



Ohio Legislative Service Commission

Bill Analysis

Jennifer A. Parker

S.B. 224

128th General Assembly
(As Introduced)

Sen. Coughlin

BILL SUMMARY

- Requires the Department of Administrative Services to negotiate the sale or lease of the right to manage and operate the State Lottery.
- Requires the Department to negotiate a public-private lease agreement for the operation of the Ohio Turnpike, and abolishes the Ohio Turnpike Commission upon the transfer of control of the Ohio Turnpike to a private entity.
- Requires that the proceeds from the Lottery or Turnpike sale or lease be paid into the Ohio Promise Scholarship Program Fund for purposes of the Ohio Promise Scholarship Program, which is established by the bill.
- Renames the existing Turnpike Legislative Review Committee and adds four members appointed by the Governor.
- Makes application of the bill contingent on the adoption of an amendment to Section 6, Article XV, of the Ohio Constitution to authorize (1) operation of the State Lottery by a private entity and (2) use of the net profit of the State Lottery for scholarships for Ohio residents who are students at institutions of higher education located in Ohio, in addition to the current use of the net profit for the support of elementary, secondary, vocational, and special education programs.

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CONTENT AND OPERATION

Ohio Promise Scholarship Program

Eligible students

(R.C. 3333.45 and 3333.46(A); R.C. 3345.32)

The bill establishes the Ohio Promise Scholarship Program under which the Treasurer of State is to award scholarships to eligible students. An "**eligible student**" is one who satisfies *all* of the following conditions:

(1) The student has been a resident of Ohio for at least two school years¹ prior to graduating from high school.

(2) The student graduates with a high school diploma or honors diploma awarded from a public or chartered nonpublic high school pursuant to current law (R.C. 3313.61, 3313.612, or 3325.08).

(3) If the student is required to pass the Ohio graduation test prescribed under current law (R.C. 3301.0710(B)) as a condition to receiving a high school diploma, the student has attained a proficient score on all five parts.

(4) The student has completed a high school curriculum meeting the requirements of existing law (R.C. 3313.603(C)).

(5) The student is enrolled full-time at an eligible institution. "**Eligible institution**" means a state institution of higher education,² a nonprofit college or university,³ a private career school holding program authorizations issued by the State

¹ For purposes of the bill, "**school year**" has the same meaning as in R.C. 3313.62.

² "**State institution of higher education**" has the same meaning as in R.C. 3345.011.

³ "**Nonprofit college or university**" means a nonprofit institution of higher education in Ohio that has been issued a certificate of authorization under R.C. Chapter 1713.

Board of Career Colleges and Schools pursuant to existing law (R.C. 3332.05(C)), or a private institution exempt from regulation under R.C. Chapter 3332., as prescribed in current law (R.C. 3333.046).

(6) The student has matriculated at an eligible institution the next academic year⁴ after graduating from high school.

(7) The student is in the top one-third of the group of students in the graduating twelfth grade class, based on academic rank, who enroll in an eligible institution the next academic year after graduating from high school.

(8) While enrolled in an eligible institution, the student maintains a cumulative grade point average of at least 3.0 out of 4.0.

Program administration

(R.C. 3333.46(A), (C), (E), and (F))

Under the Program, public and chartered nonpublic high schools and institutions of higher education are required to notify the Treasurer of State of each eligible student. The Treasurer of State must then request the Director of Budget and Management to establish an individual account for each eligible student in the Ohio Promise Scholarship Program Fund, which is created by the bill (see below). Upon the establishment of an eligible student's account, and annually thereafter for each academic year the student is eligible for a scholarship, the Treasurer of State is to request the Director to credit to the account an amount equal to the eligible student's scholarship for that academic year. Each academic year a student is eligible for a scholarship, the Treasurer of State must cause an electronic transfer of scholarship proceeds from the student's account in the Fund to the eligible institution the student is attending. The first scholarships are to be awarded for the academic year that begins not later than two academic years after the first amount of principal is deposited into the Fund.

A scholarship is renewable for up to three additional academic years. An eligible student need not enroll in the same eligible institution for all of the academic years for which a scholarship is awarded to the student. A student who becomes ineligible may regain eligibility one time.

⁴ The Treasurer of State is required to define "**academic year**" for purposes of the bill.

The bill requires the Chancellor of the Ohio Board of Regents and the Department of Education to cooperate with the Treasurer of State in the administration of the Program.

Scholarship amounts

(R.C. 3333.46(B) and (D); R.C. 3315.37, 3333.28, and 3333.38)

In general, the amount of a scholarship awarded to an eligible student is to be the *lesser* of:

--The total amount of tuition or instructional fees and other general fees charged to the student by the eligible institution for the academic year minus other scholarships or grants, but not loans, awarded to the student by the state or another entity for that same academic year;

--The applicable maximum scholarship amount, as prescribed in the following chart.

WHERE THE STUDENT IS ENROLLED	MAXIMUM SCHOLARSHIP AMOUNT
Main campus of a state university	\$7,000
Branch campus of a state university	\$4,250
Any other state institution of higher education	\$2,750
Nonprofit college or university, private career school holding program authorizations issued by the State Board of Career Colleges and Schools, or private institution exempt from regulation under R.C. Chapter 3332.	\$7,000

If, for any given academic year, all eligible students cannot be awarded a scholarship in the full amount described above because the number of eligible students in that year exceeds the amount of money available from the Ohio Promise Scholarship Program Fund, the Treasurer of State is to reduce the maximum amount of the scholarships to be awarded and credited to individual accounts in the Fund for that year by an amount that the Treasurer of State determines will not exceed the amount of available money from the Fund.

Ohio Promise Scholarship Program Fund

(R.C. 3333.47)

The bill creates the Ohio Promise Scholarship Program Fund in the state treasury. The Fund is to consist of moneys deposited from the sale or lease of the State Lottery and the lease of the Ohio Turnpike as provided by the bill (see below). Investment earnings on moneys in the Fund are to be credited to the Fund.

The Treasurer of State is required to use only the investment earnings to pay scholarships under the Ohio Promise Scholarship Program, and is permitted to use up to one-quarter of one per cent of the investment earnings each fiscal year for administration of the Program. The principal cannot be spent.

Rule-making requirements

(R.C. 3333.48)

The Treasurer of State is mandated by the bill to adopt rules for the implementation of Ohio Promise Scholarship Program.

Duplicative scholarship programs

(Section 3)

Not later than one year after the beginning of the first academic year for which scholarships are awarded under the Ohio Promise Scholarship Program, the Chancellor of the Ohio Board of Regents is required to recommend to the General Assembly the elimination of other scholarship programs currently authorized that the Chancellor determines are duplicative of the Ohio Promise Scholarship Program and, therefore, may be eliminated.

Operation of the State Lottery

(R.C. 3770.25)

The bill requires the Department of Administrative Services (DAS) to issue a request for proposals inviting prospective contractors to propose a contract under which the prospective contractor will purchase, or lease for a specified period, the right to manage and operate the State Lottery. The following terms and conditions are to be addressed in the proposal:

(1) The term of the contract, if the contract would involve a lease of the management and operation of the State Lottery;

(2) The compensation to be paid to the state and the manner in which the compensation will be paid, which must include an initial lump sum payment and a guaranteed annual payment;

(3) Compliance with the requirements of the State Lottery Law (R.C. Chapter 3770.);

(4) Other terms and conditions that DAS considers appropriate for inclusion in the contract.

Upon evaluation of all the contract proposals DAS receives, it may negotiate with any or all of the prospective contractors over the terms and conditions of the contract *and* may reject any or all proposals or any part of any or all proposals and issue a new request for proposals or parts of proposals.⁵ DAS is required to select the contract proposal that proposes the highest amount to be paid to the state and the best material terms and conditions and that maximizes revenues for the purposes for which the net profit of the State Lottery is required to be used. Notice of the selection must be given to the prospective contractor in writing. After DAS enters into the contract, the General Assembly is to enact legislation that revises the appropriate statutes of the Revised Code to do the following:

(1) Reflect the purchase or lease of the right to operate and manage the State Lottery;

(2) Abolish the State Lottery Commission and require the Attorney General to perform specified duties under the State Lottery Law;

(3) Designate those powers and duties currently assigned to the State Lottery Commission that the operator of the State Lottery is to perform and those that the Attorney General is to perform, including (a) adopting administrative rules to govern the operation of the State Lottery, (b) licensing lottery sales agents, (c) deducting child support and taxes due from lottery prize awards, and (d) administering transfer agreements as defined in existing law (R.C. 3770.10).

⁵ The bill provides that the actions of DAS are not subject to R.C. Chapter 125.

Operation of the Ohio Turnpike

Overview

(R.C. 5537.011(C) and (D))

Within one year after the effective date of this portion of the bill, or as soon thereafter as is practicable, the Department of Administrative Services (DAS) is required to select a private entity and enter into a public-private lease agreement for the operation of the Ohio Turnpike. The Turnpike Oversight Committee (see below) is to oversee the operation of the Turnpike by the private entity. Any payment or compensation under the lease agreement by the private entity is to first be used by DAS to pay debt charges on all outstanding bonds, notes, and other obligations issued in connection with the Turnpike, and any other debts or obligations of the Ohio Turnpike Commission, and then is to be distributed at the direction of DAS to the Ohio Promise Scholarship Program Fund (see above).

Selection of a private entity

(R.C. 5537.011(A) and (B))

In soliciting and selecting a private entity with which to enter into a public-private lease agreement for the operation of the Ohio Turnpike,⁶ DAS is authorized to issue a request for qualifications in connection with the proposed execution of a lease agreement, to require that any bid submitted be accompanied by security in the form of cash, letters of credit, or other financial security acceptable to DAS, and to utilize any competitive selection process that DAS determines to be appropriate or reasonable.

The following factors may be considered in evaluating and selecting a bid or proposal to enter into a public-private lease agreement:

- (1) The overall value to the state from the bid or proposal of the private entity;
- (2) The general reputation, qualifications, industry experience, and financial capacity of the private entity;
- (3) The safety record of the private entity;
- (4) Other criteria that DAS considers appropriate.

⁶ The bill defines "Ohio Turnpike" as the toll freeway that runs in an easterly and westerly direction across the entire northern portion of Ohio between its borders with Pennsylvania in the east and Indiana in the west and carries the interstate highway designations of Interstate 76, Interstate 80, and Interstate 89 (R.C. 5537.01(CC)).

Terms of the public-private lease agreement

(R.C. 5537.012)

The public-private lease agreement between DAS and a private entity for the operation of the Ohio Turnpike must set forth at least the following terms and conditions:

- (1) The term of the agreement, which cannot exceed 50 years;
- (2) Programmed reconstruction, replacement, improvement, maintenance, management, and repair of the Turnpike, which, except as otherwise provided in the agreement, must comply at least with the Department of Transportation minimum standards for other projects of a similar nature and with any other applicable state or federal standards;
- (3) A description of the actions the Turnpike Oversight Committee may take to ensure proper reconstruction, replacement, improvement, maintenance, management, and repair of the Turnpike;
- (4) Compliance with applicable federal, state, and local laws;
- (5) The rights and duties of the private entity and other state and local governmental entities with respect to use of the Turnpike, including a provision that any police, fire, and emergency services and any other security or emergency personnel, including the U.S. Armed Forces, have access to the Turnpike as necessary for the enforcement of police powers, emergency management purposes, and homeland security purposes;
- (6) Procedures for amendment of the agreement;
- (7) The rights and remedies available in the event of default or delay;
- (8) Grounds for termination of the agreement by the state or the private entity.

Additionally, the lease agreement *may* provide for the following:

- (1) Review and approval by the Turnpike Oversight Committee of the private entity's plans for the operation and maintenance of the Turnpike;
- (2) Inspection by the Turnpike Oversight Committee of construction, reconstruction, or maintenance of or improvements to the Turnpike;

(3) Maintenance of insurance, bonds, or letters of credit by the private entity, providing coverage and amounts acceptable to DAS;

(4) Filing by the private entity, on a periodic basis, of appropriate financial statements in a form acceptable to the Turnpike Oversight Committee;

(5) Filing by the private entity, on a periodic basis, of traffic reports in a form acceptable to the Turnpike Oversight Committee;

(6) Assignment, subcontracting, or other delegation of responsibilities of the private entity under the agreement to third parties;

(7) Traffic enforcement and other policing issues, including any reimbursement by the private entity for those services;

(8) The imposition and collection of tolls and the development or use of service revenues and other revenue sources. Tolls or user fees may not be imposed by the private entity except as set forth in the agreement. Tolls and user fees and the setting of tolls and user fee rates are not subject to supervision or regulation by any commission, board, bureau, or agency of the state or any municipal corporation, other than DAS or the Turnpike Oversight Committee to the extent set forth in the agreement.⁷

(9) Other terms and conditions.

Termination of the lease agreement

(R.C. 5537.013)

Upon the termination of the public-private lease agreement, the authority and duties of the private entity cease, except for any duties and obligations that extend beyond the termination as provided in the agreement, and the Ohio Turnpike reverts to the state.

If the private entity commits a material default,⁸ DAS may do any of the following:

--Seek specific performance, injunction, or other equitable remedies;

⁷ See also R.C. 5537.21 and 5537.26.

⁸ "**Material default**" is defined by the bill as any failure of a private entity to perform any duties under the public-private lease agreement that jeopardizes delivery of adequate service to the public and remains unsatisfied after a reasonable period of time and after the private entity has received written notice of the failure from DAS or the Turnpike Oversight Committee.

--Exercise any additional rights and remedies allowed by law or in equity or provided in the public-private lease agreement, including the ejection of the private entity from the Turnpike, the assessment of liquidated damages or other amounts, or the liquidating of any bond, security, or reserve accounts established under the agreement;

--Terminate the agreement and exercise any other rights and remedies that may be available.

As stated in the bill, the General Assembly specifically finds that the commencement of a reorganization or liquidation proceeding under federal law or under any comparable state or local law by any private entity that is a party to a public-private lease agreement to operate the Turnpike would constitute an immediate threat to the public health, safety, and welfare of the citizens of this state, requiring the termination of the agreement.

In the event that the agreement is terminated, DAS must notify the Turnpike Oversight Committee and the Department of Transportation. Immediately upon the notification, the Department of Transportation is to take all appropriate actions to continue operation of the Turnpike until such time as DAS enters into a new agreement for the lease and operation of the Turnpike and the private entity selected is prepared to operate the Turnpike.

Ohio Turnpike Oversight Committee

(R.C. 5537.24; conforming changes in R.C. 5537.01, 5537.03, 5537.27, and 5537.28)

Current law provides for a Turnpike Legislative Review Committee composed of the following six members:

--Three members of the Senate, no more than two of whom can be members of the same political party, one of whom is to be the chairperson of the Senate committee dealing primarily with highway matters, one of whom is to be appointed by the Senate President, and one of whom is to be appointed by the Minority Leader of the Senate. Both the member appointed by the Senate President and the member appointed by the Senate Minority Leader must represent either districts in which is located or through which passes a portion of a turnpike project that is part of the Ohio Turnpike system or districts located in the vicinity of a turnpike project that is part of the Ohio Turnpike system.

--Three members of the House of Representatives, no more than two of whom can be members of the same political party, one of whom is to be the chairperson of the House committee dealing primarily with highway matters, one of whom is to be

appointed by the Speaker of the House of Representatives, and one of whom is to be appointed by the Minority Leader of the House of Representatives. Both the member appointed by the Speaker and the member appointed by the House Minority Leader must represent either districts in which is located or through which passes a portion of a turnpike project that is part of the Ohio Turnpike system or districts located in the vicinity of a turnpike project that is part of the Ohio Turnpike system.

The bill renames the Turnpike Legislative Review Committee the "Turnpike Oversight Committee" and adds four members appointed by the Governor.

As under current law, the Turnpike Oversight Committee is to meet at least quarterly. At each meeting, the Chairperson of the Ohio Turnpike Commission *or* the private entity operating the Ohio Turnpike under a public-private lease agreement must make a report to the Committee with respect to financial and budgetary matters and proposed and on-going construction, maintenance, repair, and operational projects. The Committee, by the affirmative vote of at least six of its members, may submit written recommendations to the Governor describing new turnpike projects or new interchanges located on existing projects that the Committee believes the Governor should consider approving, as provided under current law (R.C. 5537.03).

Members of the Committee who are members of the General Assembly are to serve without compensation, but are to be reimbursed for their actual and necessary expenses incurred in the discharge of their official duties as committee members.

Ohio Turnpike Commission

(R.C. 5537.01(A) and 5537.02; Section 4)

The bill abolishes the Ohio Turnpike Commission upon the transfer of control of the Ohio Turnpike to a private entity. At that time, all of the Commission's functions, assets, and liabilities are transferred to DAS. The bill states that DAS is successor to, assumes the obligations of, and otherwise constitutes the continuation of the Commission.

Application of the bill

(Section 5)

The bill states that its provisions do not take effect unless a proposal to amend Section 6, Article XV, of the Ohio Constitution to authorize the State Lottery to be operated by a private entity and to authorize the net profit of the State Lottery to be used for scholarships for Ohio residents who are students at institutions of higher education located in Ohio, in addition to the current use of the net profit for the support

of elementary, secondary, vocational, and special education programs, is approved by the electors of the state at a general or special election held in 2009 or 2010.

HISTORY

ACTION	DATE
Introduced	01-13-10

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