, obstruction, or danger that is the subject of the declaration and must set forth a dollar limitation for the repair, removal, or prevention of that exigency under the declaration (R.C. 123.15(A) and (C) and 123.21; repeal of R.C. 123.20).

Before any project to repair, remove, or prevent a public exigency can begin, the Director must send to the Director of Budget and Management (1) a notice detailing the project to be undertaken and (2) a copy of the public exigency declaration that establishes the monetary limitations on that project. The act authorizes the Director of the Office of Budget and Management to release unencumbered capital balances for that project in the amount designated in the public exigency declaration. (R.C. 123.15(C) and 126.14.)

Plans and cost analyses for certain public improvement projects

(R.C. 153.01)

Current law requires that, when any building or structure for the use of the state or any institution supported in whole or in part by the state or involving the state's public works is to be constructed, when improvements are to be made related to them, or when heating, cooling, or ventilating plants or other equipment is to be installed in or materials supplied for them, if the aggregate cost of the construction, improvements, equipment, or materials is \$10,000 or more, then an architect or engineer must prepare, and the Attorney General must approve, the following:

- (1) Full and accurate plans for use by mechanics and other builders, as well as details to scale and full-sized;
- (2) Accurate bills showing the exact quantity of different kinds of material necessary to construction;
- (3) Complete specifications of the work to be performed;
- (4) A full and accurate estimate of each item of expense and the aggregate cost of those items of expense;
- (5) A life-cycle analysis;
- (6) Any other data that the Department of Administrative Services may require.

The act requires these items to be prepared and approved only when the aggregate construction, improvement, equipment, or materials cost is \$50,000 or more.

Pay raises for exempt employees

(R.C. 124.152)

The act:

- (1) Increases the hourly rates paid to exempt employees, beginning on the first day of the pay period that includes July 1, 2000, July 1, 2001, and July 1, 2002. The increases are approximately 3%, 3½%, and 4% respectively, although the hourly rates for Step 1 of Salary Schedule E-1 are reduced beginning on the first day of the pay period that includes July 1, 2000.

(2) Eliminates the compensation tables that apply only to exempt employees of the Treasurer of State's office.

(3) Adds a step 7 to pay ranges 12 through 18 in Salary Schedule E-1.

"Exempt employee" means: (1) a permanent full-time or permanent part-time employee paid directly by warrant of the Auditor of State whose position is included in the job classification plan established by the Director of Administrative Services but who is not considered a public employee for purposes of the Public Employees Collective Bargaining Law and (2) a permanent full-time or permanent part-time employee of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General who has not been placed in an appropriate bargaining unit by the State Employment Relations Board.

Elimination of mandatory step advances

(R.C. 124.15(E) and (G))

Formerly the base rate of pay of an exempt employee paid in accordance with Salary Schedule E-1 had to advance to the next higher step in the employee's pay range at annual intervals until the maximum step was reached if the employee maintained satisfactory performance. The act instead specifies that each such exempt employee is eligible to advance to the next higher step until the employee reaches step 6, if the employee has maintained satisfactory performance in accordance with criteria established by the employee's appointing authority. The act provides that such step increases cannot occur more frequently than once in a 12-month period.

Under the act, an employee may advance to step 7 in a pay range only upon performing at an exemplary level as determined in the employee's performance evaluation, and an employee's advancement to step 7 is at the discretion of the employee's appointing authority. An employee may not appeal the denial of advancement to step 7 to the State Personnel Board of Review.

Holiday pay

(R.C. 124.18(B))

The act (1) prohibits an employee who is paid directly by warrant of the Auditor of State, who is scheduled to work on a holiday, and who does not report to work due to illness of the employee or a member of the employee's immediate family from receiving holiday pay and (2) provides that employees whose work schedules are based on the requirement of a seven-days-per-week operation must observe holidays on the actual days specified in the law for commemoration.

Appeal of the removal or reduction in position of a probationary employee

(R.C. 124.27(C) and 124.34(B))

The act provides that a probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction to the State Personnel Board of Review or to a municipal civil service commission or civil service township civil service commission, as applicable. A probationary employee may be removed or reduced in position at any time during the employee's probationary period if the employee's service is unsatisfactory.

Payment of accumulated sick leave at retirement

(R.C. 124.384)

Formerly an employee whose salary or wage was paid by warrant of the Auditor of State and who had accumulated sick leave under either of two statutes that grant sick leave to state employees was required to be paid for a percentage of the employee's accumulated balances, upon separation for any reason, including retirement or death, at the employee's last base rate of pay at the rate of one hour of pay for every two hours of accumulated balances. The act instead requires that such an employee who retires in accordance with any retirement plan offered by the state be paid upon retirement for each hour of the employee's accumulated sick leave balance at a rate of 55% of the employee's last base rate of pay.

Disability leave benefits for permanent part-time employees

(R.C. 124.385(A))

An employee is eligible for disability leave benefits if the employee has completed one year of continuous state service immediately prior to the date of disability and either of the following applies:

(1) The employee is a full-time permanent employee and is eligible for sick leave credit under the provision of current law that grants sick leave to employees paid by warrant of the Auditor of State;

(2) The employee is a full-time permanent employee, is on disability leave or leave of absence for medical reasons, and would be eligible for sick leave credit except that the employee is in no pay status. The act gives the same benefit to part-time permanent employees who are on disability leave or medical leave of absence for medical reasons, but it also provides that if the full-time or part-time employee is in no pay status, it must be because of the employee's medical condition.

The act also makes eligible for disability leave an employee who (1) has completed one year of continuous state service immediately prior to the date of the disability, (2) is a part-time permanent employee who has worked at least 1,500 hours within the 12-month period immediately preceding the date of the disability, and (3) is eligible for sick leave credit under the law that grants sick leave to employees paid by warrant of the Auditor of State.

Personal leave credit for part-time permanent exempt employees

(R.C. 124.386(A))

Each full-time permanent exempt employee, and certain other full-time permanent employees who are not exempt employees but are exempt from collective bargaining coverage, is credited with 32 hours of personal leave each year. Under the act, each part-time permanent exempt employee, and certain other part-time permanent employees who are not exempt employees but are exempt from collective bargaining coverage, must receive a pro-rated personal leave credit as established by rule of the Director of Administrative Services. The act also prohibits personal leave from being used on a holiday when an employee is scheduled to work.

Eligibility of recipients of occupational injury leave program for sick leave and disability leave

(R.C. 124.381)

Occupational injury leave is granted to employees of the following state agencies who suffer bodily injury while on the job that is inflicted by an inmate, patient, client, youth, or student: (1) the Departments of Rehabilitation and Correction, Mental Health, Mental Retardation and Developmental Disabilities, and Youth Services, (2) the Ohio Veterans' Home, and (3) the Schools for the Deaf and Blind. Under prior law, an employee receiving occupational injury leave generally did not accumulate sick leave or vacation leave credit, but, whenever the employee's disability extended beyond 120 workdays, the employee became eligible for sick leave.

The act provides that (1) an employee receiving occupational injury leave does accumulate sick leave and, in the case of an exempt employee, personal leave credit, (2) the employee is exempt from accumulating vacation leave credit only if the employee is an exempt employee, (3) when an employee's disability extends beyond 120 workdays, the employee also becomes eligible for disability leave benefits, and (4) an employee receiving occupational injury leave must be paid at the employee's total rate of pay, rather than just the employee's regular rate of pay.

Professional Development Fund

(R.C. 124.182)

The act creates in the state treasury the Professional Development Fund. The Director of Administrative Services must use money credited to the fund to pay for programs that provide professional development opportunities for employees who are exempt from collective bargaining coverage and paid by warrant of the Auditor of State. The Director must identify by rules adopted under the Administrative Procedure Act programs for which payments from the fund must be made. The fund also must be used to pay any direct or indirect costs that are attributable to consultants or a third-party administrator and that are necessary to administer the act's fund provisions. All investment earnings of the fund must be credited to it.

The Director of Administrative Services, in consultation with the Director of Budget and Management, must determine a rate (1) at which the payrolls of all participating state agencies with employees paid by warrant of the Auditor of State must be charged each pay period and (2) that is sufficient to cover the costs of administering the programs the fund pays for. The rate must be based on the total number of those employees and may be adjusted as the Director of Administrative Services, in consultation with the Director of Budget and Management, considers necessary. All money collected from these charges must be credited to the fund.

If the Director of Administrative Services determines that additional appropriation amounts are necessary, the Director may request that the Director of Budget and Management increase those amounts. Those amounts are, the act states in codified law, "hereby appropriated." (Article II, Section 22 of the Ohio Constitution states that "no appropriation shall be made for a longer period than two years.")

Maximum term of sports facilities bonds

(R.C. 133.20, 505.261, and 505.264)

The maximum term, or latest maturity date, of general obligations issued under the Uniform Bond Law differs with the kind of project being financed by the obligations. For example, bonds for municipal recreation (excluding recreational equipment) cannot be issued for a term longer than 30 years. Bonds for permanent improvements other than those enumerated in the law may not have terms longer than 30 years. The act allows the maximum maturity of general obligations issued for sports facilities to be 35 years.

PERS membership for administrative employees of county historical society

(R.C. 145.01 and 145.015)

With limited exceptions, persons employed by the state or a political subdivision of the state are members of the Public Employees Retirement System (PERS).⁶ Certain persons not employed by the state or a political subdivision are eligible for PERS membership. Employees of the Ohio Historical Society are an example of non-state or local government employees covered by PERS.

The act provides that an administrative employee of a county historical society who has an account in the Employees' Savings Fund on the act's effective date may elect to remain a contributing member of PERS by giving notice to PERS not later than 90 days after the act's effective date.⁷ Once made, the election is irrevocable.

"County historical society" is defined in the act as a private, non-profit organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that collects, preserves, and interprets the historical physical and intellectual resources of a county.

Ohio Bicentennial Commission

(R.C. 149.32)

The Ohio Bicentennial Commission consists of 51 members, 16 of whom are members of an executive committee. The Governor appoints six members of the executive committee. All six of them must be Ohio residents, and at least one of them must be a representative of a state university.

Formerly, all Commission officers and members were required to serve without compensation.

The act provides that the six gubernatorial executive committee appointees are entitled to receive an annual compensation in the amount of \$3,000 for

⁶ *Exceptions include persons covered by one of the other state retirement systems (the Ohio Police and Fire Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System). Elected officials of the state and political subdivisions are permitted to join the Public Employees Retirement System.*

⁷ *The Employees' Savings Fund is a PERS fund into which mandatory deductions from members' salaries are deposited.*

carrying out their official duties as members of the executive committee if those members attend at least two-thirds of the meetings of the executive committee in a given calendar year.

Under law not changed by the act, all members of the Commission are required to be reimbursed for their actual and necessary expenses incurred in carrying out their official duties.

Unclaimed Funds Law

Exemptions

(R.C. 169.01(B))

The act modifies the Unclaimed Funds Law by excluding the following business to business transactions from the definition of "unclaimed funds":

(1) Any payment or credit due to a business association from a business association representing sums payable to suppliers, or payment for services rendered, in the course of business, including checks or memoranda, overpayments, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates;

(2) Any payment or credit received by a business association from a business association for tangible goods sold, or services performed, in the course of business, including checks or memoranda, overpayments, unidentified remittances, nonrefunded overcharges, discounts, refunds, and rebates.

"Business association" is defined by the act as any corporation, joint venture, business trust, limited liability company, partnership, association, or other business entity composed of one or more individuals, whether or not the entity is for profit.

Credits to be refunded to a retail customer

(R.C. 169.02(N))

In general, the Unclaimed Funds Law declares certain moneys, rights to moneys, and other intangible property to be unclaimed funds if held or owed by a holder "unclaimed" for a specified period of time and if not excluded from the definition of "unclaimed funds." Under that law, the following constitute unclaimed funds, if held or owed by the holder unclaimed for one year from the date payable or distributable:

[a]ny sum payable as wages, salaries, or commissions, any sum payable for services rendered, funds owed or held as royalties, oil and mineral proceeds, funds held for or owed to suppliers, and moneys owed under pension and profit-sharing plans.

All other credits held or owed by a holder are considered unclaimed funds if unclaimed for three years from the date payable or distributable. Under the act, all other credits to be refunded to a retail customer by a holder are also unclaimed funds if left unclaimed for three years from the date payable or distributable.

Application

(Section 53)

The act states that these modifications to the Unclaimed Funds Law apply to payments and credits that, on the effective date of the act, are in the possession, custody, or control of a business association.

Abolition of the Ohio Coal Development Fund

(R.C. 1551.12, 1551.30, 1551.31, 1551.33, 1551.34, 1551.36, 4905.01, and 4906.03)

The act abolishes the Ohio Coal Development Fund. Revenues received by the Ohio Coal Development Office were required to be credited to the fund and were permitted to be spent for any activities or expenses of the Office. Henceforth, revenues received by the Office will be credited to the General Revenue Fund instead.

Allowing vocational education weighted funding to follow open enrollment students

(R.C. 3313.98 and 3313.981)

Any school district may establish an open enrollment policy under which it enrolls students who live in other school districts. Funding for these open enrollment students follows much the same process as funding for community schools, in that the students are counted in the enrollments of their home districts for state funding calculations and then the payments to the districts where they enroll are deducted and transferred. This is popularly characterized as the state funding "following" the open enrollment students. Under current law, base-cost and special education funding "follow" open enrollment students.

The act adds that vocational education weighted funding likewise must follow open enrollment students. The payments are to be based on an FTE basis, meaning the amount paid is to be proportionate to the percentage of time each open enrollment student spends in vocational education programs.

Base-cost payments to joint vocational districts for open enrollment students

(R.C. 3313.981(C)(4) and (D)(1) and 3317.03(A)(3))

When a student wants to use open enrollment to attend a joint vocational school district (JVSD) to which his or her "home" school district does not belong, the student first registers in a city, local, or exempted village school district that does belong to that JVSD, and from there enrolls in the JVSD. Formally, when this happened, the per pupil base-cost funding amount "followed" the student, but it was divided so that only 75% went to the JVSD and 25% went to the city, local, or exempted village school district that belonged to that JVSD.

The act eliminates this 75% restriction for JVSDs so that they can receive 100% of the base-cost amount. It retains the 25% share for the city, local, or exempted village school district in which the student is also enrolled, which is to be paid in addition to the JVSD's full share. This makes payment for JVSD open enrollment similar to the practice of crediting city, local, and exempted village school districts with 25% of the base cost for their resident students who attend their resident JVSDs. The act clarifies that for open enrollment students, the school district eligible for the additional 25% is the city, local, or exempted village district where the student registers under open enrollment, not his or her district of residence.

Specification that vocational education weighted funding is based on FTE

(R.C. 3317.03(B)(8) and (9) and (C))

State funding for vocational education is paid to school districts as an add-on to base-cost funding. The additional funding is calculated using "weights," which are expressed as a percentage of the base-cost formula amount. For example, the weight of 0.60, which is used for job-training and workforce development programs approved by the Department of Education, means that the funding for those programs is an additional 60% of the per pupil base-cost formula amount per vocational education student. (The FY 2000 formula amount is \$4,052 per pupil, and 60% of that is \$2,431 per pupil.) Other vocational education classes

are assigned a weight of 0.30. The state pays a share of each district's calculated amount, which varies based on the district's property wealth per pupil.⁸

Because vocational education weighted funding is calculated on a per-pupil basis, the amount a school district receives depends on how many students are enrolled in vocational education programs. School districts are required to report their enrollments in vocational education programs on a full-time-equivalent (FTE) basis. For example, if a student spends half of his or her time in vocational education, and the other half in regular classes, the student is counted as one-half student in the vocational education funding formula (but as a whole student in the base-cost formula).

The act maintains the FTE reporting requirement, but spells it out more explicitly. It states that a child is to be counted in the vocational education formula "in the same proportion as the percentage of time that the child spends in the vocational education programs and classes."

The act also clarifies that individual special education students and vocational education students may be counted as more than one student in combined base-cost, special education, and vocational education funding formulas. (State special education funding is also calculated with weights.) This occurs, for example, if a handicapped student is also enrolled in a vocational education program. While that appeared to be the intent of the law, the actual wording was somewhat ambiguous. This clarification is consistent with the "add-on" nature of state funding for special education and vocational education, which is paid as a supplement for additional costs imposed by these programs.

Programs for preschool-age children who are deaf

(R.C. 3325.07; Section 55)

The act authorizes the State Board of Education to include in its educational program for preschool-age children who are deaf or hard of hearing and their parents (1) day-care, (2) child development courses, and (3) summer enrichment courses. It further authorizes the Superintendent of the State School for the Deaf to allow children who are not deaf or hard of hearing to participate in the "methods of instruction" designed for preschool-age children "as a means to assist deaf or hard of hearing children to construct a pattern of communication." The Superintendent must establish procedures regarding the participation of children who are not deaf or hard of hearing.

⁸ See R.C. 3317.014, 3317.02(A), and 3317.022(E), not in the act.

The act authorizes the Superintendent of the State School for the Deaf to establish "reasonable fees" for participation in the methods of instruction designed for preschool-age children to defray the costs of carrying them out, and the Superintendent must determine the manner in which any such fees will be collected. All fees must be deposited in the state treasury to the credit of the Even Start Fees and Gifts Fund. The money in the fund must be used to implement the programs established for preschool-age children who are deaf or hard of hearing.

Ohio Arts and Sports Facilities Commission Law

(R.C. 3383.01, 3383.03, and 3383.07)

Ohio arts facilities and arts projects

The Ohio Arts and Sports Facilities Commission is required to determine the need for additional Ohio arts facilities and Ohio sports facilities and to provide for the use of such facilities in making the arts and professional sports available to the public in Ohio.

The act expands the existing definition of an "Ohio arts facility" by including a local historical facility in it. The act defines a "local historical facility" as a site or facility, other than a state historical 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 an arts organization, so long as the facility meets specified requirements, is managed by or pursuant to a contract with the Ohio Arts and Sports Facilities Commission, and is used for or in connection with the Commission's activities. (R.C. 3383.01(H) and (J)(3).)

The act defines an "arts project" and incorporates into the Ohio Arts and Sports Facilities Commission Law the concept of an arts project being all or a portion of an Ohio arts facility. Apparently, this allows for additions or renovations of existing facilities as well as the construction of new facilities. (R.C. 3383.01(C).)

Local match change

Under prior law, no state funds, including state bond proceeds, could be spent on the construction of any "Ohio arts facility" unless all of the following applied: (1) the Commission had determined that there was a need for the facility in the region of Ohio where the facility was proposed to be located, (2) provision had been made, satisfactory to the Commission and as an indication of substantial regional support for the facility, for a contribution amounting to not less than one-third of the total estimated cost of the facility, including any cost of the site, from

sources other than the state to be used for costs of construction and/or management, and (3) the General Assembly had specifically authorized the spending of money on, or made an appropriation for, the construction of the facility, or for rental payments relating to the financing of the construction of the facility.

The act generally substitutes "arts project" for "Ohio arts facility" in these provisions (in a few instances both terms are used) and changes the second requirement, pertaining to regional support, to require that the arts organization involved has made provision satisfactory to the Commission, in its sole discretion, for local contributions amounting to no less than 50% of the total state funding for the arts project (R.C. 3383.07(D)). The act defines "local contribution" as the value of an asset provided by or on behalf of an arts organization from sources other than the state, the value and nature of which the Commission must approve in its sole discretion. Local contributions may include the value of the site where an arts project is to be constructed. All local contributions, except a contribution attributable to the site, must be for the costs of construction of an arts project or the costs of operation of an arts facility. (R.C. 3383.01(G).)

The act relatedly defines "costs of operation" as amounts required to manage an Ohio arts facility that are incurred following the completion of construction of its arts project, provided that (1) the amounts either have been committed to a fund dedicated to that purpose or equal the principal of any endowment fund, the income from which is dedicated to that purpose and (2) the Commission and the arts organization have executed an agreement with respect to either of those funds (R.C. 3383.01(D)).

Commission and Department of Administrative Services duties

The act requires the Commission to determine the need for arts projects in addition to Ohio arts facilities and Ohio sports facilities (R.C. 3383.03(A)). It also specifies that the Department of Administrative Services must provide for the construction of an arts project (instead of an "Ohio arts facility") in conformity with the Public Improvements Law (R.C. Chapter 153.) except for the following: (1) an arts project that has an estimated construction cost, excluding its acquisition cost, of \$25 million or more and that is financed by the Ohio Building Authority, in which case the act specifies that construction services may be provided by the OBA, and (2) an arts project, other than a state historical facility, may have construction services provided on behalf of the state by the Commission, or by a governmental agency or an arts organization that occupies, will occupy, or is responsible for the Ohio arts facility involved, as determined by the Department of Administrative Services, in which case (a) construction services to be provided by a governmental agency or an arts organization must be specified in an agreement

between the Commission and the agency or arts organization and (b) the agreement, and any actions taken under it, are not subject to the Public Works Law (R.C. Chapter 123.) or the Public Improvements Law (R.C. Chapter 153.), except for their respective provisions relating to minority set-asides (R.C. 123.151) and the use of steel products made in the United States (R.C. 153.011), and are subject to the Prevailing Wage Law (R.C. Chapter 4115.). (R.C. 3383.07(A)(1) and (2).)

Finally, the act continues another exception to the Department of Administrative Services' construction requirement that pertains to state historical facilities by amending that exception and another state historical facility provision to refer to "an arts project" that is a state historical facility or to "an arts project related to" a state historical facility (R.C. 3383.07(A)(3) and (E)).

County share of program for medically handicapped children

(R.C. 3701.024)

The Department of Health operates a program for medically handicapped children. To be eligible, an applicant must meet medical and financial eligibility requirements established by Public Health Council rules and the Department's manual of operational procedures and guidelines for the program. The program pays for treatment services, service coordination, and related goods provided to eligible medically handicapped children.

The Department is required to determine the amount each county is to provide annually for the program. The amount is based on a proportion of the county's total general property tax duplicate and is not to exceed 3/10th of a mill. The act temporarily lowers the limit on the amount the Department can require to 1/10th of a mill. The lower limit applies through fiscal year 2005, and thereafter the 3/10th of a mill limit will again be in effect.

Special Supplemental Nutrition Program for Women, Infants, and Children

(R.C. 3701.132)

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods and nutrition education as an adjunct to good health care during critical times of growth and development to prevent health problems, including drug and other harmful substance abuse, and to improve the health status of low-income women and children.⁹ WIC supplements

⁹ *Current law incorrectly refers to WIC as the Special Supplemental Food Program for Women, Infants, and Children. The act corrects this.*

the Food Stamp Program and, like the Food Stamp Program, is administered on the federal level by the United States Department of Agriculture.

Continuing law designates the Department of Health as the state agency to administer WIC and authorizes the Public Health Council to adopt rules as necessary for administering the program. The act provides that the rules may include civil money penalties for violations of the rules. If the Department determines that a vendor has committed an act with respect to WIC that federal or state law prohibits, the Department is required by the act to take action against the vendor in the manner required by federal regulations, including imposition of a civil money penalty, or Public Health Council rules.

Screening newborn children for genetic, endocrine, and metabolic disorders

(R.C. 3701.23)

The Public Health Council is required by law to adopt rules for testing of newborn children for the presence of phenylketonuria, homocystinuria, galactosemia, and hypothyroidism. If certain conditions are met, the rules may require tests for other genetic, endocrine, or metabolic disorders. The Council is required to establish by rule a fee of not less than \$14 for the tests.

Of the fee collected for newborn testing, the law earmarked \$10.25 for the Genetic Services Fund and \$3.75 for the Sickle Cell Fund. Of the amount deposited in the Genetic Services Fund, \$3 must be used to defray costs of phenylketonuria programs and \$7.25 to defray the costs of the newborn screening program. The money in the Sickle Cell Fund must be used to defray the costs of the Director of Health's duties regarding sickle cell disease. Instead of earmarking specific amounts of the fee for these purposes, the act provides that "not less than" the amount specified by law is so earmarked. For example, not less than \$10.25 of the fee is earmarked for the Genetic Services Fund and not less than \$3 of the \$10.25 must be used to defray costs of phenylketonuria programs.

Pressure piping inspection fee reduction

(R.C. 4104.45)

Specified types of pressure piping systems are required to be inspected in accordance with rules adopted by the Board of Building Standards. Owners or users of systems that must be inspected must pay specified inspection fees.

The act decreases one of the fees. Formerly the owner or user of the system had to pay a fee of \$150 plus an additional 2% of the actual cost of the system for each inspection made by a general inspector. Under the act, the 2% assessment is

reduced to 1.8% for fees paid during the period from July 1, 2000 through June 30, 2001, and to 1% on and after July 1, 2001.

Regulation of elevators

(R.C. 4105.12 and 4105.15)

The Superintendent of the Division of Industrial Compliance in the Department of Commerce is required to adopt rules exclusively for the inspection of elevators. The act additionally requires the Superintendent to adopt rules for the issuance, renewal, suspension, and revocation of certificates of competency and of operation, and for the conduct of hearings related to those actions.

Formerly the Director of Commerce was prohibited from issuing a certificate of operation for an elevator until it was inspected and an inspection report was filed with the Superintendent. The act eliminates the reporting requirement and instead requires that the inspection be completed as required by the Elevator Law (R.C. Chapter 4105.).

The act eliminates the requirement that each certificate of operation or renewal bear the date of inspection. The act also eliminates the specific requirements relative to the timing of renewal inspections in favor of a requirement that certificates of operation be renewed in accordance with rules adopted by the Superintendent.

Examination for licensure as a nursing home administrator

(R.C. 149.43, 1347.08, 4751.04, 4751.041, 4751.05, and 4751.06)

Under law unchanged by the act, no person may operate a nursing home unless it is under the supervision of an administrator whose principal occupation is nursing home administration or hospital administration and who holds a valid nursing home administrator's license and registration, or a temporary license, issued by the Board of Examiners of Nursing Home Administrators. A nursing home administrator is an individual responsible for planning, organizing, directing, and managing the operation of a nursing home, or who in fact performs those functions, whether or not the functions and duties are shared by one or more other persons.

One condition for obtaining a nursing home administrator's license is passing an examination prescribed by the Board. The Board is required to hold examinations at least two times each year, at such times and places as the Board designates.

The act eliminates the requirement that the Board hold examinations at least two times each year, at such times and places as the Board designates, and provides instead that the Board may administer the examinations or contract with a government or private entity to administer the examinations. If the Board contracts with a government or private entity to administer the examinations, the contract may authorize the entity to collect and keep, as all or part of the entity's compensation under the contract, any fee an applicant for licensure pays to take an examination. The government or private entity is not required to deposit the fee into the state treasury.

Formerly the Board was required to admit to the examination an applicant who, among other things, pays the examination fee of \$150. The act requires that the Board, or a government or private entity under contract with the Board to administer the examination, admit to the examination an applicant who, among other things, pays the examination fee charged by the Board or entity.

The act prohibits the Board, except when it considers it necessary, from disclosing test materials, examinations, or evaluation tools used in the examination. The prohibition applies regardless of whether the Board, or a government or private entity under contract with the Board, administers the examination. The test materials, examinations, and evaluation tools are exempted by the act from disclosure under the Public Records Law and release under the Personal Information Systems Law.

Resolving conflicts in gas and electric company taxation

Generally, the act resolves effective date issues created by the simultaneous amendment, by two acts, of the same public utility excise tax and tangible personal property statutes. The acts are (1) the Biennial Budget Act, Am. Sub. H.B. 283 of the 123rd General Assembly, which removes natural gas companies from the public utility excise tax and levies a new excise tax on their gross receipts, beginning May 1, 2000, at the same rate of 4¾% as under the public utility excise tax, and (2) the Electric Industry Deregulation Act, Am. Sub. S.B. 3 of the 123rd General Assembly, which, among numerous other matters, removes electric companies from the public utility excise tax and requires them to pay the corporation franchise tax, commencing in tax year 2002. Many of the provisions in H.B. 283 took effect September 29, 1999, and parts of S.B. 3 took effect October 5, 1999.

Under R.C. 103.131, the Director of the Legislative Service Commission is the codifier of Ohio's laws (R.C. 103.131). In performing this duty, the Director must follow statutory rules of construction, which require that if amendments to the same statute are enacted at the same or different sessions of the legislature, one

amendment without reference to the other, the amendments are to be harmonized, if possible, so that effect is given to each (R.C. 1.52). If the amendments are substantively irreconcilable, the latest in date of enactment prevails. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.

The nearly simultaneous amendment of the same statutes in both H.B. 283 and S.B. 3, and the fact that many of the statutes have future applicability, resulted in statutory harmonization problems and, in some instances, made it difficult to establish which version of a particular statute was to prevail. Although most of the codified and uncodified law in both acts clearly addressed when many of the provisions first apply, some amendments were substantively irreconcilable, resulting in versions that eliminated language needed until future versions of the statutes take effect. To prevent problems with the administration and effective dates of these statutes, and to resolve harmonization problems, the act reenacts language that was intended to remain in the statutes up to tax year 2001 or 2002, places effective dates directly in some of them, and makes technical corrections where needed.

Amendments that clarify effective dates or resolve harmonization problems

(R.C. 5727.111, 5727.15(C), 5727.24, 5727.32, and 5727.33; Sections 58, 59, 66, 67, and 77)

Section 3 of S.B. 3 provided that the reduction of the tangible personal property assessment rate for electric and rural electric company property, and the new apportionment formula for that property, would first apply to tax year 2001. The act repeals Section 3 and places this date directly in codified law so that the assessment rates and apportionment formula that existed prior to S.B. 3 remain in the law, to be used until tax year 2001, and retains the new assessment rates and apportionment formula added by S.B. 3, to be followed in tax year 2001 and thereafter. The act also reenacts apportionment language that should have remained in existing law until December 31, 2000, but could not be harmonized.

The act amends the new natural gas company excise tax law to indicate that natural gas companies begin paying the tax on and after May 1, 2000. Although this date appeared in R.C. 5727.25 and Section 174 of H.B. 283, it also is being indicated in R.C. 5727.24 to address any effective date concerns.

In removing electric companies from the public utility excise tax and requiring them to pay the corporation franchise tax under S.B. 3, and at the same time moving natural gas companies from the public utility excise tax to the new excise tax under H.B. 283, two provisions, one regarding which rural electric and

electric company gross receipts must be included in the annual statement filed under the public utility excise tax law (R.C. 5727.32), and the other concerning which of those gross receipts are excluded in computing the tax (R.C. 5727.33(D)), could not be harmonized. The act reenacts this language, but limits it to tax years prior to tax year 2002.

Combined companies

Correction to the term "combined companies" (R.C. 5727.01, 5727.24 to 5727.29, 5727.32, and 5727.33; Section 66). S.B. 3 added a definition to the public utility excise tax and tangible personal property laws for a "combined company," meaning a person engaged in the activity of an electric company or rural electric company that is also engaged in the activity of a heating company or a natural gas company, or any combination thereof. H.B. 283 added a similar definition of "combined electric and gas company." The act eliminates the duplication, and retains the term "combined company" and the definition from S.B. 3.

Attributing gross receipts to the proper combined company activity (R.C. 5727.01, 5727.03(D), 5727.24, and 5727.29(A)(2); Section 66). Current law enacted by S.B. 3 establishes how the gross receipts of a combined company are to be attributed to a particular public utility activity for tax purposes. This provision has a formula to determine which gross receipts arise out of an electric or rural electric company activity versus those that should be attributed to a natural gas or heating company activity. Determining which gross receipts to attribute to a particular activity is crucial because electric company gross receipts are taxed under the corporation franchise tax, natural gas company gross receipts are taxed under the new natural gas company excise tax, and those of a heating company continue to be taxed under the public utility excise tax.

At the time H.B. 283 enacted the new excise tax for natural gas companies, the combined company provision enacted by S.B. 3 (R.C. 5727.03) did not exist. The act adds natural gas companies to this provision so that their gross receipts are attributed to the proper activity under the formula, and the correct tax is applied to the receipts, depending on the activity to which they are attributed. A similar change is made to the law (R.C. 5727.29) regarding how a combined company's gross receipts are attributed to a natural gas company activity for purposes of claiming a tax credit for payment of the old public utility excise tax during the transition to the new natural gas company excise tax.

The act includes a combined company in the definition of "public utility" for purposes of the public utility excise, tangible personal property, and natural gas company excise tax laws.

Natural gas company tax returns

(R.C. 5727.25(B))

H.B. 283 established a new excise tax payment schedule for natural gas companies that allowed payment for the preceding quarter or year rather than the "advance" payment schedule of the existing public utility excise tax. Under that act, a natural gas or combined company generally will be required to file a quarterly return, but if it has an annual tax liability of less than \$325,000 for the preceding calendar year, it will have to file an annual return. Sub. H.B. 640 makes this requirement permissive, so that natural gas or combined companies with this lesser tax liability may choose their filing period.

Tax payments and assessments required for the transfer of natural gas companies to the new natural gas company excise tax

Final tax payments (R.C. 5727.25(B); Section 66). Section 174 of H.B. 283 establishes three final tax payment dates for a natural gas company or a combined company (for its receipts attributed to a natural gas company activity) during its transition from paying the public utility excise tax, which has an advance payment schedule, to paying the new natural gas company excise tax, which requires payments based on the preceding quarter or year. The act provides that a natural gas company that had a tax liability of less than \$325,000 for the public utility excise tax assessed by the Tax Commissioner on or before November 1, 1999, is not required to make any of those three final tax payments when that tax is again assessed by the Tax Commissioner on or before November 6, 2000. Instead, the natural gas company must remit the new excise tax on or before February 14, 2001, for the period of May 1, 2000, to December 31, 2000.

Tax year 2000 assessments for combined companies (Section 66). The transition from the existing public utility excise tax to the new natural gas company excise tax presents a unique problem for combined companies. For instance, a combined company that is a heating company and a natural gas company must determine how much it owes under the existing public utility excise tax as a heating company and, prior to May 1, 2000, as a natural gas company. After that date, its gross receipts from natural gas company activities begin to be taxed under the new natural gas company excise tax. For this transition, the act requires that the Tax Commissioner issue two separate assessments for tax year 2000. The first assessment must reflect only the taxable gross receipts of a combined company from operating as a natural gas company subject to the new natural gas company excise tax. The second assessment must reflect all the other taxable gross receipts of the combined company. A combined company's estimated payments that are due on or before October 15, 2000, March 1, 2001,

and June 1, 2001, for its public utility excise tax liability are to be based solely on this second assessment.

Transition tax payment for certain natural gas companies (R.C. 5727.29(B); Section 66). Section 175 of H.B. 283 requires that on June 30, 2001, a natural gas company with over 300,000 open access residential customers pay \$10,300,000, as an advance payment of the new natural gas company excise tax. Under existing law, the payment is refundable as a tax credit against natural gas company excise tax liability, and the company may claim one-sixtieth of the credit on each quarterly tax return. The act states that this payment is a tax payment (not an advance payment of the new natural gas company excise tax), and provides that the payment first may be claimed as a credit against the tax the company is required to pay for the quarter ending September 30, 2001, divided equally among the 60 quarters.

In the event a natural gas company or combined company entitled to the credit sells or transfers all or a majority of its natural gas assets, the act provides that any such unused credit transfers to the new owner of those assets. If the sale or transfer takes place after April 30, 2000, the credit for the tax period in which all or a majority of the assets are sold must be split proportionally between the natural gas company or combined company and the new owner, based on a ratio that is the number of days in the tax period that the assets were owned by the company as compared to the new owner.

Applicability of the existing public utility excise tax

(R.C. 5727.30; Section 58)

The act restates in codified law certain dates already set in uncodified law. The act provides that on and after April 30, 2001, an electric company's or a rural electric company's gross receipts are no longer subject to the public utility excise tax. This concept also appears in Section 11 of S.B. 3. Likewise, the act provides that a natural gas company's gross receipts received after April 30, 2000, are no longer subject to the public utility excise tax. Section 174 of H.B. 283 also addresses this.

Computation period for the public utility or natural gas company excise tax

(R.C. 5727.33)

The act clarifies the gross receipts computation period for each type of public utility. For instance, heating companies must compute gross receipts for the period of May 1 prior to the tax year to April 30 of the tax year. The act adds a

provision that requires a natural gas company, including a combined company, to compute its gross receipts in the manner required by existing natural gas company excise tax law.

Under prior law the Tax Commissioner was required to "ascertain and determine" the entire gross receipts received from all sources to compute the public utility or natural gas company excise tax and "exclude" certain receipts. The act eliminates these phrases and states that gross receipts actually received from all sources for business done within this state are taxable gross receipts and affirmatively lists the gross receipts that are to be excluded.

Distribution of one-time property tax replacement payments

(Section 54)

Under S.B. 3, the Tax Commissioner, under certain circumstances, may make a one-time early payoff of school district and local government property tax replacement payments. The law that allows the Commissioner to do this for school districts designates the School District Property Tax Replacement Fund as the fund from which the payments are paid, requires that the amounts be distributed to the proper local taxing unit as if they had been levied and collected as taxes, and directs the local taxing unit to apportion the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes. The act establishes this same distribution requirement for one-time payments made from the Local Government Property Tax Replacement Fund.

Technical changes

(R.C. 4928.20, 5727.03, 5727.111(E)(3), 5727.25, 5727.31, 5727.311, 5727.38, 5727.42, and 5727.60; Section 76)

The act moves language within statutes and eliminates duplicative phrases. These technical problems are the result of statutory changes made by H.B. 283 that were not envisioned at the time S.B. 3 was drafted.

The act also clarifies in existing law regarding public utility property tax assessment rates that the type of electric company personal property listed and assessed under the general taxpayer personal property tax law is property that is leased to the electric company (R.C. 5727.111(E)(3)).

Prior law authorized a municipality, township, or county to adopt an ordinance or resolution, on or after the starting date of competitive retail electric service, under which the municipality, township, or county could aggregate retail electrical loads located within its jurisdiction and, for that purpose, enter into

service agreements to facilitate for those loads the sale and purchase of electricity. The act allows a municipality, township, or county to adopt the ordinance or resolution anytime under which, on or after the starting date of competitive retail electric service, the municipality, township, or county could aggregate the electrical loads and enter into the service agreements. (R.C. 4928.20.)

Tax credit for new manufacturing machinery and equipment

(R.C. 5733.33 and 5747.31)

Continuing law authorizes a tax credit for new manufacturing machinery and equipment purchased and used in Ohio by corporations and other business organizations. The credit applies to purchases made before 2006, provided the machinery or equipment is installed before 2007. The credit equals a percentage of a taxpayer's incremental increase in machinery and equipment investment in a county over its existing stock of machinery and equipment over a baseline period. The percentage is 7.5%, other than in inner cities, certain economically distressed areas, and labor surplus areas, where the percentage is 13.5%. The credit must be claimed over seven years, and is nonrefundable.

If a group of taxpayers are related through common ownership or control (e.g., parent-subidiaries), under current law the taxpayers in the group must claim the credit as if they were a single taxpayer. That is, in determining whether the incremental investment in a county is sufficient for a credit, the combined incremental investment in the county by all of the related taxpayers is compared to their combined stock of machinery and equipment over the baseline period. To be considered part of the group, some taxpayers may own or control as little as 20% of at least one other group member, or another member of the group must own or control as little as 20% of the taxpayer.

Under the act, to be treated as a single taxpayer for purposes of the credit, each taxpayer in the group must own or control more than 50% of the voting stock of at least one other group member, or another group member must own or control more than 50% of the taxpayer's voting stock. Or, two or more taxpayers must claim the credit as a single taxpayer if neither owns or controls more than 50% of the taxpayer's voting stock, but more than 50% of each taxpayer's voting stock is owned by one or more other corporations. (In terms of the law, the taxpayer must be a member of a "qualifying controlled group.") By implication, the act also restricts the ability to claim the credit as a group to groups of corporations only; that is, entities that have issued stock. Groups of other forms of business organizations that are related through common ownership are not required (or permitted) to claim the credit together as a single taxpayer.

The act also codifies Section 178 of Am. Sub. H.B. 283 of the 123rd General Assembly, which allowed groups of taxpayers to elect to be treated as a single taxpayer retroactively for the purposes of claiming the credit for machinery and equipment investments before 2001, provided they satisfy the mutual ownership and control criterion.

The act also changes the manner in which the new manufacturing machinery and equipment tax credit is computed for partnerships. Am. Sub. S.B. 3 of the 123rd General Assembly (the electric industry deregulation act) established in the corporation franchise tax law (R.C. 5733.057) a general method by which partnerships and other business entities determine allocable income or losses in computing tax credits granted under that law. The act amends the new manufacturing machinery and equipment tax credit to require that partnerships compute the credit in accordance with this general method.

Sales tax exemption for labels and related equipment and supplies

(R.C. 5739.02(B)(15))

Existing law exempts from the sales tax sales to retailers and other specified persons of certain personal property, including material and parts for packages and machinery, equipment, and material used primarily for packaging. The act adds to the list of exemptions sales of labels for packages and of machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced | 04-04-00 | p. 1755 |
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