



Final Analysis

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Legislative Service Commission

H.B. 675*

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(As Passed by the General Assembly)

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Sens. Amstutz, Spada, Carnes, Coughlin

Effective date: March 14, 2003; certain provisions effective December 13, 2002, and July 1, 2003; Sections 1.04 and 1.05 effective January 1, 2004; Sections 1.07, 1.08, and 32.01 effective July 1, 2003; and Sections 30.01, 30.02, 30.03, 30.04, and 30.05 effective December 13, 2002; contains item vetoes

ACT SUMMARY

- Establishes the Innovation Ohio Loan Program in the Department of Development and authorizes the Director of Development, subject to the approval of the Controlling Board, to make loans and loan guarantees to pay the allowable innovation costs of eligible projects in targeted innovation industry sectors.
- Permits the Director of Development to acquire innovation property (e.g., software, inventory, licenses, contract rights, patents and patent applications, trademarks) and to convey such innovation property to any governmental agency or person without competitive bidding and upon whatever terms, conditions, and manner of consideration the Director considers appropriate.

* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for H.B. 675 for an analysis of such provisions.*

- Establishes administrative procedures and criteria for assistance under the Innovation Ohio Loan Program that are similar, but not identical, to those of the ongoing Facilities Establishment Fund Law.
- Specifies that the amount of an Innovation Ohio loan may not exceed 90% of the total costs of an eligible innovation project, and that the amount to be guaranteed under the program may not exceed 90% of the allowable innovation costs of an eligible project.
- Permits reimbursement under the Innovation Ohio Loan Program of the costs of creating and protecting intangible property, such as a patent, copyright, or trademark, that is related to an eligible innovation project or a product or service related to an eligible innovation project.
- Would have exempted the construction of project facilities built under the Innovation Ohio Loan Program from the Prevailing Wage Law. (Vetoed)
- Permits the issuance of additional obligations according to the procedures of the Facilities Establishment Fund Law to pay the costs of the program.
- Modifies the maximum aggregate amount of the unpaid principal of loans and loan guarantees that may be outstanding under the Facilities Establishment Fund Law by adding the unpaid principal of loans and loan guarantees made under the Innovation Ohio Loan Program, but increases the maximum aggregate amount from \$500 million to \$700 million, of which no more than \$200 million may be comprised of loan guarantees made under the Facilities Establishment Fund Law and the Innovation Ohio Loan Program.
- Permits the Director of Development to take an interest in property to ensure that innovation property is used in Ohio and that services associated with innovation property are delivered by persons employed within Ohio.
- Creates the Third Frontier Commission in the Department of Development, as well as the Third Frontier Advisory Board, to coordinate and administer science and technology programs to promote the welfare of Ohio citizens and to maximize the economic growth of the state through expansion of the state's high technology research and development capabilities and the state's product and process innovation and commercialization.

- Abolishes the Biomedical Research and Technology Transfer Commission and transfers all of its functions, funding, and employees to the Third Frontier Commission.
- Makes various modifications and corrections to trust taxation law, affecting the computation of taxable income, how certain investment income is to be apportioned, trust residency rules, allocation of nonresident trusts' taxable income, exempted trusts, and attributing ownership in businesses to trusts.
- Eliminates the exclusion that allowed pass-through entities to avoid paying the pass-through entity withholding tax on account of electing small business trusts that otherwise qualify as investors for which payment of the withholding tax is required.
- Makes various corrections and clarifications to certain aspects of the income tax law and pass-through entity withholding tax law.
- Revises the definition of "making retail sales," for purposes of tax abatement eligibility under enterprise zone agreements and agreements for voluntary remediation of contaminated property, to limit such sales to point-of-final-purchase transactions at a facility open to the consuming public.
- Eliminates the requirement that county boards of revision mail decisions on real property tax complaints to the Tax Commissioner, but provides that the Tax Commissioner may order county auditors to send such decisions to the Commissioner.
- Provides that, for persons other than the Tax Commissioner, the time for filing an appeal to the Board of Tax Appeals begins to run when notice of the board of revision's decision is mailed to that person, while the Tax Commissioner's time for filing an appeal begins when the last mailing of notice is made to those other persons.
- Restores the interest charge on underpayments of estimated corporation franchise taxes.
- Makes technical corrections in the sales tax law to resolve conflicting amendments made by two recent acts.

- Provides that a probate court order granting an estate summary release from administration does not eliminate the duty to file an estate tax return and accompanying certificate.
- Modifies eligibility criteria and other conditions of the job retention tax credit.
- Temporarily permits certain tax increment financing "service" payments from tax-exempt property to be used to fund public infrastructure development unrelated to and remote from the exempted property.
- Changes, from the Tax Commissioner to the Office of Budget and Management, the entity from which the Secretary of State must request, and which must then prepare, an estimate of the annual expenditure of public funds proposed in connection with a state law or constitutional amendment proposed by initiative petition.
- Permits the Office of Budget and Management and the Tax Commissioner to issue jointly an estimate of the annual expenditure of public funds and an estimate of the annual yield of any taxes, if a state law or constitutional amendment proposed by initiative petition necessitates both the expenditure of public funds and the levy of a tax.
- Repeals a requirement that a ten-member Budget Study Committee be appointed.
- Specifies that the proceeds of Ohio Building Authority bonds that can be used to finance specified capital facilities do not include accrued interest or any premium received upon the sale of the bonds for the payment of bond service charges, and expressly authorizes the deposit and safeguarding of that accrued interest and premium.
- Under the state bond law, specifies that "debt service" may (rather than must) include costs relating to credit enhancement facilities that are related to and represent, or are intended to provide a source of payment of or limitation on, other debt service.
- Specifies which fiscal year's wealth percentile ranking to use in determining a school district's priority for assistance and share of project cost under the state's school facilities assistance programs.

- Requires that demolition costs be considered in calculating the basic project cost of a state-assisted school facilities project.
- Creates a school facilities assistance program for joint vocational school districts.
- Requires the Ohio School Facilities Commission, by July 1, 2004, to establish by rule an expedited facilities assistance program for joint vocational school districts similar to the "expedited local partnership program" established by statute for city, exempted village, and local school districts.
- Permits the Administrator of Workers' Compensation to allow a state institution of higher education, a school district, a county school financing district, an educational service center, and a community school to self-insure construction projects estimated to cost over \$25 million, whether or not those public employers are self-insuring public employers under the Workers' Compensation Law.
- Increases, from \$15,000 to \$50,000, the threshold amount for requiring competitive bidding for capital improvement projects undertaken by two-year state-assisted colleges.
- Authorizes, in addition to two or more municipal corporations as under ongoing law, (1) one or more municipal corporations and one or more political subdivisions other than a municipal corporation or (2) two or more political subdivisions other than municipal corporations, to enter into an agreement for the joint construction or management, or construction and management, of any public work, utility, or improvement benefiting each municipal corporation or other political subdivision or for the joint exercise of any power conferred on municipal corporations or other political subdivisions by the Ohio Constitution or statutory law, in which each of the municipal corporations or other political subdivisions is interested.
- Creates a new exception to the general prohibition against including a political subdivision in more than one port authority by allowing a municipal corporation and a county, both of which created or joined a port authority after July 9, 1982, to create a new port authority if the port authority (or authorities) they created or joined operates or operated an airport.

- Specifies that a port authority's territorial jurisdiction includes all of an airport that the port authority owns or leases, including runways, terminals, and related facilities, even if the airport or any part of its facilities is located outside of the territory of the political subdivision that created the port authority.
- Specifies that an entity such as a governmental agency or a nonprofit organization that would not be required to pay taxes on property that it owns also is not required to pay taxes on property that it leases from a port authority for more than one year.
- Revises the requirements by which a majority of the board of directors of a port authority may take action.
- Authorizes a county to finance the construction or repair of a bridge using long life expectancy material by issuing bonds having a maximum maturity of 50 years (instead of the formerly allowable 20 years) and an average maturity not exceeding the expected useful life of the material used in the bridge deck, upon a finding and recommendation by the county engineer that projected savings from the use of the material are sufficient to pay any additional debt service costs.
- Authorizes a board of county commissioners that purchases or appropriates specified real estate interests for purpose of the construction, maintenance, or operation of county water supply facilities, if the interest was subject to certain property taxes prior to the purchase or appropriation, to make payments to a school district for all or a portion of the amount of taxes that otherwise would have been received by the district.
- Eliminates the caps on the amount of money that a board of county commissioners may annually provide to the county historical society, allows a board to also provide such funding to a local society for the preservation and restoration of historic and archaeological sites, and allows such funding to be used for the restoration of historic buildings.
- Revises the mine safety laws to modify the notification and review procedures for the finding of a mine safety violation, add requirements for the examination of surface coal mines, and change the class of employees at surface coal mines that can be designated as first aid providers.

- Increases the annual inspection, reinspection, and midseason operational inspection per-ride fees for specified types of amusement rides, and establishes per-ride fees for annual go kart inspections and reinspections and for expedited inspections, failures to cancel scheduled inspections, and failures to have amusement rides ready for inspection.
- Authorizes, rather than requires, the Department of Agriculture to conduct a midseason operational inspection of every amusement ride for which it conducts an annual inspection.
- Increases the fee for a license to operate a concession at a fair or exposition from \$50 to \$70.
- Creates the Administrative Building Fund consisting of the proceeds of bonds issued by the Ohio Building Authority, and the State Architect's Fund consisting of public works rents and other revenue collected by the Department of Administrative Services and (under certain circumstances) a percentage of the investment earnings of the Administrative Building Fund.
- Specifies that money in the Administrative Building Fund be used to pay for the costs of buildings for housing branches of state government and money in the State Architect's Fund be used to pay for certain expenses of the Department of Administrative Services.
- Permits cash balance amounts not needed for ongoing operating expenses in the State Fire Marshal's Fund to be used to acquire interests in real property for the benefit of the Office of the Fire Marshal and to construct, acquire, enlarge, equip, furnish, and improve the Fire Marshal's office facilities and the facilities of the Ohio Fire Academy.
- Exempts public employees who must function as attorneys to fulfill their job duties from the Public Employees Collective Bargaining Law.
- Authorizes the Controlling Board to reject recommendations of a fact-finding panel (that is utilized for collective bargaining when the parties reach an impasse) when the state or any of its agencies, authorities, commissions, boards, or other branch of public employment is party to the fact-finding process.

- Permits all state board or commission members to receive specified healthcare benefits coverage, and requires only some of those members (those appointed for a fixed term with specified compensation or reimbursement) to pay the entire premiums, costs, or charges for that coverage.
- Creates the Ohio Veterans' Home Agency to maintain and operate veterans' homes and associated nursing homes for honorably discharged veterans in the state; allows the Agency to establish veterans' homes in addition to the Ohio Veterans' Home at Sandusky; and makes changes to the names of various entities, positions, and funds related to the Ohio Veterans' Home to reflect the creation of the Agency and the establishment of multiple veterans' homes.
- Clarifies that the Superintendent of the Ohio Veterans' Home (Agency) may, but is not required to, appoint veterans' home police officers for each veterans' home.
- Makes permissive, rather than mandatory, the requirement that a resident of a veterans' home pay the amount equal to the rate of per diem grant reimbursement for the resident's care that is not paid to the home by the United States Department of Veterans Affairs for specified reasons.
- Expands the duties of the Ohio Arts and Sports Facilities Commission to include the provision of training or education in the arts.
- Enacts the Ohio Museum Property Act to address the ownership of property on loan to any institution operated by a governmental agency or nonprofit corporation primarily for educational, scientific, aesthetic, historic, or preservation purposes.
- Revises the payment schedule set forth in Am. Sub. S.B. 164 of the 124th General Assembly for the conveyance of certain state-owned real estate to the Hamilton County Alcohol and Drug Addiction Services Board.
- Authorizes the conveyance of certain state-owned real estate located in Hamilton County to any purchaser.
- Authorizes the conveyance of certain state-owned real estate located in East Liverpool, Columbiana County to the East Liverpool Young Men's Christian Association (YMCA) in exchange for the YMCA's conveyance

to the state, for the use and benefit of Kent State University, of other real estate in East Liverpool.

TABLE OF CONTENTS

Innovation Ohio Loan Program	11
Legislative declaration of intent	12
Allowable costs of eligible innovation projects	12
Establishment of new funds	14
Establishment of new loan guarantee fund reserve requirements	15
Issuance of obligations	16
Aggregate limits on the issuance of obligations	16
Aggregate limits on the guaranteed portion of loans and on loans made	16
Reservation of at least 50% of original obligations for small business.....	17
Amounts required in the Innovation Ohio Loan Guarantee Fund.....	17
Inducements available under the Innovation Ohio Loan Fund Program.....	18
Innovation property	19
Director may ensure that innovation property is used in Ohio	19
Innovation financial assistance	19
General criteria to determine eligibility for innovation financial assistance	19
Specific criteria for loan guarantees.....	21
Rights of guaranteed parties.....	23
Specific criteria for loans	23
Determinations of the Director are conclusive	24
Relocation of an eligible innovation project.....	25
Other definitions modified by the act	25
Differences between the Facilities Establishment Fund Law and the Innovation Ohio Loan Program	27
Biomedical Research and Technology Transfer Commission: abolishment and transfer of functions	30
Background	30
Third Frontier Commission.....	30
Third Frontier Advisory Board.....	32
Changes in the tax on trust income	34
Taxable income.....	34
Trust residency rules	39
Exempted trusts	41
Sharing of credits with beneficiaries.....	41
Effective date	42
Removing exemption for ESBTs from pass-through entity tax	42
Tax abatement eligibility of enterprise zone businesses that make retail sales	43
Board of revision decisions: notice and appeal	43



Interest charges on late estimated payments of corporation franchise tax	44
Harmonization and technical corrections to sales tax law.....	44
Summary release from probate administration: duty to file estate tax return and certificate.....	45
Changes to job retention tax credit.....	46
Eligibility.....	46
Centrality-of-operations requirement	47
Recapture of tax credits and renegotiation of agreements	47
Analogous municipal job retention tax credits	48
Municipal tax increment financing: remote use of funds	48
Preparation of tax and expenditure estimates for initiative petitions	49
Repeal of the Budget Study Committee	49
Ohio Building Authority bonds	50
Definition of "debt service" in state bond law	50
Changes to the School Facilities Commission programs	50
Background	50
Wealth percentile ranking	51
Specifying demolition costs as part of the project costs	53
Joint vocational school facilities assistance program	53
Expedited program for JVSDs	54
Educational entities self-insuring construction projects for Workers'	
Compensation.....	55
Bidding requirement for capital improvement projects undertaken by two-year state-assisted colleges	56
Joint contracts for public improvements and for the joint exercise of powers	57
Ongoing law.....	57
Changes made by the act.....	58
Port authorities.....	58
Creation of a new port authority.....	58
Port authority tax exemption.....	59
Port authority boards of directors.....	60
County bonds for bridge improvements using long-lived material.....	60
County payments to a school district for tax revenues eliminated due to county acquisition of property for water supply facilities.....	62
Funding county historical societies	62
Mine safety	63
Notification and review procedures for mine safety violations	63
Examination of surface coal mines	63
First aid providers.....	64
Amusement ride inspection fees.....	64
License fees for concession operators at fairs and expositions	66
Administrative Building Fund and State Architect's Fund.....	66
Fire Marshal's Fund.....	67

Changes in the Public Employees Collective Bargaining Law	67
State board and commission member healthcare benefits coverage	67
The Ohio Veterans' Home Agency.....	68
Overview of Ohio veterans' homes	68
Creation of the Ohio Veterans' Home Agency	68
Board of Trustees of the Ohio Veterans' Home Agency.....	68
Establishment of multiple veterans' homes.....	69
Superintendent of the Ohio Veterans' Home Agency	69
Police chief of the Ohio Veterans' Home Agency	69
Veterans' home police officers	70
Veterans' homes related funds	70
Miscellaneous	70
Duties of the Ohio Arts and Sports Facilities Commission	71
Ohio Museum Property Act	71
Definitions	72
When property on loan is considered abandoned or the loan terminated	72
Required notices.....	73
Application of conservation measures.....	74
Property from an unknown source	75
Disclosure.....	75
Good title.....	75
Other provisions	75
Payment schedule for real estate conveyed to Hamilton County Alcohol and	
Drug Addiction Services Board.....	76
Conveyance of real estate in Hamilton County	76
East Liverpool land conveyances	76

CONTENT AND OPERATION

Innovation Ohio Loan Program

(R.C. 151.40, 166.01 to 166.08, and 166.11 to 166.16)

The act establishes the Innovation Ohio Loan Program in the Department of Development. The program is operated in a manner that is similar to the ongoing Facilities Establishment Fund Program (R.C. Chapter 166.). Under the new program, the act authorizes the Director of Development to make loans and loan guarantees to persons to pay the "allowable innovation costs" of "eligible innovation projects." The release of funds is subject to the approval of the Controlling Board. Program assistance is limited to eligible innovation projects involving the use of technology in "targeted innovation industry sectors," which are industry sectors involving the production or use of advanced materials, instruments, controls and electronics, power and propulsion, biosciences,

information technology, or other sectors designated by the Director. (R.C. 166.01(P).)

The program is funded by the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund, which are established by the act and are in the custody of the Treasurer of State. These two funds receive moneys from the proceeds of bond sales that are repaid with state liquor profits or repayments of program loans in the same manner as the ongoing Facilities Establishment Fund and Loan Guarantee Fund. The use of revenue bond proceeds for economic development is authorized by Section 13, Article VIII of the Ohio Constitution, if the purposes are consistent with that section. The purposes for which assistance may be granted under the Innovation Ohio Loan Program are more expansive than those of the Facilities Establishment Fund Law in that they include payment for intangible property such as patents. Also, the administrative procedures utilized in the two programs are not identical (see "*Differences between the Facilities Establishment Fund Law and the Innovation Ohio Loan Program*," below). The act increases the combined total amount of the unpaid principal of loans and loan guarantees that the Director may make under the Innovation Ohio Loan Guarantee Fund Law and the Facilities Establishment Fund Law from \$500 million to \$700 million (R.C. 166.11(B)).

Legislative declaration of intent

The act includes a legislative declaration of intent that states that, in order to maintain and enhance the competitiveness of the Ohio economy and to improve the economic welfare of all of the people of the state, it is necessary to ensure that high-value jobs based on research, technology, and innovation are available to the people of Ohio. The act also includes a declaration of a legislative finding that the attraction of high-value jobs and their presence in this state will materially contribute to the economic welfare of all of the people of Ohio. Accordingly, the act provides that it is the public policy of the state to assist and facilitate the establishment or development of eligible innovation projects, or to assist and cooperate with any governmental agency in achieving that purpose. (R.C. 166.12(A).)

Allowable costs of eligible innovation projects

The act permits the Director to enter into contracts to (1) guarantee the repayment or payment of the unpaid principal amount of loans made to pay the "allowable innovation costs of eligible innovation projects" and (2) make loans to pay these costs. (R.C. 166.15(A) and 166.16(A).)

Eligible innovation project. The act creates a new term, "eligible innovation project," which includes:



- An "eligible project," as defined for the Facilities Establishment Fund Law, including any "project facilities" (e.g., buildings, equipment, improvements, and other property) associated with an eligible innovation project (see "Other definitions modified by the act" for a definition of "project facilities"); and
- All tangible and intangible property related to a new product or process based on new technology or the creative application of existing technology, including research and development, product or process testing, quality control, market research, and related activities, which is to be acquired, established, expanded, remodeled, rehabilitated, or modernized for industry, commerce, distribution, or research, or any combination thereof, the operation of which, alone or in conjunction with other eligible projects, eligible innovation projects, or innovation property, will create new jobs or preserve existing jobs and employment opportunities and improve the economic welfare of the people of the state. (R.C. 166.01(C).)

Allowable innovation costs. The act also creates a new term, "allowable innovation costs," which includes the following costs *to the extent that such expenditures could be capitalized under then-applicable generally accepted accounting principles*.^{1,2}

¹ *It appears, though it is not certain, that the phrase "all to the extent that such expenditures could be capitalized under then-applicable generally accepted accounting principles" modifies all of the listed elements of the definition, rather than the phrase immediately preceding it regarding intellectual property. If this is not the case, then the definition may permit the reimbursement for expenses such as labor or materials, which could pose a potential conflict with Section 13, Article VIII of the Ohio Constitution.*

² *Under Generally Accepted Accounting Principles (GAAP), an expense that is capitalized is recorded as an asset and the cost is amortized over future years. Generally, the costs of materials consumed and labor used in internal research and development (R&D) projects are not capitalized, although the costs of equipment may be capitalized if the equipment also is usable for other R&D projects. In addition, the filing costs of a patent application, and associated legal work, may be capitalized. Different rules apply for the capitalization of R&D that is acquired from an external source.*

Section 13, Article VIII of the Ohio Constitution permits the state "[t]o acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, or research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys..." for these purposes. This provision prohibits the state from obligating or pledging money raised by taxation for the

(1) "Allowable costs," as used under the Facilities Establishment Fund Law (see "**Other definitions modified by the act**"), of eligible innovation projects;

(2) Research and development of eligible innovation projects;

(3) Obtaining or creating any requisite software or computer hardware related to an eligible innovation project or the products or services associated therewith;

(4) Testing (including, without limitation, quality control activities necessary for initial production), perfecting, and marketing of such products and services; and

(5) Creating and protecting intellectual property related to an eligible innovation project or any products or services related thereto, including costs of securing appropriate patent, trademark, trade secret, trade dress, copyright, or other form of intellectual property protection for an eligible innovation project or related products and services.

"Allowable innovation costs" also includes the reimbursement of moneys advanced or applied by any governmental agency or other person for allowable innovation costs. (R.C. 166.01(B).)

Establishment of new funds

The act creates the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund as special revenue funds and trust funds that are in the custody of the Treasurer of State but are not part of the state treasury. The Treasurer serves as the agent of the Director in making withdrawals and deposits and for the maintenance of records related to the funds. The funds consist of all grants, gifts, and contributions of moneys or rights to moneys designated for or deposited in such funds, and all moneys and rights to moneys designated for and transferred to such funds, including moneys received from the issuance of revenue bonds. Neither fund may be comprised, in any part, of moneys raised by taxation. (R.C. 166.15(D) and (F) and 166.16(D) and (G).)

Innovation Ohio Loan Fund. In addition, except as noted below, the act requires the Innovation Ohio Loan Fund to receive moneys from: (1) funds received by the state from the repayment of loans made from the Fund, (2) the recovery of loan guarantees, including interest, made under the Innovation Ohio

payment of bonds or other obligations issued or guarantees made pursuant to this section of the Constitution. It is unclear whether expenditures for labor may be construed as "property" within the meaning of this section of the Constitution.



Loan Fund Law, and (3) the sale, lease, or other disposition of property acquired or constructed from moneys in the Fund derived from the proceeds of the sale of obligations. Such moneys must be used as provided in the law governing the Innovation Ohio Loan Program and the Facilities Establishment Fund Law. (R.C. 166.16(H)(1).)

Investment income from moneys in the Innovation Ohio Loan Fund must be deposited in that Fund. The Treasurer of State is permitted to withdraw, without appropriation, amounts of investment income required to be rebated to the federal government in order to maintain the exemption from federal taxation of interest on obligations issued under the Innovation Ohio Loan Fund Law. (R.C. 166.16(H)(3).)

Exceptions to the deposit of funds in the Innovation Ohio Loan Fund. As an exception to the above, the act requires amounts recovered on loan guarantees from the Innovation Ohio Loan Guarantee Fund to be deposited to the credit of that Fund to the extent necessary to restore that Fund to the Innovation Ohio loan guarantee reserve requirement or any level in excess thereof required by any guarantee contract. Money in the Innovation Ohio Loan Guarantee Fund in excess of the reserve requirement, but subject to any guarantee contract, may be transferred to the Innovation Ohio Loan Fund by the Treasurer of State upon the Director's order. (R.C. 166.16(H)(2).)

In addition, the act permits moneys from loan repayments, recovery of loan guarantees, and the disposition of property to be held in separate accounts within the Innovation Ohio Loan Fund or in the bond service fund and pledged to the security of obligations, applied to the payment of bond service charges without need for appropriation, or released from such pledges and transferred to the Innovation Ohio Loan Fund, upon the written direction of the Director pursuant to the requirements of bond proceedings. (R.C. 166.16(H)(3).)

Establishment of new loan guarantee fund reserve requirements

The act establishes reserve requirements for any loan guarantees made from the Innovation Ohio Loan Guarantee Fund or the ongoing Loan Guarantee Fund. The act defines "innovation Ohio loan guarantee reserve requirement" as a balance in the Innovation Ohio Loan Guarantee Fund equal to the greater of 20% of the then-outstanding principal amount of all outstanding guarantees payable from the fund or 50% of the principal amount of the largest guarantee payable from it. The reserve requirement is identical for the Loan Guarantee Fund. (R.C. 166.01(I) and (K).)

Issuance of obligations

The act authorizes the issuance of obligations for the Innovation Ohio Loan Fund and the Innovation Ohio Loan Guarantee Fund upon the certification by the Director to the Treasurer of State of the amount of moneys needed in the funds. The obligations are issued according to procedures utilized in ongoing law for the Facilities Establishment Fund. The act also authorizes the costs of services associated with the issuance of obligations to be paid out of moneys in the Innovation Ohio Loan Fund. The obligations issued for the Innovation Ohio Loan Guarantee Fund may be sold at private sale without publication of notice. (R.C. 166.08.)

Aggregate limits on the issuance of obligations

Ongoing law establishes a \$300 million limit for the aggregate principal amount of obligations that may be issued for which bond service charges are repaid with liquor profits. To this limit are added the following:

- (1) The principal amount of any such obligations retired by payment;
- (2) The amounts held for the payment of the principal amount of any such obligations outstanding;
- (3) Amounts in special funds held as reserves to meet bond service charges; and
- (4) Amount of obligations issued to provide moneys required to meet payments from the Loan Guarantee Fund.

This aggregate limit must be reduced by the amount if any by which 4% of the unpaid principal amount of loan repayments guaranteed under the Loan Guarantee Fund exceeds the amount in the fund.

Under the act, the debt limit is to be increased by the amounts of obligations issued to provide moneys required to meet payments from the Innovation Ohio Loan Guarantee Fund. (R.C. 166.11(A).)

Aggregate limits on the guaranteed portion of loans and on loans made

Prior law provided that the aggregate amount of the guaranteed portion of the unpaid principal of loans guaranteed under the Facilities Establishment Fund Law, and the unpaid principal of loans made under that law, could not at any time exceed \$500 million. (Under ongoing law, this limitation does not apply to loans made with proceeds from the issuance and sale of obligations that are not serviced by liquor profits.)

The act increases the aggregate limit to \$700 million and makes loans and loan guarantees made under the Innovation Ohio Loan Program subject to this limit along with loans and loan guarantees made under the Facilities Establishment Fund Law. In addition, the act specifies that, of the \$700 million aggregate limit, the aggregate amount of the guaranteed portion of the unpaid principal of loans guaranteed by the Facilities Establishment Fund Law and by the Innovation Ohio Loan Program Law must not exceed \$200 million at any time. (R.C. 166.11(B).)

Reservation of at least 50% of original obligations for small business

Under prior law, at least 50% of the original loan and loan guarantee amounts authorized under the Facilities Establishment Fund Law had to be reserved for and applied to assist small business concerns with not more than 400 employees, not including new employment generated by an eligible project to be assisted under the Facilities Establishment Fund Law. The act removes this requirement. (R.C. 166.11(C).)

Amounts required in the Innovation Ohio Loan Guarantee Fund

Before the Director enters into a contract for a guarantee payable from the Innovation Ohio Loan Guarantee Fund, the Treasurer of State must transfer an amount from the Innovation Ohio Loan Fund to the Innovation Ohio Loan Guarantee Fund sufficient to make the balance in the Guarantee Fund equal to its reserve requirement. Thereafter, the Treasurer must maintain an amount in the Innovation Ohio Loan Guarantee Fund at least equal to the reserve requirement, through transfers from the Innovation Ohio Loan Fund. If the amounts available in the Innovation Ohio Loan Guarantee Fund are inadequate to meet the requirements of a guarantee, the Treasurer must transfer, without appropriation and without further action by the Director, necessary amounts to the fund from unencumbered and available money in the Innovation Ohio Loan Fund. The provisions of the guarantee determine the manner and the times of disbursement. (R.C. 166.15(F).)

The act requires the Treasurer of State to follow the same procedures to maintain the reserve requirement balance in the Loan Guarantee Fund with respect to guarantees made under the Facilities Establishment Fund Law, except the transfers are made from the Facilities Establishment Fund (R.C. 166.06(F)).

Inducements available under the Innovation Ohio Loan Fund Program

In order to implement the Innovation Ohio Loan Fund Law, the act permits the Director to exercise the following powers:³

(1) After consultation with appropriate governmental agencies, to enter into agreements with persons engaged in industry, commerce, distribution, or research to develop eligible innovation projects and make provisions for project facilities and governmental actions;

(2) To provide for loan guarantees from the Innovation Ohio Loan Guarantee Fund and loans from the Innovation Ohio Loan Fund;

(3) Subject to the release of moneys by the Controlling Board from the Innovation Ohio Loan Fund, to contract for labor and materials needed for eligible innovation projects, and to contract for the operation of such projects;

(4) Subject to release of moneys by the Controlling Board from the Innovation Ohio Loan Fund, to acquire or contract to acquire by gift, exchange, or purchase, including by purchase options, "innovation property" (see below), and to convey or otherwise dispose of innovation property without competitive bidding and upon such terms and conditions and manner of consideration that the Director determines to be appropriate to satisfy the objectives of the program;

(5) To retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, and employees, agents, and independent contractors as are necessary in the Director's judgment and to fix the compensation for their services;

(6) To receive and accept from any person grants, gifts, and contributions of money, property, labor, and other things of value, to be held, used, and applied only for the purpose for which such grants, gifts, and contributions are made;

(7) To enter into appropriate arrangements and agreements with any governmental agency for the taking or provision by that governmental agency of any governmental action;

(8) To do all other acts and enter into contracts and execute all instruments necessary or appropriate to carry out the provisions of the Innovation Ohio Loan Fund Law; and

³ *These powers are similar to those exercised by the Director under the Facilities Establishment Fund Law.*

(9) To adopt rules to implement any of the provisions of the Innovation Ohio Loan Fund Law applicable to the Director (R.C. 166.12(B)).

The act permits any governmental agency to undertake on behalf and at the request of the Director the third, fourth, and fifth functions listed above (R.C. 166.02(F)).

Innovation property

The act defines "innovation property" to include (1) real and personal property and interests therein, (2) software, inventory, licenses, contract rights, goodwill, intellectual property (including, without limitation, patents, patent applications, trademarks and service marks, and trade secrets), and other tangible and intangible property, and (3) any rights and interests in or connected to any of the foregoing (R.C. 166.01(J) and (N)).

Director may ensure that innovation property is used in Ohio

Under the act, the Director is permitted to take an interest in property, including innovation property, by mortgage, security interest, assignment, exclusive or non-exclusive license, or other means, to ensure any of the following:

- (1) That innovation property is used in Ohio;
- (2) That products associated with the innovation property are produced by persons employed in Ohio;
- (3) That services associated with innovation property are delivered by persons employed in Ohio (R.C. 166.12(B)(9)).

Innovation financial assistance

The act creates a new term, "innovation financial assistance," which means the inducements described above, as well as Innovation Ohio loan guarantees and Innovation Ohio loans (R.C. 166.01(H)).

General criteria to determine eligibility for innovation financial assistance

The act requires the Director to consider the following criteria in determining the eligible innovation projects to be assisted and the nature, amount, and terms of innovation financial assistance to be provided for an eligible project under the Innovation Ohio Loan Program:

(1) The number of jobs to be created or preserved by the project, directly or indirectly;

(2) Payrolls, and the taxes generated, at both state and local levels, by or in connection with the project and by the employment created or preserved by or in connection with the project;

(3) The size, nature, and cost of the project, including the prospect of the project providing long-term jobs in enterprises consistent with the changing economics of the state and the nation;

(4) The needs of any private sector enterprise to be assisted;

(5) The amount and kind of assistance, if any, to be provided to the private sector enterprise by other governmental agencies through tax exemption or abatement, financing assistance with industrial development bonds, and otherwise, with respect to the project or with respect to any providers of innovation property to be included as part of the project;

(6) The likelihood of successful implementation of the proposed project;

(7) Whether the project involves the use of technology in a targeted innovation industry sector (R.C. 166.14(A)(1)).

The benefits to the local area, including taxes, jobs, and reduced unemployment and reduced welfare costs, among others, may be accorded value in leasing or sales of project facilities and in loan and guarantee arrangements (R.C. 166.14(A)(2)).

In making determinations one through seven above, the act permits the Director to consider the effect of an eligible innovation project upon any entity engaged to provide innovation property to be acquired, leased, or licensed in connection with the assistance (R.C. 166.14(A)(3)).

Development Finance Advisory Council. The act requires the Director to submit information to the Development Finance Advisory Council (DFAC) for DFAC's use in making a recommendation as to the appropriateness of the proposed innovation financial assistance. The information that the Director must submit includes data pertinent to the criteria for eligibility, the terms of the proposed innovation financial assistance, and other relevant information the DFAC may request.

DFAC may revise its recommendation to reflect any changes in the proposed assistance submitted by the Director. DFAC must submit its

recommendations as to appropriateness of proposed innovation financial assistance to the Controlling Board. (R.C. 166.14(B) and (C).)

Private sector financial records not open to public inspection. Under the act, financial statements and other data submitted to the Director, the DFAC, or the Controlling Board by any private sector person in connection with innovation financial assistance, or any information taken from such statements or data for any purpose, are not open to public inspection. The act permits the DFAC, in considering confidential information in connection with innovation financial assistance, to close the meeting during such consideration by unanimous vote of all members present. (R.C. 166.14(D).)

Specific criteria for loan guarantees

The act permits the Director to enter into contracts to guarantee the repayment or payment of the unpaid principal amount of loans made, including bonds, notes, or other certificates issued or given to provide funds, to pay allowable innovation costs of eligible innovation projects. Such guarantees must be secured solely by and payable solely from the Innovation Ohio Loan Guarantee Fund and from unencumbered and available money in the Innovation Ohio Loan Fund. The act stipulates that such guarantees do not constitute general obligations of the state or of any political subdivision, and moneys raised by taxation cannot be obligated or pledged for the payment of the guarantees.

Before guaranteeing any such repayments or payments, the Director must make all of the following determinations:

- (1) The project is an eligible innovation project and is economically sound;
- (2) The principal amount to be guaranteed does not exceed 90% of the allowable innovation costs of the eligible innovation project as determined by the Director. The Director may engage an independent engineer, architect, appraiser or other professional to make the determination, pursuant to a contract to be paid solely from the Innovation Ohio Loan Fund, subject to the approval of the Controlling Board.
- (3) The principal amount to be guaranteed has a satisfactory maturity date or dates, which in no case shall be later than 20 years from the effective date of the guarantee;
- (4) The principal obligor, or primary guarantor, is responsible and is reasonably expected to be able to meet the payments under the loan, bonds, notes, or other certificates;

(5) The loan or documents pertaining to the bonds, notes, or other certificates to be guaranteed contains provisions for payment by the principal obligor satisfactory to the Director, and is in such form and contains such terms and provisions for the protection of the lenders as are generally consistent with commercial practice, including, where applicable, provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, delinquency charges, default remedies, acceleration of maturity, prior, additional and secondary liens, and other matters as the Director may approve. (R.C. 166.15(A) and (B).)

These determinations are generally identical to those used under ongoing law for guarantees payable from the Loan Guarantee Fund. (The act modifies ongoing law as necessary to conform to the terms described above. It also provides that guarantees made from the Loan Guarantee Fund are payable solely from that fund and unencumbered and available money in the Facilities Establishment Fund (rather than liquor sale profits). (R.C. 151.40 and 166.06(A) and (B).))

Contract of guarantee. The contract of guarantee may provide for:

- The conditions of, time for, and manner of fulfillment of the guarantee commitment;
- Subrogation of the state to the rights of the parties guaranteed and exercise of such parties' rights by the state;
- Giving the state the options of making payment of the principal amount guaranteed in one or more installments and, if deferred, to pay interest thereon from the Innovation Ohio Loan Guarantee Fund;
- Any other terms or conditions customary to such guarantees and as the Director may approve;
- Securing the guarantee in a manner consistent with the Innovation Ohio Loan Program Law;
- Covenants on behalf of the state for the maintenance of the Innovation Ohio Loan Guarantee Fund and of receipts to it, including covenants on behalf of the state to issue obligations to provide moneys to the Innovation Ohio Loan Guarantee Fund to fulfill such guarantees;
- Covenants restricting the aggregate amount of guarantees that may be contracted under the Innovation Ohio Loan Program and restricting the obligations that may be issued by the state, and terms pertinent to either, to better secure the parties guaranteed (R.C. 166.15(C)).

The act also allows the Director to fix service charges for making a guarantee. The time, place, amount and manner of payment are to be determined by the Director. (R.C. 166.15(E).)

Rights of guaranteed parties

The act provides that any guaranteed parties, except to the extent that their rights are restricted by the guarantee documents, may by any suitable form of legal proceedings, protect and enforce any rights given to them by Ohio law or granted by the guarantee or guarantee documents. These rights include the right to compel the performance of all duties of the Director and the Treasurer of State that are required by the law pertaining to the guarantees made under the Innovation Ohio Loan Program or by the guarantee or guarantee documents. In the event of default with respect to the payment of any guarantees, a guaranteed party may apply to a court to appoint a receiver to receive and administer the moneys pledged to the guarantee with full power to pay, and to provide for payment of, the guarantee, and with such powers, subject to the direction of the court, as are accorded receivers in general equity cases, excluding any power to pledge or apply additional revenues or receipts or other income or moneys of the state or governmental agencies of the state to the payment of the guarantee.

The act establishes that each duty of the Director and the Treasurer of State and their officers and employees, and of each governmental agency and its officers, members, or employees, required or undertaken according to the law pertaining to guarantees made under the Innovation Ohio Loan Program or a guarantee made under that program, is a duty of those individuals for which a court may issue a writ of mandamus compelling those individuals to perform the duty. The act exempts the individuals who are at the time the Director and Treasurer of State, or their officers or employees, from liability in their personal capacities on any guarantees or contracts to make guarantees under the Innovation Ohio Loan Program. (R.C. 166.15(G).)

Specific criteria for loans

The act permits the Director, with the approval of the Controlling Board and subject to the other applicable provisions governing the Innovation Ohio Loan Program, to lend moneys in the Innovation Ohio Loan Fund to persons for the purpose of paying allowable costs of an eligible innovation project if the Director determines all of the following:

- (1) The project is an eligible innovation project and is economically sound;
- (2) The borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms;

(3) The amount to be lent from the Innovation Ohio Loan Fund will not exceed 90% of the total costs of the eligible innovation project;

(4) The repayment of the loan from the Innovation Ohio Loan Fund will be secured by a mortgage, lien, assignment, pledge, or other interest in property or innovation property at a level of priority and value as the Director may determine necessary; in making this determination, the Director may take into account the value of any rights granted by the borrower to the Director to control the use of any property or innovation property of the borrower under the circumstances described in the loan documents. (R.C. 166.16(A).)

The act allows the Director to fix fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the Innovation Ohio Loan Fund. The moneys used in making such loans are to be disbursed from the Fund upon order of the Director. The Director may take actions necessary or appropriate to collect or otherwise deal with a loan. (R.C. 166.16(C) and (E).)

Determinations of the Director are conclusive

The act provides that the Director's determinations that certain facilities or property constitute eligible innovation projects, that costs of such facilities or property are allowable innovation costs, and all other determinations relevant thereto or to an action taken or agreement entered into, are conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under the act (R.C. 166.12(C)). Moreover, the Director must set forth a determination that any innovation financial assistance given conforms to the law governing the Innovation Ohio Loan Program in the assistance agreement. The determination must be submitted to the DFAC when it considers a request for innovation financial assistance, and to the Controlling Board when it considers a loan made from the Innovation Ohio Loan Fund. The Director's determination is conclusive for purposes of the validity and enforceability of the agreement and any loans, loan guarantees, or other assistance under the Innovation Ohio Loan Fund Law. (R.C. 166.13(A).)

With respect to loan guarantees, the act provides that the determinations of the Director are conclusive for purposes of the validity of a guarantee evidenced by a contract signed by the Director, and such guarantee is incontestable as to money advanced under loans to which such guarantees is their terms applicable (R.C. 166.06(H) and 166.15(H)). With respect to loans, the act similarly provides that the determinations of the Director are conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the Director (R.C. 166.16(B)).

Relocation of an eligible innovation project

The act permits an applicant to request assistance under the Innovation Ohio Loan Program for the purpose of relocating an eligible innovation project. Such a request triggers a notice requirement. Under the act, whenever a person applies for financial assistance and the project for which assistance is requested is to relocate an eligible innovation project that is currently being operated by the person and that is located in another county, municipal corporation, or township, the Director is required to provide written notification to the appropriate local governmental bodies and state officials.⁴

The notification must contain the following information:

- (1) The name of the person applying for financial assistance;
- (2) The county, and the municipal corporation or township, in which the project for which assistance is requested is located; and
- (3) The county, and the municipal corporation or township, in which the project to be replaced is located.

The Director must provide the written notification to the appropriate local governmental bodies and state officials so that they receive the notification at least five days before the meeting at which the DFAC considers the request for financial assistance. (R.C. 166.13(B).)

Other definitions modified by the act

Allowable costs. Under ongoing law modified by the act, for purposes of the Facilities Establishment Fund Law, "allowable costs" is defined as all or part of the costs of:

⁴ Under the act, "appropriate local governmental bodies" means: (a) the boards of county commissioners or legislative authorities of the county in which the project for which assistance is requested is located and of the county in which the project to be replaced is located, (b) the legislative authority of the municipal corporation or the board of township trustees of the township in which the project for which assistance is requested is located, and (c) the legislative authority of the municipal corporation or the board of township trustees of the township in which the project to be replaced is located. The appropriate "state officials" are the state representative and state senator in whose districts the project for which assistance is requested is located, and the state representative and state senator in whose districts the project to be replaced is located. (R.C. 166.13(C).)

- (1) Acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping, or furnishing "project facilities," where "project facilities" means buildings, structures, other improvements, equipment, and other property, excluding small tools, supplies, and inventory, that are all or part of, or serving or incidental to, an eligible project, including public capital improvements;
- (2) Site clearance and preparation;
- (3) Supplementing and relocating public capital improvements or utility facilities;
- (4) Designs, plans, specifications, surveys, studies, and estimates of costs;
- (5) Expenses necessary or incident to determining the feasibility or practicability of assisting an eligible project or providing project facilities;
- (6) Architectural, engineering, and legal services fees and expenses;
- (7) The costs of conducting any other activities as part of a voluntary action. ("Voluntary action" means environmental site remediation under R.C. Chapter 3746.)
- (8) Such other expenses as may be necessary or incidental to the establishment or development of an eligible project; and
- (9) Reimbursement of moneys advanced or applied by any governmental agency or other person for allowable costs.

The act modifies the definition of allowable costs and utilizes it as an element of "allowable innovation costs," as noted under **Allowable innovation costs**," above. The act adds the costs of eligible innovation projects to the first and eighth activity listed above, and adds the costs of an eligible innovation project or the costs of providing facilities related to an eligible innovation project to the fifth activity listed above. (R.C. 166.01(A), (M), and (Q).)

Governmental action. "Governmental action," for purposes of the Facilities Establishment Fund Law, is defined under ongoing law as any action by a governmental agency relating to the establishment, development, or operation of an eligible project and project facilities that the governmental agency acting has authority to take or provide for the purpose under law, including, but not limited to, actions relating to contracts and agreements, zoning, building, permits, acquisition and disposition of property, public capital improvements, utility and transportation service, taxation, employee recruitment and training, and liaison and coordination with and among governmental agencies.

Under the act, "governmental action" also means any such action by a governmental agency relating to the establishment, development, or operation of an eligible innovation project. (R.C. 166.01(F).)

Project facilities. Under ongoing law, project facilities means buildings, structures, and other improvements, equipment and other property, and any one, part of, or combination of the above, that comprise all or part of, or serve or are incidental to, an eligible project, including, but not limited to, public capital improvements. The term excludes small tools, supplies, and inventory. Under the act, the items included above also are considered to be project facilities if they comprise all or part of, or serve or are incidental to, an eligible innovation project. (R.C. 166.01(M).)

Differences between the Facilities Establishment Fund Law and the Innovation Ohio Loan Program

Many of the procedures and criteria for eligibility established by the act for the Innovation Ohio Loan Program are similar, or even identical, to those found in the Facilities Establishment Fund Law. The following list describes differences between the programs.

Declaration of legislative intent and purpose. The declaration of legislative intent and purpose of the Facilities Establishment Fund Law expresses a finding that many local areas throughout Ohio are experiencing economic stagnation or decline, and that investments through the Facilities Establishment Fund constitute a deserved, necessary reinvestment by the state in those areas, materially contribute to their economic revitalization, and result in improving the economic welfare of all of the people of the state (R.C. 166.02(A)). The intent and purpose clause established by the act for the Innovation Ohio Loan Program focuses on high-value jobs based on research, technology, and innovation (see "**Legislative declaration of intent,**" above).

Utilization of innovation property in Ohio. The authority of the Director under the Innovation Ohio Loan Program to take interests in property in order to ensure that innovation property is utilized in Ohio is a new authority that is not granted in the Facilities Establishment Fund Law.

Recommendation by a regional economic development entity. The Facilities Establishment Fund Law provides that the Director is not required to submit any data, determinations, or application materials to the DFAC if the provision of assistance has been recommended by a regional economic development entity (R.C. 166.05(C)(2)). A regional economic development entity is an organization that is under contract with the Director to administer a loan

program in a particular area of the state (R.C. 166.01(S)). The Innovation Ohio Loan Program does not contain this exception from DFAC approval.

Prevailing wage. The Facilities Establishment Fund Law requires that laborers and mechanics employed on project facilities assisted under that Law receive prevailing wages as determined by the Prevailing Wage Law (R.C. Chapter 4115.). A provision of the act, vetoed by the Governor, would have exempted the Innovation Ohio Loan Program from this requirement. (R.C. 166.02(E).)

General eligibility for assistance. The two programs require the Director to make similar determinations with respect to the general criteria to determine the eligibility of a project for assistance. The requirements are not identical, however. The following four determinations are required by the Facilities Establishment Fund Law but are *not* required under the Innovation Ohio Loan Program:

- (1) The needs, and degree of needs, of the area in which the eligible project is to be located;
- (2) The competitive effect of the assistance on other enterprises providing jobs for people of the state;
- (3) The effect of the assistance on the loss of or damage to or destruction of prime farmland;
- (4) The length of time the operator of the project has been operating facilities within the state. (R.C. 166.05(A)(1)(d), (f), (i) and (j).)

In making the required determinations for eligibility, the Ohio Innovation Loan Program permits the Director to consider the effect of an eligible innovation project upon any entity engaged to provide innovation property to be acquired, leased, or licensed in connection with such assistance (R.C. 166.14(A)(3)). The Facilities Establishment Fund Law does not contain such a provision.

Under the Facilities Establishment Fund Law, other criteria that the Director must take into consideration are payrolls and taxes generated, at both state and local levels, by the eligible project and by the employment created or preserved by the eligible project (R.C. 166.05(A)(1)(b)). The act establishes the same criteria for the Innovation Ohio Loan Program, but adds that payrolls and taxes generated "in connection with" the eligible innovation project must also be considered by the Director (R.C. 166.14(A)(1)(b)).

The Facilities Establishment Fund Law also requires the Director to take into consideration the impact of the eligible project and its operations on local government services, including school services, and on public facilities



(R.C. 166.05(A)(1)(h)). The Innovation Ohio Loan Program does not include this requirement.

In addition, the Facilities Establishment Fund Law requires the Director to determine that the benefits to the state and the local area from the eligible project exceed the cost of providing the assistance (R.C. 166.05(B)). The Innovation Ohio Loan Program does not include this provision.

Eligibility for a loan guarantee. Under the Facilities Establishment Fund Law, the Director is required to determine that the rate of interest on a loan to be guaranteed, and on any other loan made by the same parties or related persons for the eligible project, is not excessive (R.C. 166.06(B)(4)). The act does not establish this requirement for the Innovation Ohio Loan Program.

Eligibility for a loan. The two programs use similar criteria with respect to determining eligibility for loans. However, they are not identical. Under the Facilities Establishment Fund Law, the amount that formerly could be loaned could not exceed 75% of the total allowable costs of the eligible project, unless the entire amount to be lent was derived from the issuance and sale of project financing obligations (that is, obligations financed from loan repayments rather than liquor profits), in which case the amount could not exceed 90% of the total allowable costs of the eligible project. The act modifies this provision by increasing the loan cap from 75% to 90% if *any part* of the amount to be lent (rather than the entire amount) is derived from the issuance and sale of project financing obligations. (R.C. 166.07(A)(3).) The act establishes a limit of 90% of allowable innovation costs for all loans made from the Innovation Ohio Loan Fund (R.C. 166.16(A)(3)).

Under the Facilities Establishment Fund Law, the Director must determine that the eligible project could not be achieved in the local area in which it is to be located if the portion of the project to be financed by the loan instead were to be financed by a guaranteed loan (R.C. 166.07(A)(4)). The act does not establish this requirement for the Innovation Ohio Loan Program Fund.

Under the Facilities Establishment Fund Law, the amount of the loan to be repaid must be adequately secured by a mortgage, lien, assignment, or pledge at a level of priority that the Director requires (R.C. 166.07(A)(5)). The act establishes this requirement for the Innovation Ohio Loan Program, and adds that the Director may take into account the value of any rights granted by the borrower to the Director to control the use of any property of the borrower under circumstances described in the loan documents (R.C. 166.16(A)(4)).

Under the Facilities Establishment Fund Law, a borrower is required to hold at least a 10% equity interest in the eligible project at the time the loan is

made (R.C. 166.07(A)(6)). The act does not establish this requirement for the Innovation Ohio Loan Program.

Biomedical Research and Technology Transfer Commission: abolishment and transfer of functions

(R.C. 102.02, 183.021, 183.19, 183.20 to 183.25 (repealed), 183.30, and 184.01 to 184.03; Sections 1.03, 30.01 to 30.05, and 35.02)

Background

Pursuant to Am. Sub. S.B. 192 of the 123rd General Assembly, all payments made to Ohio under the Tobacco Master Settlement Agreement are credited to the Tobacco Master Settlement Agreement Fund and then transferred by the Director of Budget and Management to eight other funds, including the Biomedical Research and Technology Transfer Trust Fund. Under prior law, money in the Biomedical Research and Technology Transfer Trust Fund was administered by the 25-member Biomedical Research and Technology Transfer Commission within the Ohio Board of Regents. The charge of the Commission was to make strategic assessments of the types of state investments in biomedical research and biotechnology in Ohio that would be likely to create jobs and business opportunities and produce the most beneficial long-term improvements to the public health of Ohioans. These assessments were to be used by the Commission to guide its decisions on awarding grants to individuals, public agencies, private companies or organizations, or joint ventures for any of a broad range of activities related to biomedical research and technology transfer.

Third Frontier Commission

The act abolishes the Biomedical Research and Technology Transfer Commission, effective July 1, 2003, and transfers all of its functions and employees to the Third Frontier Commission, which the act creates in the Department of Development. The Third Frontier Commission is to consist of the Director of Development, the Chancellor of the Ohio Board of Regents, and the Governor's science and technology advisor. The purpose of the Commission is to coordinate and administer science and technology programs to promote the welfare of Ohio citizens and to maximize the economic growth of the state through expansion of the state's high technology research and development capabilities and the state's product and process innovation and commercialization.

Duties. The Third Frontier Commission is required to administer the Biomedical Research and Technology Transfer Trust Fund to support the duties and responsibilities of the Commission in accordance with the act's provisions. The Commission is to establish a competitive process for the award of grants and

loans that is designed to fund the most meritorious proposals and, when appropriate, provide for peer review of proposals. With specific application to the Biomedical Research and Technology Transfer Trust Fund, the Commission is to periodically make strategic assessments of the types of state investments in biomedical research and biotechnology in Ohio that would likely create jobs and business opportunities and produce the most beneficial long-term improvements to the public health of Ohioans, including biomedical research and biotechnology initiatives that address tobacco-related illnesses as may be outlined in any master agreement. The Commission must award grants and loans from the Fund pursuant to the competitive process it establishes.

The act authorizes the Commission to perform any act to ensure the performance of any function necessary or appropriate to carry out its purposes and exercise its powers. In addition, the Commission may do any of the following:

(1) Adopt, amend, and rescind rules under expedited rulemaking procedures (R.C. 111.15) for the administration of any aspect of its operations;

(2) Adopt bylaws governing its operation, including those that establish procedures and set policies as may be necessary to assist with the furtherance of its purposes;

(3) Appoint and set the compensation of employees needed to carry out its duties;

(4) Contract with, retain the services of, or designate, and fix the compensation of, such financial consultants, accountants, other consultants and advisors, and other independent contractors as may be necessary or desirable to carry out its duties;

(5) Solicit input and comments from the Third Frontier Advisory Board (see below) and specialized industry, professional, and other relevant interest groups concerning its purposes;

(6) Facilitate alignment of the state's science and technology programs and activities;

(7) Make grants and loans to individuals, public agencies, private companies or organizations, or joint ventures for any of the broad range of activities related to its purposes.

Within 90 days after the end of each fiscal year, the Commission must submit a report of its activities during the preceding fiscal year to the Governor and the General Assembly.

Administration. The Governor is required to select a chairperson from among the members, who will serve in that role at the pleasure of the Governor. The Commission is to meet at least once during each quarter of the calendar year or at the call of the chairperson. A majority of the members of the Commission constitutes a quorum, and no action can be taken without the concurrence of a majority of the members. Commission members are to serve without compensation, but are to receive their reasonable and necessary expenses incurred in the conduct of Commission business.

The act requires the Commission to administer any money that may be appropriated to it by the General Assembly, and authorizes the Commission to use such money for research and commercialization and for any other purposes that may be designated by it. The Department of Development is to provide office space and facilities for the Commission. Administrative costs associated with the operation of the Commission or with any program or activity administered by the Commission are to be paid from amounts appropriated to the Commission or to the Department of Development for those purposes.

The Attorney General is to serve as the legal representative for the Commission, and the act permits the Attorney General to appoint other counsel as necessary for that purpose.

The act states that the Commission is not subject to the Sunset Review Committee Law (R.C. 101.82 to 101.87).

Third Frontier Advisory Board

The act also creates the Third Frontier Advisory Board to provide general advice to the Third Frontier Commission on items such as (1) strategic planning for programs administered by the Commission, (2) budget and funding priorities, funding processes, request-for-proposal criteria, and other aspects of the management and coordination of programs administered by the Commission, (3) metrics and methods of measuring the progress and impact of programs administered by the Commission, and (4) studies to be conducted to collect and analyze data relevant to advancing the goals of Commission administered programs.

The Board is to consist of 16 members selected for their knowledge of and experience in science and technology matters that may affect Ohio in the near future. Fourteen of the members are to be appointed by the Governor. The Speaker of the House of Representatives and the President of the Senate are each to appoint one member.

Of the 14 members appointed by the Governor, nine must be representative of or have experience with business matters that affect Ohio and five must be representative of or have experience with matters affecting universities or nonprofit research institutions in Ohio. Of the Governor's initial appointees that are representative of or have experience with business matters that affect Ohio, three are to serve an initial term of one year, three are to serve an initial term of two years, and three are to serve an initial term of three years. All of the initial appointees that are representative of or have experience with matters affecting university or nonprofit research institutions are to serve an initial term of three years. Thereafter, each member appointed by the Governor is to serve a three-year term.

Not more than nine members of the Board can be of the same political party. Members are not to act as representatives of any specified disciplinary, regional, or organizational interest, but are to represent a wide variety of experience valuable in technology research and development, product process innovation and commercialization, and creating and managing high-growth technology-based companies.

The Governor is to appoint the chairperson of the Board from among its members, who will serve in that role at the pleasure of the Governor. A majority of the members constitutes a quorum. No action can be taken without the affirmative vote of a majority of the members.

Each member is to hold office from the date of appointment until the end of the term for which appointed. A member may be reappointed for an unlimited number of terms. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed holds office for the remainder of that term. A vacancy in an unexpired term is to be filled in the same manner as the original appointment. A member is to continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first. All appointees to the Board serve at the pleasure of their appointing authorities; however, the Governor may remove *any* member for malfeasance, misfeasance, or nonfeasance after a hearing in accordance with the Administrative Procedure Act (Chapter 119.).

Members of the Board are to serve without compensation, but are to receive their reasonable and necessary expenses incurred in the conduct of Board business. The Department of Development is required to provide office space and facilities for the Board.

Before entering upon their duties, each member is required to take an oath as provided by the Ohio Constitution (Article XV, Section 7). In addition,



members are required to file financial disclosure statements with the Ohio Ethics Commission as described in the Ethics Law (R.C. 102.02(B)).

The act states that the Board is not subject to the Sunset Review Committee Law (R.C. 101.82 to 101.87).

Changes in the tax on trust income

(R.C. 5747.01(I), (S), and (BB), 5747.011, 5747.012, 5747.02, and 5747.231)

The act makes various modifications and corrections to recently enacted law applying the income tax to certain kinds of trusts for three years. The changes principally address the variety of ways in which trusts and their income sources may be organized or related to one another and third parties. The changes affect the definition of taxable income and how it is to be computed; how certain investment income is to be apportioned; statutory rules governing the residency of trusts; how a nonresident trust's taxable income is allocated; which kinds of trusts are exempted from the tax; and how a trust's ownership of businesses is to be attributed to the trust.

Taxable income

(R.C. 5747.01(S) and (BB) and 5747.012)

Under ongoing law, trusts are taxed on the basis of "modified taxable income," which is derived from a trust's federal taxable income. To compute modified taxable income, federal taxable income is adjusted by various additions and deductions prescribed by law, and divided into three components: modified business income, modified nonbusiness income, and the "qualifying amount," which is comprised of capital gains and losses from holding debt or equity of a business, government, or other issuer. (The act renames the "qualifying amount" as the "qualifying trust amount.") Modified business income is the business income of a trust minus any business income included in the qualifying amount; modified nonbusiness income is any income other than business income and income included in the qualifying amount. The division of income into three components is for the purpose of apportioning and allocating the portion of a trust's income that is taxable by Ohio; each component is apportioned or allocated by a different method.

Apportioning, allocating trusts' investment income to Ohio. Under ongoing law, modified business income is apportioned by the same method used to apportion a corporation's ordinary income under the corporation franchise tax law: that is, in proportion to the value of property, payroll, and sales in Ohio relative to all property, payroll, and sales, with relative sales constituting 60% of

the proportion, and relative payroll and property each constituting 20%. Modified nonbusiness income is allocated to Ohio (i.e., constitutes a part of modified taxable income) to the extent that the trust's nonbusiness income is produced by trust assets that compose the Ohio resident part of the trust under the trust residency rules (see below). A trust's qualifying amount is apportioned to Ohio on the basis of where the underlying physical assets producing the gain or loss are located: the gain or loss is apportioned to Ohio in proportion to the value of the underlying physical assets located in Ohio as compared to everywhere. (For example, if a trust receives a capital gain from selling stock it holds in a company with 30% of its physical assets in Ohio, 30% of the gain is apportioned to Ohio and thereby becomes part of the trust's qualifying amount.) The qualifying trust amount includes only those gains or losses arising from physical assets if the location is "available" to the trust. Under the act, a location is available if a person is able to learn of it by the time a tax report is due (including any extensions) for the year in which the gain or loss is realized.

The act requires certain kinds of investment income of certain kinds of resident trusts to be apportioned in the same manner as modified business income (i.e., under the relative property, payroll, sales formula), rather than being allocated as modified nonbusiness income. To be apportioned as modified business income, the investment income and the trust must satisfy four sets of conditions:

(1) The income must be attributable to the trust's ownership of a "qualifying investment pass-through entity"--i.e., a partnership or other pass-through entity that: (a) derives at least 40% of its income from loanmaking, investment management, other financial business activities, managing intangible assets, or from ownership of any other partnership or pass-through entity, (b) has at least 40% of its asset value composed of intangible assets, and (c) was formed before June 5, 2002 (the date the trust tax law became effective).⁵

(2) The income must arise from sources or activities described in (1)(a), above, and must not be included as part of the trust's qualifying trust amount (i.e., the income is not a capital gain or loss arising from the trust disposing of an ownership or debt interest, and is not a partnership share of a capital gain or loss that is attributed to the trust's qualifying trust amount under the "look-through" rules, explained below).

⁵ A pass-through entity is a partnership, limited liability company, S corporation, or other entity that generally is not taxed as an entity; instead, the constituent owners are taxed on their distributive shares of income from the entity.

(3) The trust and certain related persons must own a minimum share of the investment pass-through entity from which the income flows: the trust must own at least 5% of the entity on each day of the entity's accounting year, and related persons must own more than 60% of the entity on each day of the entity's accounting year (in either case, ownership may be direct, or indirect through intermediate entities). "Related person" includes any family member of a qualifying beneficiary--i.e., a beneficiary's spouse; parents, grandparents, great grandparents, siblings thereof, and children, grandchildren, and other lineal descendants of any of those and those descendants' spouses.

(4) The trust was "fixed" on the date the trust tax law originally became effective (June 5, 2002), in the sense that it either (a) was created before, and irrevocable on, that date, or (b) consists of assets, 80% of which previously were owned by persons related to the trust, or owned by another trust created before that date by a person who did not have the power to change beneficiaries or amend or revoke the trust. (Substituting property of equal value would not constitute such a power.) (Such a trust is defined as a "qualified section 5747.012 trust.")

A trust continues to be entitled to a credit for taxes paid to another state on its modified nonbusiness income, but the act excludes from that income any investment income apportioned as described above. Alternatively, the credit equals the effective tax rate multiplied by modified nonbusiness income--excluding apportioned investment income--if this computation yields a smaller credit amount.

"Look-through" and amalgamation rules. A trust's qualifying trust amount is the gain (or loss) from selling or otherwise disposing of its interests in a business or its holdings of bonds or other debt instruments of a business or government entity. The taxable portion of the qualifying trust amount is determined on the basis of where the physical assets of that business or entity are located. To account for the possibility of a trust holding interests in a business or other entity indirectly through other entities, or in a business that is a part of a larger combination of businesses, the act prescribes rules for computing the extent to which the location of the physical assets of the indirectly held business, or of the group of businesses, are incorporated into computing the taxable portion of the trust's qualifying trust amount. The rules preclude, for example, a trust from escaping taxation on its qualifying trust amount just because the assets giving rise to income are held in an out-of-state holding company having no physical assets in Ohio; in such a case, the rules ensure that the location of the physical assets of businesses held by the holding company figure in the computation of the taxable qualifying trust amount. The rules also ensure that if a trust realizes a gain or loss indirectly through its indirect ownership of a business (e.g., the trust owns a pass-through entity business that realizes a gain or loss from selling ownership shares in

a second business), then the location of the physical assets of the second business are figured in the computation of the trust's taxable qualifying trust amount to the extent of the trust's indirect share of the second business.

Specifically, when a trust's qualifying trust amount is computed with respect to a business that is part of a group of commonly owned or controlled businesses (i.e., when the trust's gain or loss from disposing of its interest in the business is computed), the apportionment fraction (which is based on the relative value of the business's underlying physical assets in Ohio compared to everywhere) must incorporate the location of the physical assets of all of the members of that group. Also, if the group as a whole or any of its members owns the majority of a partnership or other pass-through entity, then the location of the pass-through entity's physical assets is attributed to that group, and therefore the location of those assets are to be incorporated in the computation of the part of the trust's gain (or loss) that is taxable by Ohio. If the partnership or other pass-through entity owns a share of another ("lower level") partnership or pass-through entity, then the location of the physical assets of the lower level entity is attributed to the "upper level" partnership or entity (i.e., the owner of the lower level entity), and therefore must be incorporated in computing the part of the trust's gain or loss that is taxable by Ohio as a qualifying trust amount. If the upper level entity owns less than a majority of the lower level entity, this attribution does not apply if it can be shown with clear and convincing evidence that the location of the lower level entity's physical assets is not available to the upper level entity.

For the purpose of computing its qualifying trust amount, a nonresident trust (or the part of a trust that is considered a nonresident trust) does not have to include gains or losses from selling its shares of or debt holdings in a "C" corporation (i.e., a corporation that is taxed as an entity, unlike an S corporation) if the gain or loss is nonbusiness income and the trust recognized the gain or loss in computing its taxable income.

"Qualifying trust amount": exceptions. The act permits a trust to have a small (less than 5%), long-term ownership interest in a business without having to include gains or losses realized on the sale of its share of the business in the trust's qualifying trust amount (and thereby incurring tax on the gain, or offsetting other income with the loss). To determine whether a trust owns less than 5% of a business, its indirect ownership of the business through any other, intermediary business or entity is included. Thus, if a trust holds 50% of an entity holding a 10% interest in the business, the trust is considered to hold 5% of the business. Ownership is determined as of any day during the ten-year period that ends on the last day of the trust's taxable year in which the gain or loss is realized. In determining the share of a business or entity indirectly owned by the trust, rules of constructive ownership are applied if the intermediary business or entity is either

another (irrevocable) trust, an estate, an S corporation, a partnership that is not publicly traded, a limited liability company not taxed as a corporation, or a closely held "C" corporation (i.e., a "C" corporation the majority of which is owned by five or fewer individuals, pension fund trusts, supplemental unemployment compensation trusts, private tax-exempt foundations, or charitable trusts). If a trust owns the business through an intermediate (second) trust, ownership is attributed to the first trust if both trusts have an individual trustee in common (or a member of that trustee's family as a trustee) on a given day, or if both trusts have an individual qualifying beneficiary in common (or a member of that beneficiary's family) on a given day.

Nonresident trusts' nonbusiness income. The act expressly includes a nonresident trusts' nonbusiness income in its Ohio tax base (i.e., in modified taxable income), and specifies a method for allocating the nonbusiness income of a nonresident trust (or the nonbusiness income of a part of a trust that is considered a nonresident trust under the residency rules explained below). Under prior law, nonbusiness income of a nonresident trust was not included in its Ohio tax base and there was no provision for allocating that income (unless the income was part of the trust's qualifying amount). Under the act, a nonresident trust's nonbusiness income is allocable to Ohio (and therefore taxable) generally to the extent that it would be allocable to Ohio if it were a nonresident individual's nonbusiness income (to the extent the income is not included in the trust's qualifying amount): i.e., the trust's capital gains and losses from property are to be allocated according to the location of the property, its rents and royalties are to be allocated according to the location of the rental property or where the underlying property rights are utilized, and its Ohio lottery prizes, if any, are allocable in entirety to Ohio.

Other adjustments to trust's taxable income. The act clarifies some of the adjustments made in computing a trust's or estate's Ohio taxable income. Additions for federally tax-deductible interest and dividends from publicly issued securities are required only to the extent that the net interest or dividend is not, for some other reason, required to be included in Ohio taxable income, and the net interest or dividend either (1) arises from any part of the trust composed of S corporation shares for which a federal electing small business trust (ESBT) election has been made, or (2) does not arise from an ESBT part of the trust, but has not been distributed to beneficiaries for the taxable year. (The significance of the ESBT election is that income arising from a trust's holdings in an S corporation are taxable entirely to the trust, and do not appear in the individual beneficiaries' federal adjusted gross income. Thus, that income should already be included in a trust's federal taxable income.)

The act also clarifies that certain deductions may be taken only to the extent that the deduction relates to income included in a trust's (or estate's) federal taxable income, or included in any part of a trust covered by an ESBT election. And, deductions and additions are to be deducted or added on a net basis, whereby an item of income is deducted or added only after the item is offset by related expenses incurred in producing that income.

Farming income. Under ongoing law, a trust owning a farm or share of a farm may deduct farming income, but only if the farm is at least ten acres and qualifies for favorable property tax treatment under the CAUV law (regardless of whether it actually receives CAUV treatment). The act clarifies that if such a farm is owned by a trust through a partnership or other type of pass-through entity, the trust may claim the deduction only if its proportionate share of a farm is equivalent to at least 10 acres (e.g., in the case of a 100-acre farm held by a partnership, a trust must own at least 10% of the partnership). The act also clarifies that the farm income deduction is available only to the extent that the trust has not distributed the income (unless the income is from the part of a trust under an ESBT election).

Trust residency rules

(R.C. 5747.01(I)(3))

The residency of a trust determines the extent to which the trust's nonbusiness income is taxable by Ohio: if a trust is not a resident trust, it is entitled to a credit for taxes paid to another state on the nonbusiness income. Under ongoing law, a trust is considered a resident trust to the extent that it consists of assets transferred under any of three conditions. If only some of the trust's assets consist of assets transferred under those conditions, then only the part of the trust consisting of those assets is considered a resident trust. Under prior law, the three conditions were the following:

(1) The assets were transferred by the will of a decedent who was domiciled in Ohio at the time of death.

(2) If the trust was not irrevocable, the assets were transferred by a person who was domiciled in Ohio.

(3) The assets were transferred by a person domiciled in Ohio when the trust became irrevocable, but only if at least one of the trust's beneficiaries was an Ohio resident (for Ohio income tax purposes) during some portion of the trust's taxable year.

The act modifies the conditions determining a trust's residency, generally to account for the variety of circumstances under which assets may be transferred to a trust. The modifications are as follows:

(1) The first condition is expanded to include transfers by a person, court, or governmental entity on account of the decedent-transferor's death. This first condition applies only if the trust is either (a) a testamentary trust (i.e., a trust taking effect upon the death of an individual) created by an individual who was domiciled in Ohio at the time of death (for Ohio estate tax purposes), or (b) an irrevocable inter vivos trust (i.e., one created during the individual's life) having at least one beneficiary domiciled in Ohio for some part of the trust's taxable year and receiving a "qualifying" transfer. A qualifying transfer is a transfer satisfying one of six sets of conditions: (i) a decedent transferred the assets to the trust while domiciled in Ohio, the trust was created before the decedent's death, and the trust became irrevocable while the decedent was domiciled in Ohio, (ii) the assets were transferred to a trust that the decedent had transferred assets to while living and while domiciled in Ohio, and the trust becomes irrevocable while the decedent was domiciled in Ohio, (iii) the transfer arises from a contractual relationship that existed between the person transferring the assets and the decedent (or the decedent's estate) while the decedent was living, and the decedent was domiciled in Ohio for estate tax purposes, (iv) the transfer arises from a contractual relationship between the decedent and another person who was domiciled in Ohio when the decedent died, (v) the transfer was by the decedent's will, or (vi) the transfer was made to a trust created by (or at the behest of) a court in connection with the death of an individual who was domiciled in Ohio at the time of their death (for estate tax purposes).

(2) The second condition is modified to require that the person transferring the assets was domiciled in Ohio (for income tax purposes) when the assets were transferred, and that at least one of the trust's beneficiaries was domiciled in Ohio (for income tax purposes) during at least some part of the irrevocable trust's taxable year. (For the purpose of conditions (2) and (3), a beneficiary includes any person entitled to a distribution of the trust's principal or income at any time during the trust's taxable year, or who may receive such a distribution at the discretion of any person, but excludes any beneficiary if the distribution would qualify as a tax-deductible charitable contribution. If the trust is a charitable lead trust--i.e., its income is distributed to a charitable or governmental entity for some period and its corpus or remainder is eventually distributed to another (noncharitable) beneficiary--then a beneficiary includes any current, future, or contingent beneficiary other than a charitable or governmental institution.)

(3) The third condition is modified to specify that the domicile of the person transferring the assets is "domiciled" for income tax purposes, and that the

irrevocability of the trust occurs when the trust instrument or document becomes irrevocable.

The act specifies rules for computing the extent to which any part of a trust is a resident trust. Prior law did not prescribe a computation method. Under the act, the resident portion of the trust is measured on the basis of the value of the trust's total assets (net of liabilities) that have been transferred under the residency conditions in (1), (2), and (3), above, in proportion to the value of all the trust's assets. (This proportion is the "qualifying ratio.") The value is computed as of the time of the transfer. If assets are transferred to the trust more than once, then the ratio is adjusted for each subsequent transfer to cumulate the "resident" proportion of assets, but the relative value of prior transfers are fixed at the value as of the time of the prior transfer, rather than being recomputed as of the time when the subsequent transfer occurs. (In other words, the relative values of prior transfers are frozen at the relative value when the assets were transferred, so a subsequent decline or increase in the relative value of prior transfers will not be reflected in the new ratio.)

The act also specifies that, for the purpose of the foregoing residency rules, asset transfers are included regardless of whether the transfer is made directly to the trust, or indirectly through other persons or entities.

Exempted trusts

(R.C. 5747.02(E))

Under prior law, the only kinds of trusts that were expressly exempted from the income tax were charitable trusts exempted under federal income tax law. The act expands the exemption to include revocable trusts having no modified Ohio taxable income for its taxable year, any trust exempted from federal income taxation (whether charitable or not), charitable remainder trusts, qualified funeral trusts, endowment and perpetual care trusts, qualified settlement trusts and funds, and designated settlement trusts and funds.

Sharing of credits with beneficiaries

(R.C. 5747.02(D)(3))

Under continuing law, credits available to individuals are not available to trusts. The act expressly provides that any of the other "business" credits are available to trusts. To the extent that a trust distributes income for the taxable year for which a credit is available to the trust, the credit is to be shared by the trust and its beneficiaries. The Tax Commissioner and the trust are to follow the guidance provided in United States Treasury regulations regarding the sharing of credits.

Effective date

(Sections 34.01 and 35.01)

The amendments to the trust tax provisions are not subject to the referendum, and so their effective date is not delayed by 90 days. The amendments apply to taxable years ending on or after the effective date of those provisions. However, if a trust's taxable year began in 2002 and ends before those amendments take effect, it will be presumed that the trust elects to apply the amendments to its (concluded) taxable year. A trust may decline to have the amendments apply to its concluded taxable year by notifying the Tax Commissioner in writing before June 1, 2003, but once the trust notifies the Tax Commissioner, it may not later have the amendments apply to that year.

Removing exemption for ESBTs from pass-through entity tax

(R.C. 5733.40)

Under continuing law, a "withholding"-type tax is levied on all partnerships or other pass-through entities that are owned at least in part by nonresident individuals or corporations that otherwise have no tax-related connection to Ohio. In effect, the tax ensures that a nonresident owner's Ohio taxable income from the partnership or entity is collected. Nonresident owners' individual tax liabilities are credited with the amount of tax paid by the entity on account of the owners. Owners for which the partnership or entity must pay the tax are "qualifying investors."

Under continuing law modified by the act, certain owners are excluded from the definition of "qualifying investor," including federally tax-exempt organizations, publicly traded partnerships, and electing small business trusts ("ESBTs"); thus, the withholding tax does not have to be paid on account of such owners. An ESBT is any part of a trust composed of stock in an S corporation--which is a form of pass-through entity--for which a federal tax election is made; the election means that the distributive shares from the S corporation to the trust are taxed to the trust, instead of to the trust beneficiaries.

The act eliminates ESBTs from the exclusion, therefore requiring an S corporation to pay the withholding tax on account of any ESBT owning a part of the corporation if the ESBT is not, on some other grounds, excluded from the definition of "qualifying investor."

The act also rectifies an error in how the recently enacted depreciation add-back affects the amount of withholding tax a partnership or pass-through entity must pay on account of its qualifying investors.

Tax abatement eligibility of enterprise zone businesses that make retail sales

(R.C. 5709.61)

Under ongoing law, a business enterprise may be eligible to enter into an enterprise zone agreement with a municipal corporation or county that has designated the area in which the enterprise's facilities are located as an enterprise zone. Under the agreement, the enterprise may obtain tax abatements for certain real and personal property that is part of its facilities, but, under the definition of "facility," may not include in the property eligible for an abatement any portion of the enterprise's place of business used primarily for "making retail sales."

"Making retail sales" was defined under prior law as effecting any transaction in which one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. The act revises this definition to limit it to "point-of-final-purchase" transactions "at a facility open to the consuming public."

This revision to the definition of "making retail sales" also applies to incentive agreements between enterprises and counties or municipal corporations for voluntary remediation of contaminated property under ongoing law (R.C. 5709.88--not in the act), wherein any property used primarily for making retail sales cannot qualify for tax abatements under those agreements.

Board of revision decisions: notice and appeal

(R.C. 5715.20 and 5717.01)

Under ongoing law modified by the act, whenever a county board of revision (BOR) renders a decision on a real property tax complaint, it must certify its action by certified mail to the person in whose name the property is listed or sought to be listed, the complainant (if the complainant is not the person in whose name the property is listed or sought to be listed), and the Tax Commissioner. To appeal a BOR decision, a person must file the person's appeal with the Board of Tax Appeals within 30 days after notice of the decision is mailed. In *Cleveland Elec. Illuminating Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165 (2002), the Ohio Supreme Court held that the time for filing an appeal does not begin to run until everyone, including the Tax Commissioner, has received notice from the BOR.

The act eliminates the requirement that BORs notify the Tax Commissioner of their decisions. Thus, the only persons required to receive notice of a BOR's decision is the person in whose name the property is listed or sought to be listed and the complainant (if the complainant is not the person in whose name the

property is listed or sought to be listed). However, the act provides that the Tax Commissioner may order county auditors to send BOR decisions to the Commissioner, in the manner and for the length of time the Commissioner prescribes.

The act also provides that, for any person other than the Tax Commissioner, the time for filing an appeal to the Board of Tax Appeals begins with the mailing of notice to that person. The Tax Commissioner's time for filing an appeal begins when the last mailing of notice is made to those other persons required to be mailed notice.

Interest charges on late estimated payments of corporation franchise tax

(R.C. 5733.021)

Recent legislation (S.B. 200 of the 124th General Assembly) limited the amount of penalty and interest charged on estimated payments of corporation franchise tax under a "safe harbor" clause: if estimated payments fall short of the current year's tax liability, penalty and interest are waived if the estimated payments equal at least 90% of the current net liability or 100% of the previous year's net liability.

The act restores the interest charge on tax underpayments even if the taxpayer qualifies under the safe harbor clause. The act also clarifies that, in measuring the current or previous net tax liability under the safe harbor clause, a taxpayer's tax report--whether the original or an amended report--is determinative only if the report was prepared and filed in good faith. And the act clarifies that the current or previous year's minimum tax liability is the minimum \$50 tax, rather than zero.

Harmonization and technical corrections to sales tax law

(R.C. 5739.026, 5739.031, and 5739.033; Sections 1.07, 1.08, and 35.03)

The act resolves unintended conflicts in language in the sales tax law that resulted from two acts amending the same sections of law. The language of the two acts, S.B. 143 and S.B. 200 of the 124th General Assembly, could not be harmonized completely under the harmonization principle (R.C. 1.52) because the language could not be put into simultaneous operation. The act ensures that the language of both acts is given its intended effect.

Specifically, the act clarifies a rule specifying the proper county in which purchases by direct pay permit holders should be taxed. (A direct pay permit holder is a person--usually a business purchasing large volumes of property or services--that pays sales and use taxes directly to the state instead of to the seller.)

The rule specifies that any property or service purchased by a direct pay permit holder is deemed to occur where the permit holder receives the property or service, unless the permit holder knows at the time of the purchase that the property or service will be available in more than one county, in which case the permit holder must apportion the tax among counties. The act also ensures that county sales tax rate reductions initiated by a board of county commissioners do not become effective for at least 60 days after the board certifies its rate reduction action to the Tax Commissioner. This 60-day delay was enacted by S.B. 143 in order to allow sellers additional time to adjust their tax rate schedules in accordance with the principles of the Simplified Sales Tax agreement, but the delay was overridden by the later enactment of S.B. 200. A 60-day delay already will apply to county sales tax rate increases. Finally, the act removes certain superfluous phrasing eliminated in S.B. 143 and restored by S.B. 200.

Summary release from probate administration: duty to file estate tax return and certificate

(R.C. 2113.031 and 5731.21)

Continuing law requires that an estate tax return and accompanying certificate be filed for every estate that includes property the transfer of which is subject to estate taxes.⁶ An estate tax return and certificate do not have to be filed if the value of the decedent's gross estate is \$338,333 or less, because estates valued below this threshold are effectively exempt from the Ohio estate tax.

Under continuing law, if the value of the assets of a decedent's estate does not exceed the lesser of \$2,000 or the amount of the decedent's funeral and burial expenses, the surviving spouse (or anyone else who has paid or must pay the funeral expenses) may apply to the probate court for an order granting summary release from administration in connection with the decedent's estate. Formerly, a summary release eliminated the duty to file an estate tax return and certificate, and, accordingly, the order granting summary release had to specify that the duty was eliminated.

Prior law was unclear as to whether an estate tax return and certificate had to be filed when the probate court issued a summary release for an estate that,

⁶ *The certificate that accompanies an estate tax return states all of the following: (1) the fact the return was filed, (2) the date of filing the return, (3) the fact that estate taxes have been paid in full, (4) the fact that any real property listed in the inventory for the decedent's estate is included in the return, and (5) the fact that any real property not listed in the inventory for the decedent's estate also is included in the return (R.C. 5731.21(A)(1)(b)(i) to (v)).*

while having minimal assets subject to probate, nevertheless had a value in excess of \$338,333 when the value of assets not subject to probate were included in the gross estate.

The act provides that a summary release from administration does not necessarily eliminate the duty to file an estate tax return and certificate, and also removes the requirement that orders granting summary release specify that the duty is eliminated. Thus, the act clarifies that if the value of the decedent's gross estate exceeds \$338,333, a return and certificate have to be filed even if the probate court has granted a summary release from administration.

Changes to job retention tax credit

Under ongoing law modified by the act, a "job retention" tax credit is authorized for manufacturing companies making significant investments in physical plant in Ohio (at least \$200 million over three years) and employing at least 1,000 full-time employees. The credit is claimed against a company's corporation franchise tax liability or, if the company is not subject to the franchise tax, against the company owners' individual income tax liabilities. The credit equals up to 75% of the amount of Ohio income taxes withheld against the pay of retained employees. The credit is nonrefundable, but may be carried over for up to three years. The credit is granted pursuant to an agreement between the company and the Ohio Tax Credit Authority.

Eligibility

(R.C. 122.171(A) and (B))

The act expands eligibility for the job retention credit by altering the eligibility criteria in three respects:

- A company may perform "significant corporate administrative functions," rather than manufacturing, at its facility. (The quoted term is not defined in the act.)
- A company may invest only \$100 million, rather than \$200 million, over three years if the average wage of all employment positions at its facility is greater than 400% of the federal minimum wage.
- A company's investment may be in "basic research and new product development" rather than in physical plant.

To be eligible for the credit, a company still must agree to retain at least 1,000 full-time employees at the facility. An employee generally is full time if the employee works at least 35 hours a week. Prior law also defined an employee as

full time if the employee met "any other standard of service generally accepted by custom as full-time employment within the industry." The act removes this alternative definition.

Centrality-of-operations requirement

(R.C. 122.171(A)(5))

The act alters the centrality-of-operations requirement, which formerly required a company's investment and job retention to be concentrated in an "integrated complex" confined within a five-mile radius. Under the act, all of the facilities comprising the integrated complex must be in Ohio and within a 15-mile radius.

Recapture of tax credits and renegotiation of agreements

(R.C. 122.171(J))

Under prior law, a company's tax credit agreement could be terminated and the company could be required to repay all or a portion of the tax credits it had received if it did not continue to operate for at least twice the term of the tax credit agreement, or if it reduced employment by more than 10%.

The act eliminates the second condition, so that a reduction in employment of more than 10% will not be grounds for requiring the company to repay tax credits. But, under the act, when the Director of Development determines that a company has reduced agreed-upon employment levels, the Tax Credit Authority, after giving the company an opportunity to explain the employment reduction, may amend the tax credit agreement to reduce the percentage or term of the tax credit.

The act also specifies maximum amounts that must be repaid when a tax credit agreement is terminated, and makes those amounts depend on how long the company continued to operate at the facilities covered by the tax credit agreement, as follows:

--If the company continued to operate for at least 1-1/2 times the length of the agreement, the maximum repayment is 25% of the amount of the tax credits previously received.

--If the company continued to operate for at least the term of the agreement, but for less than 1-1/2 times the term of the agreement, the maximum repayment is 50% of the tax credits previously received.

--If the company did not continue to operate for at least the term of the agreement, the maximum repayment is 100% of the tax credits previously received.

Analogous municipal job retention tax credits

(R.C. 718.151)

The act expressly permits municipal corporations to grant a credit similar to the job retention credit to any company receiving the state credit, except that the credit would be against the municipal income tax and for a term not exceeding ten years. Under ongoing law, municipal corporations are expressly permitted to grant a credit similar to the state's job creation tax credit (R.C. 122.17).

Municipal tax increment financing: remote use of funds

(Sections 32.01 and 32.02)

Under continuing law, counties, townships, and municipal corporations may engage in "tax increment financing" to encourage the development of property. Generally, tax increment financing rewards property owners or developers for developing parcels of property by exempting some or all of the parcel's increased value from property taxation. In return for the property tax exemption, property owners may be required to pay the subdivision "payments in lieu of taxes" ("PILOTs") to fund public improvements (e.g., roads, water and sewer lines). Generally, these improvements must directly benefit the exempted parcel: that is, development of the parcel must place direct, additional demand on the funded improvements.⁷

The act authorizes a temporary exception to the direct benefit rule for any municipal corporation qualifying as an "impacted city." (An impacted city is a city that has taken certain economic and community development initiatives, as described in R.C. 1728.01.) If an impacted city determines that the public improvement needs of parcels exempted from taxation under a tax increment financing arrangement have already been provided for, the city may use PILOTs from the parcels to fund public improvements that do not directly benefit the parcels, as long as the improvements support the city's urban redevelopment activities. Impacted cities must make such a determination by June 30, 2003.

⁷ *An exception to the direct benefit rule is made for "incentive districts," in which PILOTs may be used to benefit any or all parcels in the district. Incentive districts may be created only in areas characterized by poverty, unemployment, low income, or certain other signifiers of economic distress.*

Preparation of tax and expenditure estimates for initiative petitions

(R.C. 3519.04)

Prior law required the Secretary of State, upon receipt of the verified copy of a state law or constitutional amendment proposed by initiative petition that (1) proposed the levying of any tax or (2) involved a matter that would necessitate the expenditure of any funds of the state or any of its political subdivisions, to request from the Tax Commissioner an estimate of any annual expenditure of public funds proposed and the annual yield of any proposed taxes. Upon receipt of such a request, the Tax Commissioner was required to prepare the estimate and file it in the office of the Secretary of State.

The law specified that the Secretary of State was to then distribute copies of the estimate with certain publicity pamphlets. (The statute providing for the publication of those pamphlets had earlier been repealed (former R.C. 3519.19). Thus, although the law required the estimate to be distributed in a specified manner, that manner of distribution was no longer available.)

The act continues to require the Secretary of State to request, and the Tax Commissioner to prepare, an estimate of the annual yield of any proposed taxes in connection with a state law or constitutional amendment proposed by initiative petition that proposes the levy of any tax. If, on the other hand, a state law or constitutional amendment proposed by initiative petition involves a matter that will necessitate the expenditure of any funds of the state or any political subdivision, the Secretary of State instead must request an estimate of any annual expenditure of public funds proposed from the Office of Budget and Management (OBM). Upon receipt of such a request, OBM must prepare the estimate and file it in the office of the Secretary of State. The Tax Commissioner and OBM are permitted to issue a *joint estimate*, however, if the proposed state law or constitutional amendment necessitates both the expenditure of public funds and a levy of any tax.

The act also eliminates the obsolete requirement that such estimates be distributed with the above-described publicity pamphlets. The Secretary of State is not required to distribute copies of any estimates that are prepared and filed in the Secretary of State's office under the act.

Repeal of the Budget Study Committee

(Section 31.01)

Am. Sub. S.B. 261 of the 124th General Assembly required the appointment of a ten-member Budget Study Committee to conduct a

comprehensive review of various aspects of state spending. The committee was to consist of five members of the House of Representatives and five members of the Senate.

The act repeals the law requiring the appointment of the Budget Study Committee.

Ohio Building Authority bonds

(R.C. 152.09 and 152.10)

The Ohio Building Authority (OBA) is authorized to issue bonds and, under prior law, was directed to use the proceeds of those bonds to finance specified capital facilities. The act, instead, directs OBA to use the "net proceeds" of the sale of the bonds to finance those capital facilities. "Net proceeds" is the proceeds minus (1) deposits of accrued interest for the payment of bond service charges and (2) the deposit of any portion of the premium received upon the sale of the bonds for the payment of bond service charges. In addition, the act expressly authorizes bond contracts to provide for the deposit and safeguarding of that accrued interest and premium.

Definition of "debt service" in state bond law

(R.C. 151.01)

Ongoing law defines "debt service" for purposes of the state bond law. Under prior law, that definition expressly included costs relating to credit enhancement facilities that are related to and represent, or are intended to provide a source of payment of or limitation on, other debt service. The act specifies that "debt service" may, but does not have to, include such costs.

Changes to the School Facilities Commission programs

Background

Ongoing law authorizes several programs to help school districts construct, repair, or renovate school buildings. All of these programs are operated by the Ohio School Facilities Commission (SFC). The main program is the Classroom Facilities Assistance Program (CFAP), which is intended to eventually permit all districts to receive state money to address all of their facilities needs in a single project.⁸ It is a graduated, cost-sharing program where a school district's priority for funding and its portion of the cost of its project are based on the relative wealth

⁸ R.C. 3318.01 to 3318.20, not all sections in the act.

of the district. Lower-wealth districts are served first and receive a larger percentage of their total needs than wealthier districts will receive when it is their turn to be served.

There are other programs designed to meet the special needs of certain districts. The Exceptional Needs School Facilities Assistance Program provides money to districts in the 50 lowest-wealth percentiles to construct a new facility needed to protect the health and safety of students on the same cost-sharing basis as under CFAP.⁹ Under the Accelerated Urban School Building Assistance Program, the six remaining "Big-Eight" districts that have not yet received assistance under CFAP may begin applying for assistance earlier than they otherwise would be able to under CFAP.¹⁰ Finally, under the School Building Assistance Expedited Local Partnership Program, most districts that have not already been served under CFAP may enter into agreements with SFC permitting them to spend school district money on approved parts of the respective districts' facilities needs prior to their eligibility under CFAP. Those districts then may apply such expenditures toward their respective portions of their CFAP projects when they become eligible for that program.¹¹

Generally, to participate in these programs, a district board, with voter approval, must issue bonds backed by a property tax to pay its portion of the cost of the project and must levy an additional property tax of one-half mill for 23 years to generate money to pay for maintenance of the newly acquired facilities. Recent legislation provides other options that the district may use to generate money to meet its obligations under the programs, including (among others) the use of donated money, credit for certain previously issued bonds to construct facilities, and the dedication of certain existing taxes to leverage new bonds.

Wealth percentile ranking

Department of Education report of information to School Facilities Commission (R.C. 3318.011). To determine the order in which school districts are served under CFAP and each district's share of its project when it is served under most of the various school facilities programs, the Department of Education is required to annually calculate the three-year average income-adjusted valuation per pupil for each district. The Department must then rank in order each of the

⁹ R.C. 3318.37, not in the act.

¹⁰ R.C. 3318.38, not in the act. The six districts to which this program applies are Akron, Cincinnati, Columbus, Cleveland, Dayton, and Toledo.

¹¹ R.C. 3318.36.

districts from lowest to highest adjusted valuation per pupil and divide the order into percentiles where the first percentile equals the lowest valuations per pupil.

The Department is required to report all this data to SFC, but prior law did not specify the time each year that the data was to be reported. The act requires the Department to certify the data to SFC on or before September 1 of each fiscal year.

Specifying which fiscal year's percentile ranking to use in making determinations (R.C. 3318.01(J) and (K), 3318.032 and 3318.36(A)(2)). The cost of a district's project, called the "basic project cost," is calculated by SFC based on an on-site assessment of the needs of the district and is later negotiated between SFC and the district. The amount of that cost to be borne by the district is the greater of either 1% times the wealth percentile rank of the district times the project cost or an amount based on the district's existing debt where the wealth percentile rank of the district is also a factor. No district, however, is required to pay more than 95% of the basic project cost.

The act specifies that, for any school district receiving assistance under the Classroom Facilities Assistance Program, the Accelerated Urban School Building Assistance Program, or the Exceptional Needs School Facilities Assistance Program, the district's relative wealth percentile ranking must be the district's percentile ranking for the fiscal year prior to the fiscal year in which the project is approved by the Controlling Board. Former law provided that the percentile was the percentile ranking "at the time the Controlling Board approved the project," which in practice had been the previous year's percentile ranking (as specified under the act).

The act further specifies that, for any school district participating in the School Building Assistance Expedited Local Partnership Program, the district's relative wealth percentile ranking depends upon the part of the year in which the district and SFC enter into an agreement under that program. The percentile ranking of a school district with which SFC enters into an agreement between July 1 and August 31 in any fiscal year is the percentile ranking calculated for that district for the fiscal year immediately preceding the current fiscal year. But, the percentile ranking of a school district with which SFC has entered into such agreement between September 1 and June 30 is the percentile ranking calculated for that district for the current fiscal year. Formerly, the law provided that the percentile ranking for a district under the Expedited Local Partnership Program was the ranking for the year in which SFC and the district entered into the Expedited agreement.

Specifying demolition costs as part of the project costs

(R.C. 3318.01(L))

As stated above, the "basic project cost" of a district's project is calculated by SFC and subsequently negotiated by SFC and the district. Ongoing law, provides that the cost calculation must take into consideration the square footage and cost per square foot necessary for the grade levels to be housed in the classroom facilities, the variation across the state in construction and related costs, the cost of the installation of site utilities and site preparation, the cost of insuring the project until it is completed, any contingency reserve amount prescribed by SFC, and the professional planning, administration, and design fees that a district may have to pay to undertake the project. To this list, the act adds that the "cost of demolition of all or part of any existing classroom facilities that are abandoned under the project" also must be considered in the cost calculation.

Joint vocational school facilities assistance program

(R.C. 3318.08(R)(2), 3318.311, and 3318.40 to 3318.45; technical and conforming changes in R.C. 3318.01(D), (L), and (M), 3318.03, 3318.031, 3318.033, 3318.042, 3318.08, 3318.084, 3318.086, 3318.10, 3318.12, 3318.15, 3318.19, 3318.25, and 3318.26)

Under prior law, joint vocational school districts (JVSDs) were not eligible for assistance under the state's school facilities programs. The act establishes a new program called the Vocational School Facilities Assistance Program. The new program is similar in structure and operation to CFAP. Like CFAP, it is a graduated cost-sharing program where a district's priority for assistance and share of the cost of a project depend on the district's relative wealth. Where possible, the facilities assistance provisions that apply to city, exempted village, and local school districts under CFAP also apply to JVSDs under the new program. Consequently, for the most part, JVSDs are able to raise their shares of their projects in the same manner as the school districts raise their respective shares under CFAP. To provide funds for the program, beginning July 1, 2003, SFC may set aside up to 2% of the aggregate amount appropriated for school facilities projects.

Similar to CFAP, each of the state's 49 JVSDs are to be rank ordered according to three-year average per pupil valuation and to be divided into percentiles from lowest to highest valuation. Unlike CFAP, however, this valuation calculation is not adjusted for the income of the district's residents. Also, under the new program, each JVSD's share of its project cost will be 1% times the percentile in which the district is ranked times the cost of the project, except that no JVSD's share will be less than 25% or greater than 95% of the

project cost. In addition, unlike most other school districts receiving assistance under one of the state's classroom facilities programs, both the JVSD's moneys and the state's moneys in the project construction fund are to be spent simultaneously in proportion to the respective shares of the project cost.¹²

Also, similar to other school districts, JVSDs under the new program are required to generate moneys for maintenance of the new facilities. Under this provision, each year for 23 years the JVSD must deposit into a separate maintenance account or the district's capital and maintenance fund the equivalent of 1.5% of the current insurance value of the facilities acquired under the project.

By September 1, 2003, SFC is required to assess the classroom facilities needs of at least five JVSDs starting with the lowest-wealth districts. To facilitate this process, the Department of Education is required to calculate and report the wealth ranking of the state's JVSDs not later than 61 days after the act's effective date. Based on those first assessments, SFC must determine if any adjustments to its design manual for JVSDs are warranted. SFC is also required to adopt by rule guidelines to use in deciding whether or not to waive compliance with the design manual when determining the number of facilities or the basic project cost of the facilities. The guidelines specifically must address: (1) under what circumstances, if any, facilities that do not meet the design specifications are, nevertheless, adequate to address the needs of the JVSD, and (2) when facilities should be renovated rather than replaced with new construction.

Expedited program for JVSDs

(R.C. 3318.46)

Under the act, SFC is required to establish through rules an expedited local partnership program for JVSDs. Similar to the Expedited Local Partnership Program for city, exempted village, and local school districts, this program enables a JVSD to begin work on a project with school district funds prior to the district's eligibility for state funds and to count toward its required share the funds that the district spends on the project. This program must be operational on July 1, 2004.

¹² R.C. 3318.08(R). *This provision is the same as that provided for urban school districts proceeding under the Accelerated Urban Program. For all other school districts, the state moneys are generally to be spent before any district moneys are spent on the project.*

Educational entities self-insuring construction projects for Workers' Compensation

(R.C. 4123.35 (O), (P), (Q), and (R))

Ongoing law permits the Administrator of Workers' Compensation to allow a *self-insuring employer* to self-insure a construction project entered into by the self-insuring employer if the project is scheduled for completion within six years and estimated to exceed a cost of \$100 million, except that the Administrator can waive this criteria as long as the project is estimated to exceed a cost of *\$50 million*. The act permits the Administrator to also allow the following types of public employers to self-insure a construction project estimated to exceed a cost of *\$25 million, instead of \$50 million*, irrespective of their status as *state fund employers, instead of self-insuring employers*:

- (1) A school district;
- (2) A county school financing district;
- (3) An educational service center;
- (4) A community school established under the Community Schools Law (R.C. Chapter 3314.);
- (5) A community college, university branch, technical college, or state community college;
- (6) The following state institutions of higher education: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

Under the act, all of the following provisions, which apply when a self-insuring public employer desires to self-insure a construction project, apply to the education public employers described above when desiring to self-insure a construction project. The employer must submit an application containing statutorily specified information to the Administrator. The Administrator may consider all of the following when deciding whether to permit an employer to self-insure a construction project:

- (1) Whether the employer has an organizational plan for the administration of the Workers' Compensation Law;

(2) Whether the safety program that is specifically designed for the construction project provides for the safety of employees employed on the construction project, is applicable to all contractors and subcontractors who perform labor or work or provide materials for the construction project, has a safety training program that complies with standards adopted pursuant to the federal "Occupational Safety and Health Act of 1970," and provides for continuing management and employee involvement;

(3) Whether granting the privilege to self-insure the construction project will reduce the costs of the construction project;

(4) Whether the employer has employed an ombudsperson as required;

(5) Whether the employer has sufficient surety to secure the payment of claims for which the employer would be responsible if allowed to self-insure the construction project.

An employer may apply to self-insure the employees of either all contractors and subcontractors, or all contractors and, at the discretion of the Administrator, a substantial number of all the subcontractors who perform labor or work or provide materials for the construction project.

Upon approval of an application, the employer is responsible for the administration and payment of all workers' compensation claims for the employees of the covered contractor and subcontractors for that construction project. Additionally, the employer must designate a safety professional to be responsible for the administration and enforcement of the safety program that is specifically designed for the construction project. The employer also must employ an ombudsperson, who must have experience in workers' compensation or the construction industry, to perform statutorily specified duties. The employer must post the name of the safety professional and ombudsperson and instructions for contacting those persons in a conspicuous place at the site of the construction project.

Bidding requirement for capital improvement projects undertaken by two-year state-assisted colleges

(R.C. 3354.16, 3355.12, and 3357.16)

Under prior law, when the board of trustees of any community college (R.C. 3354.16), technical college (R.C. 3357.16), or state community college (R.C. 3358.10 by reference, not in the act), or the managing authority of any branch university (R.C. 3355.12) resolved to contract for a capital improvement project in an amount greater than \$15,000, the board or managing authority had to

advertise for competitive bids for that work and award the project to the "lowest responsive and responsible" bidder. The law further provided that the \$15,000 threshold for requiring competitive bidding be adjusted by the Chancellor of the Ohio Board of Regents on January 1 of each even-numbered year according to the average change in the "implicit price deflator for construction" as established by the U.S. Bureau of Census. (Ongoing law limits that adjustment to 3% of the previous threshold amount.)

The act prescribes a new threshold amount for requiring competitive bidding--\$50,000 (instead of \$15,000)--and retains the requirement that the Chancellor adjust the threshold biennially. Under the act, the first adjustment to the new threshold amount will be made in January of 2004.

Joint contracts for public improvements and for the joint exercise of powers

(R.C. 715.02)

Ongoing law

Ongoing law authorizes two or more municipal corporations to enter into an agreement for (1) the joint construction or management, or joint construction and management, of any public work, utility, or improvement benefiting each municipal corporation or (2) the joint exercise of any power conferred on municipal corporations, in which each of the municipal corporations is interested. The agreement *must provide* for the method by which the work, utility, or improvement will be jointly constructed or managed, the method by which any specified power will be jointly exercised, and apportioning among the contracting municipal corporations any expense of jointly constructing, maintaining, or managing any public work, utility, or improvement or jointly exercising any power. The agreement *may provide* for assessing the cost, or any specified part of the cost, of the joint construction, maintenance, or management of any public work, utility, or improvement upon property abutting it which is specially benefited or upon property within a "district" specified in the agreement in proportion to the benefits the property derives from the work, utility, or improvement. Each municipal corporation may issue bonds for its portion of the cost of a joint public work, utility, or improvement, provided that (1) the Uniform Public Securities Law authorizes the issuance when a municipal corporation alone undertakes the work, utility, or improvement, and (2) the conditions and restrictions that would apply to a sole undertaking issuance under that law apply to a joint undertaking issuance.

Changes made by the act

In addition to the joint contracting authority granted to two or more municipal corporations under ongoing law, the act authorizes (a) *one or more municipal corporations and one or more political subdivisions other than a municipal corporation*, or (b) *two or more political subdivisions other than municipal corporations*, to enter into an agreement for the joint construction or management, or joint construction and management, of any public work, utility, or improvement benefiting each municipal corporation or other political subdivision, or for the joint exercise of any power conferred on municipal corporations or other political subdivisions, in which each of the parties is interested. The provisions that must and may be included in the agreement, and the authority of each party to issue bonds to pay for its portion of the cost of any public work, utility, or improvement undertaken, are the same as under ongoing law in connection with agreements between two or more municipal corporations.

Port authorities

Creation of a new port authority

(R.C. 4582.30)

With one exception, ongoing law prohibits a political subdivision that created or joined a port authority after July 9, 1982, from being included in any other port authority.¹³ The act creates a second exception to this general prohibition. Under the act, a municipal corporation and a county jointly may create a new port authority under the following specific circumstances: (1) the municipal corporation must have created a port authority after July 9, 1982, and that port authority operates an airport, and (2) the county must have joined a port authority after July 9, 1982, and that port authority must have operated an airport.

A port authority created after July 9, 1982, generally must include all of the territory of the political subdivision or subdivisions creating it. Ongoing law additionally specifies that if the port authority owns or leases a railroad line, the territory of the port authority includes the territory on which the railroad's line, terminals, and related facilities are located, regardless of whether the territory is located in the political subdivision or subdivisions creating the port authority. Similarly, under the act, if a port authority created after July 9, 1982, owns or leases an airport, the territory of the port authority is extended to include the

¹³ *A municipal corporation with a population of less than 100,000 according to the most recent federal decennial census that has joined an existing port authority in a county with a population of 500,000 or less may create a port authority within the territorial jurisdiction of the municipal corporation (R.C. 4582.30(B)(2)).*

territory on which the airport's runways, terminals, and related facilities are located, regardless of whether such territory is located in the political subdivision or subdivisions creating the port authority.

Port authority tax exemption

(R.C. 4582.20 and 4582.46)

Ongoing law dealing with port authorities is divided into law governing port authorities created on or before July 9, 1982, and port authorities created after July 9, 1982.

The law governing port authorities created on or before July 9, 1982, provides that a port authority is exempt from any taxes on property, both real and personal, or any combination thereof, belonging to any port authority, that is used exclusively for any authorized purpose. However, the law specifies that "this exemption shall not apply to any property occupied and used during a tax year by a person who is a lessee of the property as of the tax lien date for that tax year under a written lease with a remaining term longer than one year." The apparent effect of this provision is that a person who leases port authority property for more than one year may not claim the port authority tax exemption.

Under the act, the exclusion from the port authority tax exemption that applies to persons who lease port authority property for more than one year, does not apply to "real or personal property, or any combination thereof, leased to a lessee, which property would be exempt from taxes under Chapter 5709. of the Revised Code if such property belonged to that lessee." Thus it appears that an entity such as a governmental agency or a nonprofit organization that would not be required to pay taxes on property that it owns also is not, under the act, required to pay taxes on property that it leases from a port authority for more than one year. The act further specifies that it does not eliminate the lessor's or the lessee's obligation to comply with other provisions of the Revised Code to obtain an exemption for such property.

Prior law governing port authorities created after July 9, 1982, also provided a tax exemption for port authorities, but included language establishing that the powers granted to port authorities were for a public purpose, and that "the operation and maintenance of port authority facilities will constitute the performance of essential governmental functions." This law also specified that the bonds issued under Port Authority Law were free from taxation. The act revises the post-1982 port authority tax exemption, making it identical to the tax exemption language discussed above in regard to pre-1982 port authorities. Thus the act appears to establish that an entity such as a governmental agency or a nonprofit organization that would not be required to pay taxes on property that it

owns also is not required to pay taxes on property that it leases from a port authority for more than one year. The act also expressly states that it does not eliminate the lessor's or the lessee's obligation to comply with other provisions of the Revised Code to obtain an exemption for such property.

In adopting identical language governing port authorities established before and after 1982, the act eliminates the specific language governing post-1982 port authorities concerning the exercise of the powers being for the benefit of the people of the state and for a public purpose. The act also eliminates language providing that "the operation and maintenance of port authority facilities will constitute the performance of essential governmental functions. . . ." It eliminates language providing that the transfer to or from a port authority of title or possession of any port authority facility is not subject to the sales and use taxes, as well as language specifying that post-1982 port authority bonds, their transfer, and their income are free from taxation within the state. It appears that the more general language stating that "a port authority shall be exempt from and shall not be required to pay any taxes on property, both real and personal, or any combination thereof, belonging to any port authority that is used exclusively for any authorized purpose" is intended to replace most of the more specific statements of tax exemption contained in prior law.

Port authority boards of directors

(R.C. 4582.03 and 4582.27)

Under ongoing law, an appointed board of directors generally governs a port authority, regardless of the nature of the subdivisions forming the port authority and regardless of when the port authority was established. Prior law specified that a majority of the board of directors constituted a quorum and also that the affirmative vote of the quorum was necessary for any action taken by the port authority. Under the act, a majority of the board of directors constitutes a quorum "for purposes of holding a meeting of the board," and only the affirmative vote of a majority of the quorum is necessary to take any action by the port authority. The act further specifies that the board of directors may determine by rule to require a greater number of affirmative votes for particular actions to be taken by the port authority.

County bonds for bridge improvements using long-lived material

(R.C. 133.20(B)(1)(c) and 307.675)

The act provides additional bonding authority for a county to finance the improvement of a bridge for which the county is responsible, using long life expectancy material for the bridge deck. The act defines "long life expectancy

material" as any material, including a composite, that, when used for a bridge deck in lieu of steel, concrete, or reinforced concrete, will result in an expected useful life of the bridge deck before replacement of at least 30 years.

Under the act, the county may issue bonds for such a bridge improvement, having a specified longer maturity than otherwise allowed by statute, upon a recommendation of the county engineer based on a determination that the projected savings from the use of the material in the bridge deck are sufficient to pay any additional debt service costs of the bonds. To make that determination, the county engineer must do the following:

(1) Calculate the expected useful life of the bridge deck if constructed or repaired using long life expectancy material. The county engineer must use credible data, and thoroughly review any data used that is not generated by the engineer.

(2) Determine the additional debt service costs for the proposed indebtedness relative to the debt service costs of constructing or repairing the bridge deck using steel, concrete, or reinforced steel;

(3) Compare the additional debt service costs to the projected savings in operating, repair, and future capital improvement costs of the bridge deck over the lesser of 50 years or its expected useful life.

Upon the county engineer's recommendation based on a determination that projected savings are sufficient to pay any additional debt service costs, the board of county engineers may then issue indebtedness of the county for the purpose of constructing or repairing the bridge deck with long life expectancy material. Under the act, such bonds carry a maximum maturity of 50 years; however, the average maturity of the bonds cannot exceed the expected useful life of the bridge deck as determined by the county engineer. (Under prior law, bonds for any bridge improvement had a maximum maturity of 20 years.)

The act expressly states that its new bonding authority is in addition to any other statutory authority of a board to issue indebtedness for a bridge improvement, including an improvement using long life expectancy material; thus, the act does not diminish the county's authority to issue bridge improvement bonds with a 20-year maturity. Further, upon the additional recommendation of the county engineer, the act authorizes bonds issued for a bridge improvement using long life expectancy material to provide for the purchase, installation, and maintenance of performance monitoring equipment to monitor the physical condition of the bridge.

County payments to a school district for tax revenues eliminated due to county acquisition of property for water supply facilities

(R.C. 6103.02 and 6103.25)

Ongoing law authorizes a board of county commissioners, when the board determines it necessary, to purchase or appropriate real estate or an interest in real estate for the acquisition, construction, maintenance, or operation of water supply facilities under the County Water Supply Law or to acquire the right to acquire, construct, maintain, and operate those facilities in and on any property within or outside of a county sewer district. A board may purchase the real estate, interest in real estate, or right by negotiation. However, a board cannot appropriate real estate or personal property owned by a municipal corporation. When the source of a water supply or the facilities for its distribution are owned or operated by the county, the board must fix reasonable rates for water supplied to public agencies and persons. In addition, when the distribution facilities are owned by the county, the board also may fix reasonable charges for connection to the distribution facilities.

Under the act, if a board purchases or appropriates real estate, an interest in real estate, or a right under the County Water Supply Law and the real estate, interest in real estate, or right was subject to real or personal property taxes prior to the purchase or appropriation, the board may make payments to a school district of all or a portion of the amount of the taxes that otherwise would have been received by the district if the purchase or appropriation had not occurred. The payments must be authorized by a resolution adopted by the board. The act defines "school district" to mean a city school district, local school district, exempted village school district, and joint vocational school district. In addition, the act authorizes the board to consider such payments made to a school district when the board establishes rates and other charges for water supplied.

Funding county historical societies

(R.C. 307.23)

Prior law established caps on the amount of money that boards of county commissioners could annually provide to county historical societies. The caps were based on population in accordance with the following schedule:

- A county with a population of less than 25,000, \$20,000 annually;
- A county with a population of 25,000 to 100,000, \$32,000 annually;
- A county with a population of 100,000 to 300,000, \$60,000 annually;



--A county with a population of more than 300,000, \$100,000 annually.

Ongoing law permits the use of such moneys for the promotion of historical work within the borders of the county, for the collection, preservation, and publication of historical material, to disseminate historical information of the county, and in general to defray the expense of carrying on historical work in the county.

The act eliminates the caps, and also authorizes a board of county commissioners to provide such money to local societies for the preservation and restoration of historic and archaeological sites located in the county (in addition to the county historical society). Further, in addition to the purposes for which the money may be used under ongoing law, the act allows money to be expended for the restoration or reconstruction of historic buildings.

Mine safety

Notification and review procedures for mine safety violations

(R.C. 1561.351)

Under prior law, a deputy mine inspector who found a mine safety violation was required to notify the Chief of the Division of Mineral Resources Management in the Department of Natural Resources. The Chief had to then review the inspector's finding. The act instead requires a deputy mine inspector to notify the owner, operator, lessee, agent, and representative of the miners of the mine involved upon the finding of a mine safety violation. The inspector's finding will then be reviewed by the Chief only upon request by the owner, operator, lessee, or agent of the mine involved.

Examination of surface coal mines

(R.C. 1565.04)

Prior law required all mines to have at least one certified foreperson on duty at all times when workers were employed in the loading or unloading of coal. The act limits this requirement to underground mines, and requires each active working area of a surface coal mine and each active surface installation of an underground coal mine to be examined for hazardous conditions at least once during each working shift, or more often if necessary for safety, by a certified mine foreperson. The operator is to designate the certified mine foreperson who is to conduct the examinations. Any hazardous conditions identified by the certified mine foreperson must be reported to and corrected by the operator. A certified mine foreperson may conduct the required examinations at more than one mine site if the sites are within a ten-mile radius.

First aid providers

(R.C. 1565.15)

Under prior law, a "supervisory" employee at a surface coal mine who completed the requisite training could be a first aid provider. The act removes this distinction and provides that any employee at a surface coal mine who completes the requisite training may be a first aid provider.

Additionally, prior law required an operator to make available to first aid providers all necessary equipment for first aid and emergency medical services, and specified that that equipment included a portable oxygen cylinder with a medical regulator and oxygen delivery system. The act instead requires an operator to provide at the mine site all of the necessary equipment and removes the requirement that the equipment include a portable oxygen cylinder with a medical regulator and oxygen delivery system.

Amusement ride inspection fees

(R.C. 1711.53)

Law unchanged by the act prohibits a person from operating an amusement ride within the state without a permit issued by the Director of Agriculture. "Amusement ride" means any mechanical device, aquatic device, or combination of devices that carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement. "Amusement ride" includes carnival rides, bungee jumping facilities, and fair rides, but does not include passenger tramways as defined in Workers' Compensation Law or amusement rides operated solely at trade shows for a limited period of time. Prior to issuing a permit the Department of Agriculture must, within 30 days after the date on which it receives the application for a permit, inspect each amusement ride described in the application. The act adds that the owner of an amusement ride must have the amusement ride ready for inspection not later than two hours after the time that is requested for the inspection.

Ongoing law requires the Department to charge fees for each amusement ride annual permit, annual inspection, midseason operational inspection, and any reinspection. The act retains the \$50 annual permit fee, but increases the other fees and adds additional fees as follows:

Fee	Prior law	The act
Annual inspection and reinspection per ride:		
Kiddie rides	\$50	\$100
Roller coaster	\$500	\$950
Aerial lifts or bungee jumping facilities	\$300	\$450
Go karts	None	\$5
Other rides	\$100	\$160
Midseason operational inspection per ride	\$10	\$25
Expedited inspection per ride	None	\$100
Failure to cancel scheduled inspection per ride	None	\$100
Failure to have amusement ride ready for inspection per ride	None	\$100

Ongoing law requires the rules adopted under the Amusement Rides Law to define "kiddie rides," "roller coaster," "aerial lifts," and "other rides" for purposes of determining the various inspection fees. The act adds "go karts" to the terms to be defined in rules, and requires that the rules define "other rides" to include go kart tracks. The act specifies that the go kart inspection fee is in addition to the inspection fee for the go kart track. Additionally, the fees for an expedited inspection, failure to cancel a scheduled inspection, and failure to have an amusement ride ready for inspection do not apply to go karts. The act defines "expedited inspection" as an inspection of an amusement ride by the Department not later than ten days after the owner of the amusement ride files an application for a permit.

Prior law required the Department to conduct a midseason operational inspection of every amusement ride for which it conducted an annual inspection. The act authorizes, rather than requires, the Department to conduct such a midseason operational inspection.

License fees for concession operators at fairs and expositions

(R.C. 1711.11)

Law unchanged by the act prohibits a person from operating a concession at any fair or exposition conducted by a county or independent agricultural society or by the Ohio Expositions Commission without first obtaining from the Director a license to do so. "Concession" means any show, amusement other than an amusement ride defined in the Amusement Rides Law, game, or novelty stand operation at a fair or exposition, but does not include food or drink operations. Ongoing law prohibits a license from being issued until the applicant has paid a fee to the Director, except that no fee is required from nonprofit organizations. The act increases the application fee by \$20, from \$50 to \$70.

Administrative Building Fund and State Architect's Fund

(R.C. 123.10 and 152.101)

The act creates in the state treasury the Administrative Building Fund consisting of proceeds of bonds issued by the Ohio Building Authority. The money in the fund must be used as provided in the bond proceedings to pay for the costs of buildings, structures, and other improvements for housing branches and agencies of state government. Investment earnings of the fund are required to be deposited in the fund except for investment earnings that are required by the Director of Budget and Management to be deposited in the State Architect's Fund (see below).

The act also creates in the state treasury the State Architect's Fund consisting of transfers of money to the fund authorized by the General Assembly, such percentage of the investment earnings of the Administrative Building Fund as the Director of Budget and Management determines to be appropriate, and the proceeds of certain tolls and other revenues collected by the Department of Administrative Services (DAS) on public works of the state, including revenue arising from the sale, construction, purchase, or rental of real property. Money in the State Architect's Fund must be used by DAS for all of the following purposes:

- (1) To pay personnel and other administrative expenses of the Department;
- (2) To pay the cost of conducting evaluations of public works;
- (3) To pay the cost of building design specifications;
- (4) To pay the cost of providing project management services; and

(5) Any other purposes that the Director of Administrative Services determines to be necessary for the Department to execute its legally prescribed duties under the Public Works Law.

Fire Marshal's Fund

(R.C. 3737.71)

The State Fire Marshal's Fund, established under continuing law, is funded by payments from insurance companies. The fund is used for the maintenance and administration of the Office of the Fire Marshal and for the operating costs of the Ohio Fire Academy.

The act permits cash balance amounts in the fund that are not needed for ongoing operating expenses to be used to acquire interests in real property by purchase, lease, or otherwise, and to construct, acquire, enlarge, equip, furnish, and improve the Fire Marshal's office facilities and the facilities of the Ohio Fire Academy.

Changes in the Public Employees Collective Bargaining Law

(R.C. 4117.01 and 4117.14)

The act exempts from the Public Employees Collective Bargaining Law (R.C. Chapter 4117.) public employees who must be licensed attorneys in order to perform their duties as public employees.

The act also specifies that the Controlling Board is the legislative body authorized to reject recommendations of a fact-finding panel (which is utilized for collective bargaining when the parties reach an impasse) when the state or any of its agencies, authorities, commissions, boards, or other branch of public employment is party to the fact-finding process. The act does not clarify the entities included as a "branch of public employment."

State board and commission member healthcare benefits coverage

(R.C. 124.82)

Prior law permitted members of state boards and commissions *who were members of the Public Employees Retirement System* to receive specified health care benefits coverage obtained by the Department of Administrative Services. But *all* of these individuals had to pay the entire amount of the coverage's premiums, costs, or charges.

The act instead permits *any* state board or commission member (irrespective of PERS membership) to receive that coverage, and requires *only* those individuals who are appointed to a state board or commission for a fixed term and who (1) are compensated on a per meeting basis, (2) paid only for expenses, or (3) receive a combination of per diem payments and expenses, to pay the entire amount of the premiums, costs, or charges for that coverage.

The Ohio Veterans' Home Agency

Overview of Ohio veterans' homes

Under ongoing law, the state operates in Sandusky the Ohio Veterans' Home, of which the Robert T. Secrest Nursing Home is a part, for honorably discharged veterans in the state. The Revised Code sets forth several provisions concerning the operation of this home as well as duties of individuals associated with it. The act makes several changes to these provisions of law.

Creation of the Ohio Veterans' Home Agency

(R.C. 123.024(A)(3), 124.381, 5907.01(B), 5907.02, and 5907.10(A))

The act creates the "Ohio Veterans' Home Agency." This agency is charged with maintaining and operating the state's veterans' homes and associated nursing homes. (See, "Establishment of multiple veterans' homes," below.)

Board of Trustees of the Ohio Veterans' Home Agency

(R.C. 5907.02, 5907.022, 5907.03, 5907.04, 5907.11, 5907.12, and 5907.13)

Prior law established the Board of Trustees of the Ohio Veterans' Home to have charge and custody of the Home. Reflecting the creation of the Ohio Veterans' Home Agency and the fact that, under the act, multiple veterans' homes may be established, the act renames the board as the Board of Trustees of the Ohio Veterans' Home Agency. The act confers on the successor board the duty to govern the Agency as well as the duty of having charge and custody of the Agency's facilities, which include the veterans' homes and associated nursing homes. The successor board otherwise has similar powers and duties to those of the predecessor Home governing board.

Establishment of multiple veterans' homes

(R.C. 145.012(B), 2935.03(A)(1) and (B)(1), 3721.01(A)(1)(a), 4123.01(A)(1)(a)(i), 5902.02(G), 5902.05, 5907.01(B), 5907.02, 5907.022, 5907.03, 5907.04, 5907.05, 5907.06, 5907.07, 5907.08, 5907.09, 5907.10, 5907.11, 5907.12, 5907.13, 5907.131, 5907.14, 5907.141, and 5907.15)

Throughout prior law, reference was made specifically to the Ohio Veterans' Home in Sandusky, as the *sole* veterans' home in the state.¹⁴ The act amends these statutory references to refer to "veterans' homes," "a [or each] veterans' home, or "a veterans' home operated under the Veterans' Home Law." As a result, the state may establish multiple veterans' homes, along with the associated nursing homes, throughout the state.

Superintendent of the Ohio Veterans' Home Agency

(R.C. 5907.02, 5907.021(B), 5907.04, 5907.08, and 5907.11(A))

Prior law required the Board of Trustees of the Ohio Veterans' Home to appoint a superintendent for the Home to perform duties assigned by the board. Again, reflecting the creation of the Ohio Veterans' Home Agency and the fact that, under the act, multiple veterans' homes may be established, the act renames this position as the "Superintendent of the Ohio Veterans' Home Agency." The successor Superintendent has generally similar powers and duties to those of the predecessor Home Superintendent, but, under the act, the successor Superintendent acquires an affidavit-filing duty with respect to insane veterans' home residents (formerly possessed by "the commandant").

Police chief of the Ohio Veterans' Home Agency

(R.C. 5907.02 and 5907.021(B)(1))

Prior law required the Superintendent of the Ohio Veterans' Home to appoint a police chief for the Home to oversee the Home's police officers. For the previously stated reasons, the act renames this position as the "Police Chief of the Ohio Veterans' Home Agency." The successor Police Chief has generally the same types of responsibilities as those of the predecessor Home Police Chief, except that those responsibilities now include oversight of all veterans' home police officers at *all veterans' homes* established under the act.

¹⁴ *There was one exception to this. A section of the Certificate of Need Law referred to "the southern Ohio veterans home in Brown County" (R.C. 3702.5213).*

Veterans' home police officers

(R.C. 109.71(A)(10), 109.77(C), 145.01(NN) and (VV), 145.33(E)(3)(e), 2901.01(A)(11)(i), 2921.51(A)(1), 2935.01(B), 2935.03(A)(1), 2935.031, 4123.01(A)(1)(a)(i), 5907.02, and 5907.021)

Prior law frequently referred to "Ohio Veterans' Home police officers" who had certain law enforcement powers *at the Home*. Because the act allows multiple veterans' homes to be established, these references are changed to "veterans' homes [or home] police officers" or "a veterans' home police officer."

Veterans' homes related funds

(R.C. 5907.11, 5907.13, 5907.131, 5907.14, 5907.141(A), and 5907.15)

Under prior law, several funds existed in the state treasury for the operation of the Ohio Veterans' Home and the care of its residents, including the Ohio Veterans' Home Operating Fund, the Ohio Veterans' Home Fund, the Ohio Veterans' Home Federal Grant Fund, and the Ohio Veterans' Home Rental, Service, and Medicare Reimbursement Fund. In light of the fact that, under the act, multiple homes may be established, the names of these funds are changed to the "Ohio Veterans' Homes Operating Fund," the "Ohio Veterans' Homes Fund," the "Ohio Veterans' Homes Federal Grant Fund," and the "Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund."

Additionally, under prior law, the Superintendent of the Ohio Veterans' Home, with the Board of Trustees' approval, could establish a local fund to be used for the entertainment and welfare of the residents of the Home. Again, because multiple homes may be established under the act, the Superintendent is permitted, with the approval of the Ohio Veterans' Home Agency Board of Trustees, to establish such a local fund for each veterans' home.

Miscellaneous

(R.C. 5907.02, 5907.023, and 5907.141(B))

Appointment of veterans' homes police officers. Prior law required the Superintendent of the Ohio Veterans' Home to appoint one or more employees of the Home as its police officers "at the discretion of the [S]uperintendent." As a result of the latter phrase, the law may have indicated that the Superintendent's duty was permissive. The act clearly states that the duty is permissive by specifying that the Superintendent *may* appoint one or more employees at each veterans' home as veterans' home police officers with authority to act on the given home's grounds.

Reimbursement of residents' care. Under prior law, if the United States Department of Veterans Affairs determined that a resident of a veterans' home had excess income or assets and declared the home ineligible to collect from the Department a per diem grant reimbursement for days of care the home provided to that resident, the resident *had to* pay the home an amount equal to the rate of this per diem grant denied the home. The act makes this resident payment permissive, rather than mandatory.

Exemption from sunset. The act exempts the Ohio Veterans' Home Agency and its Board of Trustees from the provisions of the Sunset Review Committee Law.

Duties of the Ohio Arts and Sports Facilities Commission

(R.C. 3383.01 to 3383.03)

Ongoing law requires the Ohio Arts and Sports Facilities Commission to engage in and provide for the development, performance, and presentation or making available of the arts and professional sports and athletics to the public in this state. The Commission exercises its powers through the provision, operation, and use of Ohio arts facilities and Ohio sports facilities.

The act expands the Commission's duties to include the provision of training or education in the arts, and specifies that Ohio arts facilities can be used for such training and education. It also provides that the term "arts," as used in the Arts and Sports Facilities Commission Law, includes design arts.

Ohio Museum Property Act

(R.C. 3385.01 to 3385.10)

The act enacts the Ohio Museum Property Act to address the ownership of property on loan to any institution operated by a governmental agency or nonprofit corporation primarily for educational, scientific, aesthetic, historic, or preservation purposes. In general, the act (1) establishes when such property is to be considered abandoned, or the loan of the property is to be considered terminated, thereby vesting title of the property in the institution, (2) permits an institution to apply conservation measures to property on loan to it, without the property owner's permission, if certain conditions are met, and (3) specifies when certain property can be presumed to be a gift to an institution.

Definitions

(R.C. 3385.01)

The act defines "loan" and "on loan" to mean a deposit of property not accompanied by a transfer of title to the property. "Museum" is defined as any institution located in Ohio that is operated by a governmental agency or nonprofit corporation primarily for educational, scientific, aesthetic, historic, or preservation purposes and that acquires, owns, cares for, exhibits, studies, archives, or catalogs property. "Museum" includes historical societies, historic sites or landmarks, parks, monuments, libraries, arboreta, and zoos. "Property" means any tangible, nonliving object in a museum's possession that has intrinsic historic, artistic, scientific, educational, or cultural value.

When property on loan is considered abandoned or the loan terminated

(R.C. 3385.02)

Under the act, property on loan to a museum *other than* pursuant to a written agreement is considered to be abandoned, and title to the property vests in the museum, free from all claims of the owner and of all persons claiming under the owner, *if* all of the following apply:

(1) The property has been held by the museum within Ohio for at least seven years and, during that time, it remained unclaimed.

(2) The museum gave notice of the abandonment of the property in accordance with the act (see "Required notices," below).

(3) No written assertion of title to the property was made by the owner of the property within 90 days after the date the notice was mailed or, if applicable, within 90 days after the date of the last published notice.

With respect to property on loan to a museum *pursuant to* a written agreement, the loan is considered to be terminated, and title to the property vests in the museum, free from all claims of the owner and of all persons claiming under the owner, *if* all of the following apply:

(1) If the loan was for an indefinite term, the museum has held the property for at least seven years. If the loan was for a specified term, that term has expired.

(2) The museum gave notice of the termination of the loan in accordance with the act (see "Required notices," below).

(3) No written assertion of title to the property was made by the owner of the property within six months after the date the notice was mailed or, if applicable, within six months after the date of the last published notice.

Required notices

(R.C. 3385.03)

The act requires a museum to send notice of abandonment of property or termination of a loan by certified mail, return receipt requested, to the owner of the property at the owner's last known address as shown by the records of the museum. If the museum has no address on record, or the museum does not receive written proof of receipt of the notice within 30 days after the date the notice was mailed, the museum must publish notice, at least twice over a 60-day period, in a newspaper of general circulation in both the county in which the museum is located and the county in which the last known address of the owner, if available, is located. For purposes of this provision of the act, "**records of the museum**" means documents created or held by the museum in its regular course of business.

The mailed and published notices must contain the following:

- (1) The date of the notice;
- (2) A general description of the property;
- (3) The name and, if available, the last known address of the owner of the property;
- (4) The approximate date the property was loaned to the museum;
- (5) The name and address of the appropriate museum official to be contacted regarding the notice;
- (6) And for published notices: (a) a request that anyone who may know the whereabouts of the owner of the property provide written notice to the museum and (b) the publication date of the last notice.

A notice of abandonment of property is required to include a statement in substantially the following form:

"The (name of museum) hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact (name of museum) in writing, establish ownership of the property, and make arrangements to collect the property. If you fail to do so

within 90 days, the property will be considered abandoned and will become property of (name of museum)."

A notice of termination of a loan of property must include a statement in substantially the following form:

"The records of (name of museum) indicate that you have property on loan to it. The (name of museum) hereby terminates the loan. If you desire to claim the property, you must contact the (name of museum) in writing, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within six months, you will be considered to have waived any claim you may have had to the property."

The act specifies that, if a loan of property was made to a branch of the museum, the museum is considered to be located in the county in which the branch is located. Otherwise, the museum is considered to be located in the county in which it has its principal place of business.

Application of conservation measures

(R.C. 3385.04)

Unless there is a written loan agreement to the contrary, a museum is permitted by the act to apply conservation measures to property on loan to the museum without notice to the owner or the owner's permission, if such measures are necessary to protect the property on loan or other property in the custody of the museum or if the property on loan is a hazard to the health and safety of the museum staff or the public, *and* if either of the following applies:

(1) The museum attempts but is unable to notify the owner at the owner's last known address not later than three days before the date the museum intends to apply the conservation measures.

(2) The museum notifies the owner not later than three days before the date the museum intends to apply the conservation measures, the owner does not agree to those measures, and the owner does not terminate the loan and retrieve the property within three days after receipt of the notice.

If a museum applies conservation measures in accordance with the act or with the agreement of the owner, the museum (1) acquires a lien on the property in the amount of the expenses incurred by the museum, unless the agreement provides otherwise, and (2) is not liable for injury to or loss of the property if the museum (a) reasonably believed at the time the conservation measures were taken that the measures were necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the

health and safety of the museum staff or the public, and (b) exercised reasonable care in the choice and application of the conservation measures.

Property from an unknown source

(R.C. 3385.07)

Under the act, any property that, on or after the act's effective date, is delivered to a museum or left on museum property, is not solicited by the museum, is from an unknown source, and might reasonably be assumed to have been intended as a gift to the museum, is conclusively presumed to be a gift to the museum, *if* there is no claim of ownership to the property within 90 days after the museum receives or otherwise discovers the property.

Disclosure

(R.C. 3385.05 and 3385.06)

The act requires a museum, upon accepting property on loan, to provide a written summary of the provisions of the Ohio Museum Property Act to the owner of the property. In addition, it requires the owner of any property on loan to a museum to promptly notify the museum in writing of any change of the owner's address or change in ownership of the property.

Good title

(R.C. 3385.10)

The act states that a museum that acquires title to property in accordance with the Ohio Museum Property Act passes good title when transferring that property with the intent to pass title.

Other provisions

(R.C. 3385.08 and 3385.09)

The act also states that the Ohio Museum Property Act (1) may be varied by written agreement of the parties and (2) does not apply to property interests other than those specifically described in the Ohio Museum Property Act. In addition, it provides that property on loan to a museum does not escheat to the state under any applicable escheat law, but passes to the museum under the Ohio Museum Property Act.

Payment schedule for real estate conveyed to Hamilton County Alcohol and Drug Addiction Services Board

(Section 33.03)

Am. Sub. S.B. 164 of the 124th General Assembly authorized the conveyance of specified state-owned real estate located in Hamilton County to the Hamilton County Alcohol and Drug Addiction Services Board. Consideration for the conveyance was \$600,000, and under prior law was to be paid over three years in accordance with the payment schedule set forth in that act. As of June 30, 2002, payments totaling \$195,000 have been made.

The act revises the payment schedule so that the amount remaining to be paid, \$405,000, is to be paid in equal installments (of \$40,500) each state fiscal year through FY 2012.

Conveyance of real estate in Hamilton County

(Section 33.01)

The act authorizes the Governor to execute a deed in the name of the state conveying to a purchaser, and the purchaser's successors and assigns or heirs and assigns, all of the state's right, title, and interest in certain state-owned real estate that is located in Hamilton County and described in the act. The Board of Trustees of the University of Cincinnati must have the real estate appraised by two disinterested persons, and the consideration for the conveyance must be a purchase price acceptable to the Board of Trustees. The purchaser must pay the costs of the conveyance.

The act specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon the purchaser's payment of the purchase price and the request of the Board of Trustees. The net proceeds of the sale must be deposited in the University of Cincinnati Endowment Fund (William Gray Endowment Fund).

This conveyance authority expires one year after the act's effective date.

East Liverpool land conveyances

(Section 33.02)

The act authorizes the Governor to execute a deed in the name of the state conveying to the East Liverpool Young Men's Christian Association (YMCA) and its successors and assigns all of the state's right, title, and interest in certain described real estate located in East Liverpool in Columbiana County. The

consideration for the conveyance is a conveyance by the East Liverpool YMCA to the state and its successors and assigns of either (1) certain real estate in East Liverpool described in the act or (2) other real estate that is of similar value and size, is contiguous to the East Liverpool campus of Kent State University, and is acceptable to Kent State University.

The act requires the state to pay the costs of both conveyances and specifies that the real estate conveyed by the East Liverpool YMCA to the state is for the use and benefit of Kent State University. Upon the East Liverpool YMCA's conveyance to the state of that real estate, procedures specified in the act for the preparation, execution, and delivery to the East Liverpool YMCA of a deed to the state-owned land will operate.

The authority for this real estate exchange in East Liverpool expires one year after the act's effective date.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-03-02	pp. 2160-2161
Reported, H. Finance & Appropriations	12-03-02	p. 2165
Passed House (93-3)	12-04-02	pp. 2185-2192
Reported, S. Finance & Financial Institutions	12-09-02	p. 2287
Passed Senate (28-3)	12-10-02	pp. 2382-2385

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