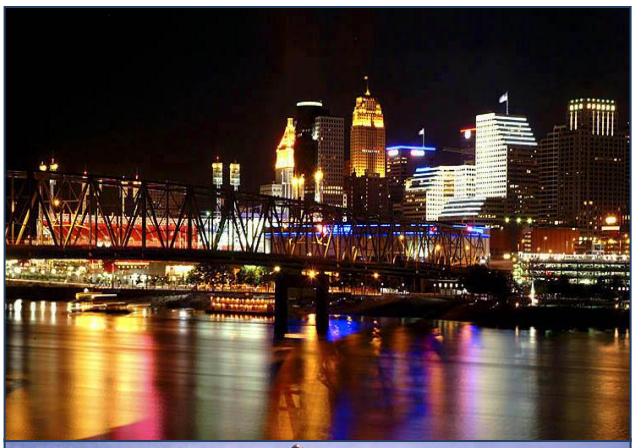

Local Impact Statement Report

For Bills Enacted in 2010

SEPTEMBER 2011

Legislative Service Commission
77 South High Street, 9th Floor
Columbus, Ohio 43215-6136

www.lsc.state.oh.us

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Introduction

R.C. 103.143 requires the Legislative Service Commission (LSC) to determine whether a local impact statement (LIS) is required for each bill that is introduced and referred to committee. An LIS may be required when a bill could result in net additional costs beyond a minimal amount to school districts, counties, municipalities, or townships. An LIS is not required for budget bills or joint resolutions. It is also not required when the bill is permissive or when the bill's potential local costs are offset by additional revenues, offset by additional savings, or caused by a federal mandate. The LIS determination is based solely on the "As Introduced" version of the bill.

R.C. 103.143 also requires LSC to annually compile the final local impact statements completed for laws enacted in the preceding calendar year. The report is to be completed by September 30 each year. This 2011 report covers the 41 bills enacted in calendar year 2010, five of which required an LIS. The LIS requirement is met through the detailed analysis of local fiscal effects included in LSC's fiscal notes.

Regardless of whether a bill requires an LIS, the fiscal note analyzes the bill's fiscal effects on both the state and local government. However, under R.C. 103.143, when a bill requiring an LIS is amended in a committee, the bill may be voted out of the committee by a simple majority vote with a revised LIS (a requirement fulfilled by preparing an updated fiscal note) or by a two-thirds vote without a revised LIS. Because various bills are exempted from the LIS requirement, this report does not include every bill enacted in 2010 that may have fiscal effects on local government. It should also be noted that fiscal notes in this report were prepared for the General Assembly's deliberations on pending legislation. This means that cost estimates included in fiscal notes may differ from the actual costs of implementing these laws, as the estimates were made before the enacted legislation was implemented. For those who are interested in the local fiscal effects of all legislation enacted in 2010, please see the LSC fiscal notes for those laws, which are available on the LSC web site (*www.lsc.state.oh.us*) by clicking on *Bills/Resolutions & Related Documents*.

In addition to this introduction, the report contains comments from the County Commissioners' Association of Ohio, the Ohio Municipal League, the Ohio Township Association, and the Ohio School Boards Association. LSC is required to circulate the draft report to these associations for comment and to include their responses in the final report. The main section of the report includes the final version of the fiscal notes for the five bills enacted in 2010 that required an LIS and became law. The 22 House bills and 19 Senate bills enacted in 2010 are listed in the appendix.

This report may be viewed online at *www.lsc.state.oh.us* by clicking on *Publications*, and then *Local Impact Statement Report* under the *Staff Research Reports* heading.

LOCAL GOVERNMENT ASSOCIATION
COMMENTS

As noted in the Introduction to the 2010 Local Impact Statement Report, various bills are exempted from the LIS requirement and, consequently, the LIS Report inadequately represents the burden of unfunded mandates placed upon county government by the General Assembly.

Generally, the impact of unfunded mandates has become more severe for all units of local government due to current economic challenges. For counties, in particular, the demands for services, most of which the county delivers on the state's behalf, continue to increase while revenue sources have stagnated or declined. Unfunded mandates continue to erode the foundation of a viable state/county partnership by threatening county governments' fiscal security.

Because the General Assembly has exempted budget bills from the LIS process, the Local Impact Statement process does not give a comprehensive and accurate view of unfunded mandates from the perspective of counties. Likewise, the fact that the LIS only applies to the "As Introduced" version of legislation is another major shortcoming in the law.

CCAO feels that with the new emphasis of the Kasich Administration on making state and local government more efficient and less costly that the law should be modified to reflect this new philosophy. The major change that should be enacted is to require this report to reflect the actions of the General Assembly in the State Budget. Another positive change in the law would be to require a current LIS when bills are amended. If such changes are made to the law, the 2011 Report would be not only more interesting, but would also be a more accurate depiction of how actions of the General Assembly impact counties and other local governments given the massive fiscal policy changes and the enactment of a series of "tools" that were also included in the budget.

In addition, including at least a listing of new permissive opportunities for collaboration and intergovernmental cooperation in the Report would point out opportunities for reduced local government costs. Such as section of the Report would also serve as an excellent tool to spur initiatives that could reduce local government costs. Making estimates of cost are often difficult and more of an "art" than a "science". Sometimes local governments really do not know the nature and magnitude of the costs until they implement the new law. Perhaps a periodic "look back" at costs a few years after the law becomes effective would be more definitive and valuable.

CCAO thanks the Legislative Service Commission for the opportunity to comment on this report. The LSC staff has a difficult job and we wish to acknowledge their professionalism, competence, and hard work. Irrespective of the concerns CCAO raises regarding the LIS process, CCAO knows that the LSC staff is a valuable resource that serves the General Assembly and Ohioans well.

The Ohio Municipal League (OML) has reviewed the draft of the Local Impact Statement Report for Bills Enacted in 2010 and would like to make the following comments.

The report provides helpful information to organizations representing local governments, their respective members, and the public: information that would otherwise be difficult to compile. It shows that numerous pieces of legislation have a potential negative impact on local governments, whose officials are already faced with declining revenues.

An area that still needs to be addressed is the section of law that exempts LSC from having to update a local impact statement for the biennial budget, capital appropriations bill or any other budget corrections bills. The League would support legislation that would allow the General Assembly to include these bills that are now exempted in Division (F) of ORC 103.143 from these local impact statements. OML also believes that local impact statements should be required at each phase of the legislative process. This is particularly important as substitute versions and amended substitute version of bills are accepted. Legislation can have a huge fiscal impact upon local governments and should be known to all as these bills progress through the legislature.

We are always optimistic that this document will gain a larger recognition with state decision makers as they consider imposing additional programs or duties on local governments or reduce or limit their funding. The OML commends the staff of the Legislative Service Commission for the time and effort they put into the individual statement and this report.

The Ohio Township Association (OTA) would like to thank the Ohio Legislative Service Commission (LSC) for the opportunity to comment on the proposed 2011 Local Impact Statement Report. The LSC Local Impact Report helps educate our membership and the members of the General Assembly on the effect certain legislation will have on township budgets and keeps legislators and local officials aware of any unfunded mandate created in legislation proposed and passed by the General Assembly.

As we have stated in the past, the fiscal impact legislation may have on townships often is underestimated. Provisions established in legislation such as filing, notification and public hearing requirements could create significant costs for townships. The OTA is pleased that LSC takes such costs into consideration when determining local fiscal impact. Although the actual impact these new laws will have on townships will not be known until the laws are put into practice, the fiscal analyses provide a base for our townships to determine how a new law may affect their budgets.

A bill is determined to have fiscal impact if its estimated annual cost is more than $1,000 for townships with a population of less than 5,000 or if its estimated annual cost is more than $5,000 for townships with a population of more than 5,000. Although $1,000 or $5,000 may not seem like a great deal of money when compared with the total budget of the township, the loss of such revenue may create a significant impact.

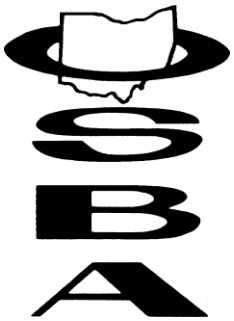
According to the 2011 report, there are five bills with a local impact, potentially resulting in a loss of dollars for township governments. Of the five pieces of legislation that will potentially result in a negative net effect, three of the bills will result in a loss of revenue or an increase of expenditures for townships.

One bill enacted in 2010, SB 232, exempts qualifying energy facilities from property taxation. In the detailed analysis of SB 232, it is estimated that local governments could lose several million dollars for fiscal year 2011. Townships, unlike other political subdivisions, do not have the taxing authority to replace lost revenue. The only tax that a township can levy is the property tax.

Am. Sub. SB 110 revises the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law. At first glance the short description of the bill may not indicate a local government impact but townships could be negatively impacted by SB 110. According to the LSC Fiscal Note & Local Impact Statement for SB 110, costs for implementation of rule changes and development of maintenance programs could increase costs for local boards of health. County boards of health are funded by townships. Any increase in expenditures will require an increase in funding from townships within the health district.

While the *2011 Local Impact Statement Report* offers an analysis of legislation passed in 2010, it is not comprehensive. State budget bills are exempted from local impact statement requirements and, therefore, are not included in this report. The OTA encourages the General Assembly to include budget bills in the LIS report in order to provide a more comprehensive look at how legislation passed affects local governments. A procedure should be established by which local governments can contest new laws that are not fully funded, yet give the General Assembly adequate time to modify or fund the mandates they impose.

The Ohio Township Association appreciates the opportunity to provide our input and thanks the Legislative Service Commission for all of their hard work in compiling this data, as it is truly beneficial to legislators and local government groups.



The Ohio School Board Association (OSBA) appreciates the opportunity to review the 2011 Local Impact Statement Report prepared by the Legislative Service Commission (LSC) for members of the Ohio General Assembly and the general public. The document clearly outlines the fiscal impact of various bills on local governmental units, including public schools. The report provides the reader with valuable understanding of the cost and programmatic implications of selected bills.

The 2011 Local Impact Statement Report indicates that only five bills were enacted during 2010 that required local impact statements. Two of the five bills have significant impact on local school districts. These bills are Sub. S.B. 210 and S.B. 232. OSBA, along with other educational stakeholders, was very active throughout the legislative process on both bills and had some limited success in gathering legislative approval for modifications that lessened the burden on school districts.

While in agreement with the overall purposes of the bill, Sub. S.B. 210 originally would have required all school districts to offer a daily 30-minute period of exercise for students, but OSBA was successful in having this requirement changed to an opt-in pilot project. Similarly, the bill originally mandated that all districts conduct Body Mass Index screenings on children in grades K, 3, 5 and 9 prior to May 1 of each year. Legislators also modified this provision to permit school districts to seek a waiver for this requirement. Finally, the bill does prohibit, beginning on July 1, 2013, school districts from hiring any person to teach physical education who is not licensed in that subject area. The potential additional costs are unknown at this time.

Sub. S.B. 232 also features worthwhile goals – encouraging the development of alternative energy sources and economic development. However, the means chosen, in effect, is a redirection of local tax resources by the state with little or no opportunity for local taxing authorities to comment on the local impact. This appears to be a case of saying that some economic development is preferable to none at all and certainly a case can be made for that argument. However, as we testified and provided solid empirical evidence, the required payments in lieu of taxes were far less than necessary. The result of this decision was to favor out-of-state and even out-of-country developers with excessive tax breaks in comparison to other surrounding states with those breaks coming at the expense of local government units, including school districts.

We continue to believe that fiscal impact statements are necessary and would support legislation that would require the General Assembly to consider the local

impact of any bills adopted, including the biennial budget, capital appropriations bill and budget corrections bill which are now exempted from such local impact statements. As in prior years, we would encourage that fiscal impact statements be issued at each step of the legislative process as changes occur from the "As Introduced" version of a bill.

Once again, OSBA wishes to express appreciation to the Legislative Service Commission for its hard work and diligence on this important task. We look forward to working with them now and in the future.

FISCAL NOTES FOR BILLS ENACTED IN 2010 REQUIRING LOCAL IMPACT STATEMENTS

Ohio Legislative Service Commission

Matthew L. Stiffler

Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 10 of the 128th G.A. **Date**: March 10, 2010

Status: As Enacted **Sponsor**: Rep. Brown

Local Impact Statement Procedure Required: Yes

Contents: Protection order for a child

State Fiscal Highlights

STATE GOVERNMENT	FY 2010 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential, not likely to exceed minimal, annual incarceration cost increase
Expenditures	- 0 -
Certain Funds of the Office of the Attorney General	
Revenues	- 0 -
Expenditures	Potential, not likely to exceed minimal, annual increase in legal representation costs
Indigent Defense Support Fund (Fund 5DY0)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	Potential annual increase of up to $300,000 to reimburse certain county electronic monitoring costs

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- **Incarceration expenditures.** If, as assumed herein, unauthorized use of the Ohio Law Enforcement Gateway (OHLEG) is relatively infrequent, then the number of persons that might be convicted of such use and sentenced to a prison term annually is likely to be extremely small, with, at most, a minimal increase in the Department of Rehabilitation and Correction's annual incarceration expenditures. Minimal for the state means an estimated cost of less than $100,000 per year.
- **Attorney General.** The requirement that the Attorney General provide representation in a civil action brought against a judge of the court of appeals or a person employed by a court of appeals is not anticipated to generate more than a minimal increase in the Attorney General's workload and related annual operating expenses.

- **Court cost revenues.** As the number of assumed OHLEG prohibition violators in any given year will be relatively small statewide, it seems likely that the additional amount of court cost revenues generated annually for either the Indigent Defense Support Fund (Fund 5DY0) or the Victims of Crime/Reparations Fund (Fund 4020) would be, at most, negligible. Negligible for the state herein means a revenue gain estimated at less than $1,000 per year.
- **Victims of Crime/Reparations Fund (Fund 4020).** The bill caps the total amount that can be paid from the fund for certain local electronic monitoring costs at $300,000 per year.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010 – FUTURE YEARS
Courts of Common Pleas (protection orders)	
Revenues	- 0 -
Expenditures	Factors increasing and decreasing court operating costs, with net annual fiscal effect uncertain, but potentially resulting in more than minimal annual increase in jurisdictions with relatively large caseloads
County Sheriffs (protection order monitoring)	
Revenues	Potential state reimbursement of monitoring costs, annual magnitude uncertain
Expenditures	Potential increase to electronically monitor respondents, annual magnitude uncertain
County Criminal Justice Systems Generally (OHLEG violations)	
Revenues	Potential minimal annual gain in court costs and fines
Expenditures	Potential minimal annual increase to prosecute, adjudicate, and sanction unauthorized use of the Ohio Law Enforcement Gateway (OHLEG)
Butler County Court of Common Pleas	
Revenues	- 0 -
Expenditures	Potential minimal annual savings effect

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Juvenile division of courts of common pleas.** The bill's provisions related to a protection order for a child will, in all likelihood, increase the number of matters to be disposed of by the juvenile division of the court of common pleas. However, LSC fiscal staff cannot estimate with much certainty the fiscal effect of these child protection order provisions on the juvenile division of any given court of common pleas other than to assert the possibility that certain courts, most likely those with jurisdictions carrying relatively large caseloads, could require a more than minimal increase in resources. For the purposes of this fiscal analysis, a more than minimal increase means a cost estimated in excess of $5,000 per year for any affected court.
- **General division of courts of common pleas.** Relative to the general divisions of courts of common pleas, the bill's child protection order provisions create a potential savings effect that may or may not manifest itself in terms of an actual reduction in the annual operating expenses of any given general division. It seems more likely that, given the magnitude and increase in the caseloads of courts generally and the

tight budgetary environment, the general divisions of courts of common pleas would be able to reallocate existing resources in order to more efficiently and effectively perform other duties and responsibilities.

- **County sheriffs.** Presumably, in many if not all instances, the duty to electronically monitor certain respondents will be performed by another county-affiliated entity, possibly the sheriff or a unit of the court, which would incur the cost to install and monitor the electronic device placed on an indigent respondent. The annual magnitude of the additional installation and monitoring costs that any given county might incur is uncertain. Also uncertain is the degree to which the combination of respondent payments and Fund 4020 moneys will offset the costs any given county entity will incur to establish and maintain its electronic monitoring system.
- **County criminal justice system generally.** If, as assumed herein, unauthorized use of the Ohio Law Enforcement Gateway (OHLEG) is relatively infrequent, then the number of related criminal matters that any given county criminal justice system might have to process annually is likely to be extremely small. Any resulting cost increase, if any, to prosecute, adjudicate, and sanction violators is likely to be minimal at most annually. The amount of related annual revenues in the form of court costs and fines collected from violators is also likely to be minimal at most.
- **Butler County Court of Common Pleas.** The bill permits certain cases that would, under current law, be adjudicated by the Court's Juvenile Division to be adjudicated by the Court's Domestic Relations Division. It is LSC fiscal staff's understanding that the intended result is to permit the Butler County Court of Common Pleas, generally, to more efficiently and effectively manage its caseload.

Detailed Fiscal Analysis

Operation of the bill

For the purposes of this fiscal analysis, the bill most notably:

- Gives the juvenile court jurisdiction to hear, determine, and enforce matters involving protection orders against a child.
- Permits any person on behalf of that person, any parent or adult household member on behalf of any other family or household member, or anyone who is determined by the juvenile court in its discretion as an appropriate person to seek such relief on behalf of any child.
- Specifies, in the context of issuing a protection order, the circumstances when the court may order that the respondent be electronically monitored for a period of time.
- Caps the amount of money able to be spent from the state's Victims of Crime/Reparations Fund for certain local electronic monitoring costs at $300,000 annually.
- Allows the juvenile court to determine if the respondent is entitled to court-appointed counsel.
- Requires the juvenile court, when certain specified circumstances are met, to expunge all of the records in a proceeding.
- Includes a foster parent in the definition of "family or household member" in the criminal and civil domestic violence laws.
- Prohibits the unauthorized use of the Ohio Law Enforcement Gateway (OHLEG), a violation of which is a felony of the fifth degree.
- Requires the Attorney General to provide representation in a civil action brought against a judge of a court of appeals or a person employed by a court of appeals.
- Gives the judges of the Butler County Court of Common Pleas concurrent jurisdiction with judges of the Juvenile Division of the Butler County Court of Common Pleas with respect to certain custody and support cases.

Protection orders for a child

The most pronounced fiscal effect produced by the bill will likely be experienced by courts of common pleas, which, under current law, have jurisdiction over matters involving protection orders against a child. Based on LSC fiscal staff's conversations with various court personnel, including juvenile court judges, it appears that the bill's provisions regarding the giving of jurisdiction involving protection orders against a child to the juvenile division raise some potential workload and cost concerns. Additionally, other components of county government, specifically sheriffs or probation

departments, may experience a related increase in their workload and associated annual operating expenses.

Juvenile division of courts of common pleas

As noted, the provisions of the bill related to a protection order for a child will, in all likelihood, increase the number of matters to be disposed of by the juvenile division of the court of common pleas. This increase will be a function of at least three variables: (1) the number of protection order-related matters where the juvenile division would have jurisdiction, (2) the number of new matters generated by permitting certain persons to file for a motion for a protection order on behalf of a child, and (3) the number of additional hearings, or increased complexity, to dispose of these matters involving questions of electronic monitoring, court-appointed counsel, or expungement of a respondent's record.

The data necessary for LSC fiscal staff to reliably estimate the potential increase in juvenile court caseloads statewide, or for the juvenile division of any given court of common pleas, is not readily available; however, we have collected the following information that is suggestive of the dynamic that the bill may trigger:

- Surveys of younger persons (teens, students, girls) indicate anywhere from one-quarter to one-half of the respondents have experienced, or know someone who has experienced, a violent relationship.
- An increase in the number or complexity of hearings for protection orders involving jurisdiction, electronic monitoring, the appointment of counsel, and expungement of the order.
- In conversations with LSC fiscal staff, some judges, who more or less exclusively handle juvenile matters, expressed concern over how large the increase in their annual caseloads could be and the likely expenditure effect. From their perspective, court resources are already generally strained and the adding of new matters to that situation creates more pressure, especially in light of the fact that hearings and determinations have to be done in a timely manner when involving a protection order.

Unfortunately, LSC fiscal staff cannot project the fiscal effect of these child protection order provisions on the juvenile division of any given court of common pleas other than to assert the possibility that certain courts, most likely those with jurisdictions carrying relatively large caseloads, could require a more than minimal increase in resources. For the purposes of this fiscal analysis, a more than minimal increase means a cost estimated in excess of $5,000 per year for any affected court.

General division of courts of common pleas

As a result of the bill's child protection order provisions, some number of matters that would have been under the jurisdiction of the general division of a court of common pleas will be assumed by the court's juvenile division, sometimes referred to as the juvenile court. Presumably, this creates a potential savings effect that may or may not manifest itself in terms of an actual reduction in the annual operating expenses

of any given general division. It seems more likely that, given the magnitude and increase in the caseloads of courts generally and the tight budgetary environment, the general divisions of courts of common pleas would be able to reallocate existing resources in order to more efficiently and effectively perform other duties and responsibilities.

Monitoring costs

As a result of the bill, it is possible that the court will order additional respondents be subject to electronic monitoring by the appropriate law enforcement agency, the cost of which is generally the responsibility of the respondent. Under current law, if the court determines that the respondent is indigent, then the cost to install and monitor the electronic monitoring device is to be paid out of funds drawn from the state's Victims of Crime/Reparations Fund (Fund 4020). The bill: (1) caps the total amount that can be paid from the fund for certain local electronic monitoring costs at $300,000 per year and (2) prohibits the court from ordering the electronic monitoring of a respondent who is an indigent minor when the state has equaled or exceeded the $300,000 cap noted in (1).

Presumably, in many if not all instances, this monitoring duty will be performed by another county-affiliated entity, possibly the sheriff or a unit of the court, that would incur the cost to install and monitor the electronic device placed on an indigent respondent. The annual magnitude of the additional installation and monitoring costs that any given county might incur is uncertain. Also uncertain is the degree to which the combination of respondent payments and Fund 4020 moneys will offset the costs any given county entity will incur to establish and maintain its electronic monitoring system.

Foster parents as domestic violence victims

By expanding the definition of "family or household member" in the criminal and civil domestic violence laws to include a foster parent, the bill provides an additional class of persons access to a wider array of civil and criminal protection orders and potentially subjects certain offenders to enhanced penalties. Based on LSC fiscal staff's research into the fiscal implications, it does not appear that this definitional expansion will generate any noticeable fiscal effect on the caseloads of local criminal or civil justice systems, nor for the state in terms of locally collected state court cost revenues or incarceration costs.

Butler County Court of Common Pleas

The bill gives the judges of the Butler County Court of Common Pleas concurrent jurisdiction with judges of the Juvenile Division of the Butler County Court of Common Pleas with respect to certain custody and support cases.

As a result of this provision, certain matters that would have been under the jurisdiction of the Juvenile Division of the Butler County Court of Common Pleas will be adjudicated by the Court's Domestic Relations Division. Presumably, this creates a

potential savings effect that may or may not manifest itself in terms of an actual reduction in the annual operating expenses of the Court's Juvenile Division. It seems more likely that, given the magnitude and increase in the caseloads of courts generally and the tight budgetary environment, the Juvenile Division would be able to reallocate existing resources in order to more efficiently and effectively perform other duties and responsibilities. It is expected that the Domestic Relations Division will be able to absorb these additional cases and related operating costs.

Ohio Law Enforcement Gateway

The bill prohibits the unauthorized use of the Ohio Law Enforcement Gateway (OHLEG), a violation of which is a felony of the fifth degree. If convicted of a violation, a person faces a possible definite prison term of six to twelve months and/or a possible fine of up to $2,500. Herein, we assume that OHLEG will generally be used for appropriate law enforcement purposes and thus violations of the prohibition will be relatively infrequent.

Local fiscal effects

If, as assumed violations are relatively infrequent, then the number of related criminal matters that any given county criminal justice system might have to process annually is likely to be extremely small. Any resulting cost increase, if any, to prosecute, adjudicate, and sanction violators is likely to be minimal at most annually. The amount of related annual revenues in the form of court costs and fines collected from violators is also likely to be minimal at most.

State fiscal effects

Incarceration expenditures

As a result of violating the prohibition, a violator may be sentenced to a prison term. In theory, such an outcome increases the Department of Rehabilitation and Correction's incarceration expenditures, as additional moneys would have to be expended to house and service those persons. If, as assumed, violations are relatively infrequent, then the number of persons that might be sentenced to a prison term annually is likely to be extremely small. Any resulting increase in the Department's annual incarceration expenditures is likely to be minimal at most. Minimal for the state means an estimated cost of less than $100,000 per year.

Court cost revenues

In the case of a felony conviction, the court generally must impose locally collected state court costs totaling $60. Half of that amount, or $30, is deposited in the Indigent Defense Support Fund (Fund 5DY0). The other half, or $30, is deposited in the Victims of Crime/Reparations Fund (Fund 4020). As the number of assumed violators in any given year will be relatively small statewide, it seems likely that the additional amount of court cost revenues generated for either state fund annually would be, at most, negligible. Negligible for the state herein means a revenue gain estimated at less than $1,000 per year.

Attorney General

The bill requires the Attorney General to provide representation in a civil action brought against a judge of a court of appeals or a person employed by a court of appeals. The requirement that the Attorney General provide this legal representation is not anticipated to generate more than a minimal increase in the Attorney General's workload and related annual operating expenses.

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Ohio Legislative Service Commission

Jamie L. Doskocil

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 77 of the 128th G.A. **Date**: March 24, 2010

Status: As Enacted **Sponsor**: Sen. Goodman

Local Impact Statement Procedure Required: Yes

Contents: DNA testing, preservation of biological evidence, custodial interrogations, and witness identification

State Fiscal Highlights

STATE AGENCY*	FY 2011 – FUTURE YEARS
Office of the Attorney General	
Revenues	- 0 -
Expenditures	Increase related to: (1) additional DNA collection and testing costs (starting around FY 2012, up to $1.9 million or more annually), (2) possible requirement that certain DNA information will need to be expunged, (3) additional post-conviction DNA testing applications (likely minimal annual cost), (4) staffing the Preservation of Biological Evidence Task Force, and (5) adopting rules associated with eyewitness identification
Supreme Court	
Revenues	- 0 -
Expenditures	Potential one-time increase, likely minimal at most, to review existing jury instructions
Rehabilitation and Correction	
Revenues	- 0 -
Expenditures	Potential minimal annual decrease in costs associated with taking DNA samples of certain offenders during the inmate intake process
Division of Criminal Justice Services (Department of Public Safety)	
Revenues	- 0 -
Expenditures	Ongoing increase, potentially more than minimal, to administer and conduct required training programs
State law enforcement agencies (including, but not limited to, Ohio State Highway Patrol and law enforcement personnel of colleges and universities)	
Revenues	- 0 -
Expenditures	Potential annual increase of uncertain magnitude to: (1) collect DNA samples, (2) train employees and store evidence, and (3) implement eye witness identification and interrogation procedures

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.
* It is uncertain what funding sources the state agencies noted above will utilize to pay for their likely or potential costs.

- **Office of the Attorney General.** The Office of the Attorney General, specifically the Bureau of Criminal Identification and Investigation (BCII), will likely experience an increase in expenditures related to: (1) DNA testing of felony arrestees (estimated at

$1.9 million annually beginning in FY 2012), (2) expungement duties related to felony arrestees who are ultimately not convicted as well as certain convicted offenders whose convictions are overturned, (3) cost for additional requests for post-conviction DNA testing (not likely to exceed minimal annually), (4) staffing the Preservation of Biological Evidence Task Force and developing rules related to the storage of biological evidence, and (5) adopting rules related to eyewitness identification procedures.

- **Supreme Court.** The potential one-time cost for the Supreme Court to review existing jury instructions would likely be minimal at most.
- **Department of Rehabilitation and Correction.** The Department may realize a minimal at most annual savings, as presumably DNA samples would be taken sooner and fewer DNA samples would need to be collected and submitted to BCII by the prison system's inmate reception centers.
- **Office of Criminal Justice Services (Department of Public Safety).** It appears that the annual cost for the Division of Criminal Justice Services to administer and conduct the required training programs will exceed minimal, which means an ongoing expense estimated to be in excess of $100,000 per year.
- **State law enforcement agencies.** The cumulative annual cost of the bill's provisions on state law enforcement agencies (collection of DNA samples, evidence storage, eyewitness identification procedures, and recording and storage of custodial interrogations) is uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010 – FUTURE YEARS
Counties, Municipalities, and Townships (law enforcement, prosecutors, courts, and clerks of courts)	
Revenues	- 0 -
Expenditures	Increase, potentially exceeding minimal in certain jurisdictions, as a function of: (1) taking DNA samples from all felony arrestees, (2) training employees in, and then, storing evidence, (3) implementing eye witness identification procedures, and (4) implementing custodial interrogation procedures

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **DNA sample collection.** Depending upon the timing of DNA sample collection, a local law enforcement agency may need to have trained personnel available or transport the arrested person to the nearest location with the capability of taking and processing a DNA sample. The cost for any given local law enforcement agency to ensure that a DNA sample is collected from all felony arrestees is uncertain.
- **Preservation of biological evidence.** Costs for local governments would likely occur subsequent to the establishment of the required biological evidence system, as, at a minimum, relevant local government employees will need to be trained. The magnitude of these potential training-related costs is uncertain. Additional local cost points include the possibility of the need for continuing training and the training of newer employees.

- **Preservation and retention standards.** Although the one-time and ongoing costs for various jurisdictions to adhere to the required preservation and retention standards are problematic to quantify, it would not be surprising if those costs for certain jurisdictions exceed minimal, with the threshold for minimal being an estimated expense in excess of $5,000 per year. Early destruction of biological evidence is permitted after giving notice by certified mail to certain parties.
- **Eyewitness identification procedures.** Law enforcement agencies may experience one-time costs associated with training and implementing the new eyewitness identification standards, the magnitude of which for any given jurisdiction is uncertain. It also seems likely that the new standards would require additional ongoing administrative costs related to the documentation requirements, but these associated costs are not expected to exceed minimal. Once in place, these procedures would likely create no more than a negligible ongoing administrative expense.
- **Custodial interrogations.** Since the bill limits the recording (as well as the storage of those recordings) of interrogations to those occurring in places of detention, it seems likely that any additional administrative costs associated with complying with this provision of the bill would be minimal at most on an ongoing basis.

Detailed Fiscal Analysis

Overview

The bill makes various changes relative to DNA testing, preservation of biological evidence, and other procedures related to criminal investigations. For the purposes of this fiscal analysis, the bill most notably:

I. Mandates the collection of a DNA sample from all persons 18 years of age or older who are arrested for a felony offense (effective July 1, 2011);

II. Expands DNA testing for certain convicted felons and eliminates the DNA testing mechanism for felons who pleaded guilty or no contest to the offense and provides for the sealing of official records of persons who have their convictions vacated and set aside due to DNA testing;

III. Establishes the Preservation of Biological Evidence Task Force;

IV. Provides for certain standards for the preservation and accessibility of biological evidence in certain criminal or delinquency investigations or proceedings;

V. Makes changes to eyewitness identification procedures; and

VI. Provides for the electronic or audio recording of certain custodial interrogations.

This fiscal analysis is organized by the topic areas briefly described above, with the potential fiscal effects for the state and/or the state's political subdivisions analyzed within each of those sections. Since the source of funds for paying the costs of affected state agencies is uncertain, each state agency's costs are analyzed in a general manner. That said, it appears likely that General Revenue Fund (GRF) appropriations will be the primary source of funding, with various non-GRF funds providing supplemental moneys.

I. DNA testing for all felony arrests

The bill requires that a DNA sample be collected by the arresting law enforcement agency from all persons 18 years of age or older who are arrested for a felony offense. If, for some reason, the sample is not collected at the time of arrest, a sample is to be taken at the time of conviction.

Under current law, any person who is convicted of or pleads guilty to a felony offense and who is sentenced to a prison term or to a community residential sanction in a jail or community-based correctional facility or who is convicted of or pleads guilty to certain misdemeanor offenses[1] and who is sentenced to a term of imprisonment must

[1] The misdemeanor offenses for which an offender is required to provide a DNA sample are: (1) unlawful sexual conduct with a minor, including complicity in committing or an attempt to commit the offense, (2) a violation of any law arising from the same facts and circumstances and same act as did a

submit to a DNA sample collection procedure. Currently, the Office of the Attorney General's Bureau of Criminal Identification and Investigation (BCII) contracts with an out-of-state vendor for DNA testing, the costs of which are paid by BCII. However, the Office of the Attorney General is planning to discontinue the use of outside vendors in the near future, as BCII plans to have an in-house laboratory in place to perform these testing services. As such, the potential cost increase associated with performing DNA testing on all felony arrestees is based on the assumption that the in-house laboratory will be fully operational at the time of implementation.

Office of the Attorney General

Upon enactment of the bill and the subsequent effective date of this provision (July 1, 2011), the number of DNA samples to be taken by local government entities and subsequently tested by BCII will increase. In 2008, approximately 58,000 DNA samples for convicted offenders were tested. If the Attorney General's in-house testing laboratory was in place during 2008, BCII estimates that the costs to perform these tests would have been $2.6 million.[2]

In order to determine the number of new DNA samples that would require testing, the Office of the Attorney General focused on estimating the number of new felony arrests that, under current law and practice, would not be subject to DNA testing. In theory, this number would represent persons who would fall into one of the following categories:

(1) Persons who are arrested for the commission of felony offenses that require DNA sample submission upon conviction, but are subsequently acquitted or the charges are dismissed/dropped or plea bargained to a lesser charge.

(2) Persons who are arrested for the commission of new felony offenses that were not previously subjected to DNA sample submission in the past.

The Office of the Attorney General estimates, based on current arrest and conviction rates, that the number of DNA samples to be tested would increase by approximately 45,000 per year. If this estimate represents a reasonable approximation of the population of offenders that would be required to submit DNA samples for analysis in future years, then it is possible that testing costs could increase by

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charge against the person of aggravated murder, murder, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or aggravated burglary, or of felonious sexual penetration as it existed prior to September 3, 1996, which charge was previously dismissed or amended, (3) a violation of interference with custody that would have been child stealing under R.C. 2905.04 as it existed prior to July 1, 1996, had the interference with custody violation been committed prior to that date, or (4) a sexually oriented offense or a child-victim oriented offense, as defined by the Sex Offender Registration and Notification Law, if in relation to the offense, the offender is a tier III sex offender/child-victim offender.

[2] In 2008, the Office of the Attorney General expended approximately $2 million in contract services for outside DNA testing. While it appears that in-house testing will be relatively more costly, the Office believes that testing will be performed more timely, and over time, increased efficiencies will help to decrease the testing costs.

$1.9 million annually. The table below summarizes the likely fiscal effects of this expansion to the existing DNA collection and analysis system on certain state agencies.

Likely Fiscal Effect of DNA Collection Expansion on Certain State Agencies		
State Agency	**Activity**	**Likely Fiscal Effect**
Attorney General (BCII)	DNA sample collection and testing (including supplies, postage, and testing)	$1.9 million annual cost increase
Attorney General (BCII)	Expungement of DNA sample for cases not resulting in a felony conviction	Federal law may require the state to provide for expungement of DNA information for a person who is not convicted. If expungement is automatic, then BCII would presumably have to expend additional resources in order to monitor the final disposition of active felony cases.
Rehabilitation and Correction (DRC)	DNA sample collection at state inmate reception centers	Minimal annual savings, as presumably DNA samples would be sooner and fewer DNA samples would need to be collected by DRC.

Note: It is unclear which funding source the Office of the Attorney General will utilize to fund these increased costs. Generally, the Victims of Crime/Reparations Fund (Fund 4020) is utilized for DNA sample collection and testing; however, due to diminished cash reserves in the fund, the Attorney General has recently temporarily halted the use of this fund for those purposes and is instead relying on a mix of various other funding sources.

Law enforcement generally

Under the state's existing DNA sample collection system, buccal testing kits are supplied free of charge (postage included) by the state (BCII) to various local law enforcement agencies, probation offices, and inmate intake centers throughout the state. DNA samples are collected either at the time of conviction or when the offender arrives at prison or their respective probation office.

Presumably, if DNA testing is required to take place at the time of arrest, these duties would then be undertaken by law enforcement at the time of booking. As such, some jurisdictions may realize a cost savings as fewer post-conviction DNA samples would need to be collected, while other jurisdictions may experience a cost increase if not currently required to collect such samples or required to collect additional samples.

Potential additional cost points for law enforcement agencies generally are as follows:

- **Transportation.** Depending upon the timing of DNA sample collection, a local law enforcement agency may be required to transport the arrested person to the nearest location with the capability of taking and processing a DNA sample. As a result, the arresting agency could incur additional time (i.e., overtime costs) and transportation costs, as law enforcement personnel would have to travel to and from the sample collection point. For example, it is unclear how this policy would be implemented in situations where a person is charged with a felony offense, but not arrested (i.e., instances when a summons is issued in lieu of arrest).

- **Contracts.** Some law enforcement agencies contract for the collection and submission of DNA samples, for example, with the local health department. Presumably, the cost of such a contract would increase to reflect the additional number of DNA samples to be collected on behalf of the law enforcement agency and submitted to BCII.
- **Training.** If the timing and/or location of DNA sample collection changes, then certain local law enforcement agencies may incur the cost of ensuring that the appropriate personnel are trained in the proper procedures and guidelines for collecting and submitting a DNA sample.
- **Quality control.** It seems likely that with an increase in the number of DNA samples, there would be a related increase in the number of improperly collected or submitted samples, including sample kit failures, that in turn require the collection, submission, and testing of a new sample.

II. Convicted offender DNA testing

The bill modifies the current law process authorizing certain convicted felons to apply for and, if specified criteria are satisfied, obtain DNA testing. More specifically, the bill expands the categories of convicted felons for whom the DNA application process is available to include: (1) convicted felons who were sentenced to a prison term but who have been paroled, are under probation, are under post-release control, or have been released from prison and are under a community control sanction regarding the felony, (2) convicted felons who were not sentenced to a prison term or sentence of death, but were sentenced to a community control sanction and are under that community control sanction, or (3) convicted felons whose offense was a sexually oriented offense or child-victim oriented offense and who have duties under the Sex Offender Registration and Notification Law relative to the felony. The bill removes the requirement that convicted felons serving a prison term for the felony have at least one year remaining on the term when their application for DNA testing is filed, and repeals the mechanism in current law that allows felons who are inmates in a prison, who were sentenced by a court, or by a jury and a court, and who pleaded guilty or no contest to the felony to file an application for DNA testing regarding that felony.

State and local fiscal effects

As a result of previously enacted legislation, originally establishing the process for the testing of inmates who had no access to DNA at their trials, more than 25,000 inmates were eligible to apply, but only about 300 or so actually applied for testing. More than 200 of these applications were denied. Inmates that comprise the current prison population, as well as those on post-release control or some other form of community sanction, will presumably already have had access to DNA testing as a result of previous legislation, or during their trial process if DNA evidence was applicable.

Staff of the Office of the Attorney General anticipates that very few requests for post-conviction DNA testing will result from this provision in any given year. That

would suggest that the potential annual costs for the Attorney General and any affected courts of common pleas, clerks of courts, and county prosecutors to process these applications would be no more than minimal.

III. Preservation of Biological Evidence Task Force

The bill creates the Preservation of Biological Evidence Task Force within the Bureau of Criminal Identification and Investigation (BCII), consisting of officers and employees of the Bureau, and representatives from four associations (coroners, prosecutors, chiefs of police, and sheriffs) and the Ohio Public Defender's Office. The task force is charged with establishing a system regarding the proper preservation of biological evidence in Ohio, specifically: (1) devising standards regarding the proper collection, retention, and cataloguing of biological evidence for certain ongoing investigations and prosecutions, and (2) recommending practices, protocols, models, and resources for the cataloguing and accessibility of preserved biological evidence already in the possession of governmental evidence-retention entities.

The bill also requires the Division of Criminal Justice Services of the Department of Public Safety, in consultation with the Preservation of Biological Evidence Task Force, to administer and conduct training programs for law enforcement officers and other relevant employees who are charged with preserving and cataloguing biological evidence.

State fiscal effects

System development. Presumably, all of the costs associated with developing and establishing the required biological evidence system will be paid for by BCII. At this time, the implementation date for such a system is uncertain. That said, the one-time costs to establish the system and the ongoing costs for its maintenance appear unlikely to exceed minimal.

Training costs. Based on our initial conversations with Department of Public Safety staff, it appears that the annual cost for the Division of Criminal Justice Services to administer and conduct the required training programs will exceed minimal, which means an ongoing expense estimated to be in excess of $100,000 per year.

Local fiscal effects

Training costs. Costs for local governments would likely occur subsequent to the establishment of the required biological evidence system, as, at a minimum, relevant local government employees will need to be trained. The potential cost for any affected local government would be a function of the number of employees to be trained, the duration of the training, and the location of the training site. Although the state would appear to assume the costs of delivery, the local government would presumably absorb any associated employee time and travel costs. The magnitude of these potential training-related costs is uncertain. Additional local cost points include the possibility of the need for continuing training and the training of newer employees.

IV. Preservation and retention standards

Generally, the bill requires the preservation of biological evidence for certain specified offenses for certain periods of time by governmental evidence-retention entities.[3] These offenses include: (1) aggravated murder, (2) murder, (3) voluntary or involuntary manslaughter, (4) reckless or negligent homicide, (5) aggravated vehicular homicide, (6) rape or attempted rape, (7) sexual battery, and (8) certain cases of gross sexual imposition (generally pertaining to cases where the victim is less than 13 years of age). Biological evidence is defined as the contents of a sexual assault examination kit, or any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of a criminal investigation or delinquent child investigation and that reasonably may be used to incriminate or exculpate any person for an offense or delinquent act.

The bill permits a governmental evidence-retention entity that possesses biological evidence to destroy the evidence before the expiration of the applicable period of time only if certain conditions are met. The bill also provides that, under certain circumstances, a governmental evidence-retention entity may destroy biological material held as evidence five years after a person pleads guilty or no contest to an offense specified by the bill. While it is difficult to quantify the potential fiscal effect of this provision, it is likely to result in a decrease in the potential costs associated with the retention of biological evidence for local governmental entities from what those costs might otherwise have been under the prior version of the bill. The magnitude of these potential cost savings would depend upon the amount of evidence collected and stored and how vigorous the collecting entity acts in maintaining its own evidence retention schedule.

State and local fiscal effects

One-time and ongoing storage costs. It is uncertain how state and local governmental entities will choose to implement the retention policies mandated by the bill. Further complicating this portion of the fiscal analysis are the potential effects of the biological evidence system to be established by the Preservation of Biological Evidence Task Force at some unspecified future point in time.

Currently, there are no statewide standards regulating the collection, storage, and retention of biological evidence. Retention policies vary from jurisdiction to jurisdiction. According to the Buckeye State Sheriffs' Association and the Office of the Attorney General, evidence is often retained by the clerk of court, although, at times, evidence is returned to the law enforcement agency which was involved in the original investigation. In some instances, evidence is retained by the local prosecutor.

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[3] "Governmental evidence-retention entity" is defined as any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within this state that is charged with the collection, storage, or retrieval of biological evidence, or any official or employee of any such entity or individual.

It seems probable that the Preservation of Biological Evidence Task Force will issue storage guidelines that will help to ensure that DNA and associated biological samples are maintained in a setting that will promote optimal preservation and thus delay degradation. It also seems reasonable to assume that most governmental evidence-retention entities will need to modify existing structures, construct new structures, or contract with various qualified private vendors in order to properly store biological evidence for the period of time mandated by the bill. It is also possible that certain jurisdictions might construct and maintain "regional" storage locations, or that a statewide repository would be recommended by the task force.

Although the one-time and ongoing costs for various jurisdictions to adhere to the required preservation and retention standards are problematic to quantify, it would not be surprising if those costs for certain jurisdictions exceed minimal, with the threshold for minimal being an estimated expense in excess of $5,000 per year.

Notification costs. The bill allows for the early destruction of biological evidence, after giving notice by certified mail to certain parties, including but not limited to the person who was required to provide a DNA sample, the attorney of record, the State Public Defender, the prosecutor of record, and the Attorney General. It is unclear how often a governmental evidence-retention entity will seek the early destruction of biological evidence. Therefore, the cost to establish and maintain the required notification system is uncertain.

V. Eyewitness identification procedures

The bill contains provisions that will govern the conduct of lineups for purposes of the identification by an eyewitness of persons suspected of committing an offense. It specifies that, prior to conducting any live lineup or photo lineup, any law enforcement agency or criminal justice entity in Ohio that conducts live lineups or photo lineups must adopt specific procedures for conducting the lineups.

The bill also provides that the Office of the Attorney General may adopt rules prescribing specific procedures to be followed for the administration by law enforcement agencies and criminal justice entities of photo lineups, live lineups, and showups (an identification procedure in which an eyewitness is presented with a single suspect). The bill requests the Supreme Court of Ohio review existing jury instructions as they pertain to eyewitness identification.

State and local fiscal effects

Law enforcement agencies. Law enforcement agencies may experience one-time costs associated with training and implementing the new eyewitness identification standards, the magnitude of which for any given jurisdiction is uncertain. It also seems likely that the new standards would require additional ongoing administrative costs related to the documentation requirements, but these associated costs are not expected to exceed minimal. Once in place, these procedures would likely create no more than a negligible ongoing administrative expense.

Attorney General. To the degree that such costs could be quantified, the one-time cost for the Attorney General to adopt rules prescribing specific procedures to be followed by law enforcement agencies and criminal justice entities would likely be minimal at most.

Supreme Court of Ohio. To the degree that such costs could be quantified, the one-time cost for the Supreme Court to review existing jury instructions would likely be minimal at most.

VI. Custodial interrogations

The bill states that when a custodial interrogation for certain offenses[4] takes place in a place of detention, any statements made are considered to be voluntary. If these statements are recorded, the bill requires law enforcement personnel to clearly identify and catalogue every electronic recording of a custodial interrogation and every recording of a part of a custodial interrogation recorded under the audio recording exception. The law enforcement agency must preserve the recording until the later of when all appeals, post-conviction relief proceedings, and *habeas corpus* proceedings are final and concluded or the expiration of the period of time within which such appeals and proceedings must be brought. Recordings may be discarded if no criminal proceeding is brought against a person who was the subject of the custodial interrogation.

Custodial interrogation is defined as any interrogation involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider himself or herself to be in custody, beginning when a person should have been advised of the person's right to counsel and right to remain silent and of the fact that anything the person says could be used against the person and ending when the questioning has completely finished.

State and local fiscal effects

Law enforcement agencies. Since the bill limits the recording (as well as the storage of those recordings) of such interrogations to those occurring in places of detention, it seems likely that any additional law enforcement costs associated with complying with this provision of the bill would be minimal at most on an ongoing basis.

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[4] These offenses include: (1) aggravated murder, (2) murder, (3) voluntary manslaughter, (4) involuntary manslaughter that is a felony of the first or second degree, (5) aggravated vehicular homicide that is a felony of the first or second degree, (6) rape or attempted rape, and (7) sexual battery.

Ohio Legislative Service Commission

Wendy Risner

Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 110 of the 128th G.A. **Date**: June 3, 2010

Status: As Enacted **Sponsor**: Sen. Niehaus

Local Impact Statement Procedure Required: Yes

Contents: To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law

State Fiscal Highlights

- The bill makes changes to the law regarding sewage treatment systems. As a result, there will be additional costs to the Ohio Department of Health (ODH) associated with rule promulgation and administration. ODH will incur additional costs to develop educational programs, in conjunction with local boards of health, to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems. LSC assumes that ODH may have to use some GRF moneys to help pay for this since funds in the Sewage Treatment Innovation Fund (Fund 5CJ0) may not be sufficient to pay for these costs. The bill specifies that rules required to be adopted under the bill must not take effect prior to January 1, 2012.
- ODH could receive additional applications from manufacturers seeking approval for the installation and use, rather than just the use as is currently required, of a sewage treatment system or component. ODH could experience a gain in revenue due to additional approval applications and possibly alteration permits for sewage treatment systems.

Local Fiscal Highlights

- According to the Association of Health Commissioners (AOHC), costs for implementation of any rule changes for household sewage treatment programs could be up to $10,000 per local board. This cost would include administrative costs such as informing the public of changes, additional education for the board staff and the public, passage of local regulations if necessary, reprinting of pamphlets and educational materials, increased call volume, and additional community meetings.
- According to AOHC, the requirement regarding the development of a program for maintenance requirements of sewage treatment systems could increase costs to local boards of health. The costs would be dependent upon the level of involvement/additional duties required on the part of boards in rules and if boards

currently do similar functions. Additionally, if any fee revenues related to these duties were collected, this could help offset costs.

- Local boards of health may also realize an increase in costs associated with the provision that specifies that, to the extent practicable, boards must computerize the process of the issuance of permits for sewage treatment systems, the requirement that the boards provide written documentation of economic impact to an owner, when requested, regarding the approval or disapproval of a system, and the development of educational programs to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems. However, local boards of health could realize a gain in revenue for fees associated with operation and alteration permits if they do not currently collect these.
- Local county courts of common pleas could experience an increase in administrative and court costs relating to sewage treatment systems appeals. Filing fees could help offset these costs.
- Sewage treatment system appeals boards are established in the bill for each county. There could be additional administrative duties for county probate courts relating to the establishment of due process procedures. If filing fees are collected for appeals before sewage treatment appeals boards, this could help offset any costs associated with the boards. Members will not receive compensation. However, the bill does not address whether members are to be reimbursed for necessary expenses related to serving on the board.

Detailed Fiscal Analysis

Background

A household sewage treatment system is a system, or a part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling. A small flow on-site sewage treatment system is a system, other than a household sewage treatment system, that treats not more than 1,000 gallons of sewage a day and that does not require a National Pollutant Discharge Elimination System permit issued by the Ohio Environmental Protection Agency.

The Ohio Department of Health (ODH) regulates sewage treatment systems and the Public Health Council establishes state minimum rules for siting, permitting, installing, altering, operating, and abandoning sewage treatment and disposal systems. Local boards of health are tasked with the associated permitting, inspecting, and enforcing of the law.

Sewage treatment systems rules

The bill makes changes to the rules the Public Health Council is to adopt. The bill addresses, among other things, the rules governing installing, operating, and altering systems, the siting and designing of systems, issuing permits, inspecting systems, bonding installers, providers, and haulers. The bill also adds some provisions to the rules that are to be adopted. Some of those changes and/or additions are discussed below.

- The bill requires local boards of health to approve or disapprove the installation, operation, and alteration of a system if it is not connected to a sanitary sewage system.
- The bill requires the Council to adopt rules requiring each board of health to develop a program for the administration of maintenance requirements. Rules must include procedures for owners to demonstrate maintenance of a system in lieu of having an inspection. A board must be authorized to inspect any system if there is a good faith complaint, there is probable cause, or proof of required maintenance is not provided. Property owners are required to pay for reasonable costs for sewage effluent testing or evaluation. Rules are to establish a methodology for determining the reasonable costs of an inspection.
- The bill requires boards of health to notify ODH in a format prescribed by the Director and to include information related to the issuance of a permit. Additionally, a board of health, to the extent practicable, must computerize the process of the issuance of permits for sewage treatment systems.
- The bill requires a board of health to inspect a sewage treatment system within 12 months of installation. Currently, an inspection is required 18 months after installation.

- The bill requires a board of health to give notice and an opportunity for a hearing to certain affected property owners.

The bill also requires ODH to develop educational programs, in conjunction with boards of health, to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems. Also, ODH, in cooperation with a board of health is required to assess the familiarity of the board's staff with best management practices in the use of sewage treatment systems and conduct appropriate training.

The bill declares that a sewage treatment system is causing a public health nuisance if certain situations occur and, after notice by a board of health to the applicable property owner, timely repairs are not made to that system to eliminate the situation. Some of the situations involve a sewage treatment system that is not operating properly or a blockage in a system causes a backup of sewage or effluent. Under these two situations, a property owner may request a test to be conducted by a board of health to verify a public health nuisance exists. The owner is responsible for test costs. Another situation involves instances where an inspection is conducted by, or under the supervision of, the Environmental Protection Agency or a registered sanitarian, and the test documents ponding of liquid or bleeding of liquid onto the surface of the ground or into surface water. The bill outlines the methods used to determine these situations.

The bill specifies that a sewage treatment system that was in operation prior to the bill's effective date must not be required to be replaced with a new system. The existing system will be deemed approved if the system does not cause a public health nuisance or if it is causing a nuisance, repairs are made to the system, and the nuisance is eliminated as determined by the appropriate board of health.

Boards of health rules and approval process

The bill allows boards of health to adopt rules providing for more stringent standards than those established in rules of the Council in some instances. The bill requires the board, in proposing or adopting the rules, to consider and document the economic impact of the rules on property owners. The bill outlines the procedure for the adoption of these rules.

Under the bill, a board of health must approve or deny the installation, operation, or alteration of sewage treatment systems, the use of which has been authorized in rules or that have been approved for use in this state by the Director of Health. The board must approve an installation, operation, or alteration only in the health district in which the board has jurisdiction through the issuance of a permit in accordance with rules. In determining the approval or disapproval of a system, a board must consider the economic impact on the property owner, the state of available technology, and the nature and economics of various alternatives. The board is required to provide written documentation of the economic impact if the property owner requests it. "Economic impact" is defined to mean, as applicable, the cost to the property owner for the installation of the proposed sewage treatment system, including

the cost of progressive or incremental installation of the system; the cost of an alternative system, including the cost of progressive or incremental installation of the system, that, when installed and maintained properly, will not create a public health nuisance compared to the proposed sewage treatment system; and the costs of repairing the sewage treatment system, including the cost of progressive or incremental installation of the system, as opposed to replacing the system with a new system.

ODH will incur an increase in costs for rule promulgation and administration, as well as increased costs for the educational program requirements. ODH also may incur increased costs associated with advising local boards of health on the process of computerization of permits. ODH will provide only technical assistance, not funding for this. LSC assumes that ODH may use GRF moneys to help pay for this since funds in the Sewage Treatment Innovation Fund (Fund 5CJ0) may not be sufficient to pay for these costs.

The Ohio Environmental Protection Agency (OEPA) may incur a minimal increase in costs. This cost would be associated with additional staff hours for sorting through the rule change.

According to the Association of Ohio Health Commissioners (AOHC), the costs for implementation of any rule changes for household sewage treatment programs could be up to $10,000 per local board of health. This cost would include administrative costs such as informing the public of changes, educating board staff and the public, passing of local regulations if necessary, reprinting of pamphlets and educational materials, increased call volume, and additional community meetings. Additionally, there could be some costs to local health departments regarding the educational programs for the proper operation and maintenance of systems.

The requirement regarding the development of a program for administration of maintenance requirements of sewage treatment systems could increase costs to local boards of health. The costs would be dependent upon the level of involvement/ additional duties required on the part of boards in rules and if local boards of health are currently involved in duties of a similar nature. Additionally, if any fee revenues related to these duties were collected, this could help offset costs. The changes in relation to public health nuisances could have an impact on local boards of health and possibly OEPA. It is assumed that local boards and OEPA are currently involved in some public health nuisance cases involving sewage. Additionally, the bill specifies that local boards are allowed to charge reasonable fees for tests, which would help offset testing costs.

The local boards of health may also realize an increase in costs associated with the provision that specifies that, to the extent practicable, boards must computerize the process of the issuance of permits for sewage treatment systems. It is expected that these costs would be incurred up front. However, in the long run, computerization may make the programs more efficient and ultimately decrease costs for boards.

Lastly, requiring local boards to provide an "economic impact" for the approval or disapproval of a system would increase costs to boards if property owners request written documentation.

Sewage Treatment System Technical Advisory Committee

The bill makes changes to the duties of the Sewage Treatment System Technical Advisory Committee and adds three new members.

ODH could incur a minimal increase in costs associated with the addition of three members to the Committee. The members serve without compensation, so the cost would only be for reimbursements for actual and necessary expenses.

Approval of sewage treatment systems

Current law establishes requirements governing the submission of applications to the Director of Health for the approval of the use of a sewage treatment system or a component of a system that differs in design from systems the use of which is authorized in rules adopted by the Public Health Council. Applications must be submitted by the manufacturers of such systems or components. The bill requires a manufacturer seeking approval for the installation and use, rather than just the use, of a system or component to submit an application. The bill establishes timelines for approval. The bill specifies that the Director must notify the boards that the sewage treatment system or component of a system that is the subject of the application is approved for statewide use. Additionally, the bill specifies that approval and disapprovals of applications for new systems or components of systems may be appealed in accordance with the Administrative Procedure Act.

ODH could receive additional applications from manufacturers seeking approval for the installation and use, rather than just the use as is currently required, of a system or component. This would result in a revenue gain to the Sewage Treatment Innovation Fund (Fund 5CJ0).

Fees for permits

Current law authorizes a board of health to establish fees for the purpose of carrying out its duties under the Sewage Treatment Systems Law, including a fee for a sewage treatment system installation permit issued by the board. The bill authorizes a board to establish fees for sewage treatment system installation permits, operation permits, and alterations permits.

According to AOHC, local boards of health may already have fees for installation, operation, and alteration permits.

Sewage treatment system appeals board

A property owner may request a hearing with the board of health for the denial of an installation, operation, or alteration permit, the required replacement of a system, or any other final order or decision of a board of health involving sewage treatment systems in which a property owner claims to be aggrieved or adversely affected. A

property owner may appeal the results of the hearing regarding this order or decision to an appropriate court of common pleas or a sewage treatment system appeals board, which is established in the bill.

The bill specifies that not later than 90 days after the effective date of the bill, a sewage treatment system appeals board is to be appointed for each county. The boards are to consist of one member appointed by the health commissioner having jurisdiction in the county, one member appointed by the judge of the probate court of the county having the longest continuous service, and one shall be appointed by the director of health. The members are to serve without compensation. However, the bill does not address whether necessary expenses related to serving on the board will be reimbursed.

The judge of the probate court who made an appointment to the board is required to establish due process procedures to be used by the appropriate sewage treatment system appeals boards. The procedures may include filing fees. An appeal before the board is final and no further appeal may be taken.

Courts of common pleas may experience an increase in court costs if individuals file appeals relating to sewage treatment systems. Filing fees may help offset these costs.

There could be additional administrative duties for certain local governmental entities for establishing a sewage treatment system appeals board. In particular, county probate courts could experience increased duties relating to the establishment of due process procedures.

If filing fees are collected for appeals before sewage treatment appeals boards, this could help offset any costs associated with the boards. The bill does not address whether members are to be reimbursed for necessary expenses related to serving on the board.

Great Lakes-St. Lawrence River Basin Water Resources Compact

The bill extends to December 15, 2010, the date at which the Great Lakes-St. Lawrence River Basin Water Resources Compact Advisory Board is to submit final recommendations. Members do not receive compensation. However, if they receive reimbursements for necessary expenses, extending the date could result in additional meetings. If this occurs, it is possible that there could be additional reimbursements to members.

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Ohio Legislative Service Commission

Edward Millane

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 210 of the 128th G.A. **Date**: June 3, 2010

Status: As Enacted **Sponsor**: Sens. Coughlin and Kearney

Local Impact Statement Procedure Required: Yes

Contents: Establishes the Healthy Choices for Healthy Children Council; restricts the sale of certain foods and beverages to students in schools; and makes other changes

State Fiscal Highlights

- The Ohio Department of Education (ODE) may incur costs in establishing a school physical education performance measure.
- ODE may incur administrative costs in implementing various requirements of the bill including establishing a clearinghouse, administering a physical activity pilot program, and issuing annual reports.
- The Department of Health (DOH) may incur administrative costs in publishing school data on BMI and weight status and creating a list of resources for parents.
- Subject to General Assembly appropriations, state expenditures may increase by approximately $1.4 million per year, based on FY 2009 costs, to provide free breakfasts to children eligible for reduced-price breakfasts under federal guidelines. The bill does not make these appropriations.

Local Fiscal Highlights

- School districts, community schools, STEM schools, and chartered nonpublic schools may incur administrative costs as a result of meeting the bill's requirements for adopting food and beverage standards, for complying with food and beverage guidelines, and for compiling and distributing annual compliance reports.
- Schools' costs may increase if they establish their own Body Mass Index (BMI) screening programs. They may incur minimal administrative costs due to the bill's requirement to report BMI and weight status to the Department of Health (DOH). However, schools may obtain a waiver of the BMI screening requirement.
- Some schools that elect to participate in the physical activity pilot program may need to lengthen the work day due to the program's requirement for 30 minutes of physical activity.

- If the General Assembly makes appropriations for this purpose, school districts offering reduced-price breakfasts to eligible students would receive state revenue to cover the costs of providing free breakfasts. This revenue would be offset by the cost of those breakfasts.

Detailed Fiscal Analysis

Healthy Choices for Healthy Children Council

The bill creates the Healthy Choices for Healthy Children Council to monitor progress in improving student health and wellness, make policy recommendations to the State Board of Education regarding ways to improve food and beverage nutrition standards, make recommendations to the Ohio Department of Education (ODE) for the development of the best practices clearinghouse, which is described below, and assist the Ohio Department of Health (DOH) in developing a list of resources regarding health risks associated with weight status. The bill specifies that the members of the Council are not compensated for their services and that the member of the Senate and the member of the House of Representatives on the Council are to serve as joint chairpersons. Legislative staff may incur minimal administrative costs to support the Council's work.

Food and beverage nutrition standards

Continuing law requires school districts to adopt standards governing the types of food that may be sold on school premises. The bill extends this requirement to community schools, STEM schools, and chartered nonpublic schools and includes standards for beverages as well as food. In adopting the food and beverage standards, the bill requires schools to consult with a licensed dietitian, a registered dietetic technician, or a certified school nutrition specialist. The bill permits the consultant to be an employee of the school, to be a volunteer, or to be paid via contract. Presumably, most schools will use, if possible, a volunteer or employee to consult with in order to avoid any costs. Should a school have to contract with an individual for consultation, however, the administrative costs of that school may increase.

The bill also requires each school to designate staff who are responsible for ensuring the school meets the school's nutritional standards. These staff must prepare an annual report regarding compliance with the standards that is to be submitted to ODE, presented at a meeting of the school board or governing authority, and made available to the public upon request.

The bill includes specific restrictions on "a la carte" food and beverage sales that must be included in each school's standards. "A la carte" items are defined in the bill and in general include individually priced items available for sale to students during the school day. They do not include items that are part of a complete meal provided

through the federally subsidized breakfast and lunch programs or items sold outside of the school day, such as at a sporting event.

The Alliance for a Healthier Generation, a joint initiative between the American Heart Association and the William J. Clinton Foundation, and representatives from PepsiCo, Coca-Cola, Cadbury Schweppes, and the American Beverage Association collaborated in 2006 to set up guidelines for serving nutritious and lower calorie beverages in schools during the school day. The goal of this compact was to achieve implementation of these standards in 75% of schools under contract prior to the beginning of the 2008-2009 school year and to achieve implementation in all schools prior to the beginning of the 2009-2010 school year. According to a spokesperson from the Ohio Soft Drink Association, company representatives in Ohio have agreed with the policy and have reached compliance with the standards in over 85% of schools as of the 2008-2009 school year.

The bill enumerates its restrictions on beverage sales for each type of school (elementary, middle, or high). The beverage standards offered by the Alliance appear to be more restrictive than those set by the bill.[5] For example, the Alliance's standards for beverages sold at elementary schools are identical to the bill's standards except that the bill restricts the calories in milk to 170 per eight ounces (150 calories beginning in January 2014) and the calories in fruit juice to 160 per eight ounces, whereas the Alliance restricts the calories per eight ounces to 150 and 120, respectively.

The Alliance has worked with the Campbell Soup Company, Dannon, Kraft Foods, and Mars to offer better nutritional food choices in schools as well. The bill permits schools to follow the Alliance's guidelines for food or adopt restrictions on food sales that are enumerated in the bill. The bill's food restrictions are dependent on food ratings developed by certain software that may be made available to ODE free of charge. This software can be used to determine the nutritional value of each "a la carte" food item and then rate each of the items based on the results. The bill requires that this software be made available free of charge to each public and chartered nonpublic school.

It is possible that schools may see changes in the amount of revenue they collect from contracts for food and beverage sales when the choices provided to students are changed. Given that the food and beverage industry is moving toward similar nutritional standards for items sold in schools, however, the additional fiscal impact of the bill's restrictions on revenues from these sales likely will not be significant. In addition, the bill exempts schools with existing contracts with food and beverage vendors from complying with the bill's restrictions until the existing contracts expire.

[5] Please see the bill analysis and www.HealthierGeneration.org for the food and beverage guidelines set forth by the bill and Alliance for a Healthier Generation, respectively.

Best practices clearinghouse

The bill requires ODE, upon receipt of the initial recommendations of the Council, to establish and then maintain a clearinghouse of best practices in the areas of student nutrition, physical activity for students, and body mass index (BMI) screenings that schools may use to promote health. This requirement may increase the administrative burden of ODE. According to ODE, the technology to support the clearinghouse is fairly inexpensive and the collection and approval of materials may be moderately time intensive.

Performance measure

The bill requires the State Board to establish, no later than December 31, 2011, a performance measure based on student success in meeting benchmarks contained in the physical education standards, school compliance with federally mandated local wellness policies, whether a school or district is complying with the BMI requirement of the bill instead of operating under a waiver, and whether a school or district is participating in the physical activity pilot program. The bill requires that the measure be included on school district and building report cards beginning in FY 2013, but prohibits the measure being a factor in school performance ratings. The cost of the measure will depend on what the State Board establishes. All but two of the performance indicators used in school performance ratings are based on student assessments. According to ODE, costs for a physical education assessment range from minimal, if the assessment is based on the free President's Physical Fitness Challenge, to moderate for a proprietary product such as FitnessGram, published by Human Kinetics Publishers, Inc., to approximately $6.0 million if ODE develops an assessment independently. To offset any cost in establishing the measure, the bill permits ODE to accept, receive, and expend gifts, devises, or bequests of money.

Reporting of BMI and weight status

The bill requires that districts, brick and mortar community schools, STEM schools, and chartered nonpublic schools screen students enrolled in kindergarten, third, fifth, and ninth grades for body mass index (BMI) and weight status category (underweight, healthy weight, overweight, or obese) prior to the first day of May of each school year. Schools are to report the data from the screenings to the Department of Health (DOH), which then may publish the data annually, aggregated by county. In order to meet this screening requirement, the bill permits schools to conduct the BMI checks themselves, contract with another entity to provide them, or request the parents or guardians of the students obtain them from their doctor and provide the results to the school. The bill exempts e-schools from participating in the BMI screenings.

Schools may obtain a waiver of this requirement by submitting to the Superintendent of Public Instruction an affidavit stating that the school board or governing authority is unable to comply with the requirement. The Superintendent is required to grant the waiver upon receipt of the affidavit.

Establishing a height and weight screening program could be costly for schools that do not currently have the necessary equipment and personnel. However, if schools take advantage of the option provided by the bill of having parents obtain the measurements independently, many of these costs may be avoided. Schools that obtain a waiver will not incur costs associated with the requirement for as long as the waiver is in effect.

Parental resources

The bill requires DOH, in consultation with ODE and the Council to develop a list of resources that can be distributed to parents explaining any risks associated with the screening results for their children. This requirement will likely increase the administrative burden of DOH only negligibly. DOH has already issued a publication entitled "Guidelines for Measuring Heights and Weights and Calculation of Body Mass Index-for-Age in Ohio's Schools" that includes a short list of resources.

School breakfast

The bill requires that each school district, community school, STEM school, and chartered nonpublic school that participates in a federally subsidized school breakfast program provide free breakfasts to each student who is eligible under federal requirements for a reduced-price breakfast in addition to those students eligible under federal requirements for a free breakfast. The bill makes this requirement subject to General Assembly appropriations to pay the cost. According to ODE figures, about 4.5 million reduced-price breakfasts were served to students in FY 2009. At $0.30 per reduced-price meal, the cost to the state of this provision would have been approximately $1.4 million that year. The bill does not make an appropriation for this purpose.

Physical activity pilot program

The bill requires that ODE, beginning with the 2011-2012 school year, administer a pilot program requiring daily physical activity for students. Districts, community schools, STEM schools, and chartered nonpublic schools may participate in the program by notifying ODE. Should a district or school elect to participate in the program, all of its students will be required to engage in at least 30 minutes "of moderate to rigorous physical activity each school day, exclusive of recess." However, the bill exempts students enrolled in a post-secondary enrollment options (PSEO) program, a career-technical education program operated by the school, or a dropout prevention and recovery program operated by the school from participating in the physical activity. Participating schools or districts will be required to annually submit to ODE the method and costs of implementing the program.

Districts or schools electing to participate in the pilot program may incur additional costs as a result of the program's requirements. According to a spokesperson at the Buckeye Association of School Administrators (BASA), including 30 minutes of physical activity in each school day may be accomplished without too much additional cost if the time were added to the beginning or end of the day and all teachers and

personnel were not required to be present, if the physical activity were substituted for another activity, or if, as the bill permits, the physical activity were to take place during an existing before or after-school program. However, if these options are not available to schools, they may need to renegotiate contracts to lengthen the work day, possibly resulting in increased personnel costs. ODE may incur additional administrative costs for administering the pilot program.

Health curriculum change

The bill requires that the one-half unit of health needed to graduate under continuing law include instruction in "nutrition and the benefits of nutritious foods and physical activity for overall health." Any cost of this change in the health curriculum will likely be negligible.

Physical education teachers

The bill prohibits, beginning on July 1, 2013, school districts, community schools, and STEM schools from hiring a person to teach physical education who is not licensed in that subject area. The State Board currently issues a multi-age license in physical education, valid for teaching in grades pre-K to 12, and multi-disciplinary licenses for elementary schools, valid for teaching multiple subjects, including physical education, in those schools. According to a spokesperson at ODE, over 900 teachers are employed to teach physical education at the elementary level under a multi-disciplinary license. It is not clear whether these licenses will meet the bill's requirements. However, since the bill's licensure requirement applies only to new hires, schools do not need to replace these teachers.

Annual reports

The bill requires ODE to issue annual reports on the compliance of schools with the BMI screening requirement and on the physical activity pilot program. The reports may increase the administrative burden of ODE, but likely will not result in significant new costs.

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Ohio Legislative Service Commission

Russ Keller

Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 232 of the 128th G.A. **Date**: June 3, 2010

Status: As Enacted **Sponsor**: Sen. Widener

Local Impact Statement Procedure Required: Yes

Contents: To exempt qualifying energy facilities from property taxation upon county approval and to require payments in lieu of taxes on the basis of each megawatt of production capacity of such facilities

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties			
Revenues	- 0 -	Potential loss up to several million dollars based on current applications to the Power Siting Board; loss would be permissive in the case of larger energy projects	Potential loss up to several million dollars based on current applications to the Power Siting Board; loss would be permissive in the case of larger energy projects
Expenditures	- 0 -	- 0 -	- 0 -
Other Local Governments			
Revenues	- 0 -	Potential loss up to several million dollars based on current applications to the Power Siting Board	Potential loss up to several million dollars based on current applications to the Power Siting Board
Expenditures	- 0 -	- 0 -	- 0 -
Municipal Corporations			
Revenues	Potential gain to fund alternative energy revolving loans		
Expenditures	Potential increase (permissive) to issue and administer alternative energy revolving loans		
Special Improvement Districts			
Revenues	Potential gain to fund special energy improvement projects		
Expenditures	Potential increase (permissive) to administer special energy improvement projects		

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill would exempt an energy facility (250 kilowatts or less) from the public utility tangible personal property tax and real property tax if its construction or installation is completed on or after the bill's effective date.

- "Qualified energy projects" using renewable energy resources, which are larger than 250 kilowatts, may be exempt from the public utility tangible personal property tax and real property tax if they submit an application to the applicable siting authority before December 31, 2011. Project construction must begin on or after January 1, 2009, and before January 1, 2012 in order to qualify, and several other requirements are necessary to maintain the property tax exemption. Qualified energy projects that are larger than five megawatts require the approval of the local board of county commissioners in order to receive the property tax exemption.
- "Qualified energy projects" using clean coal technology, advanced nuclear technology, or cogeneration technology may be permanently exempt from property taxation if: (a) the property is put into service before January 1, 2017, (b) the local county board of commissioners approves of the tax exemption and the amount of the corresponding service payment in lieu of taxes, (c) an application is filed with the Director of Development before December 31, 2013.
- At least six facilities with the potential to generate about 1,100 megawatts from renewable wind energy sources and with applications that were already approved or still pending before the Power Siting Board may establish facilities in Ohio.
- A facility designated a "qualified energy project" must make a $6,000 to $8,000 service payment in lieu of taxes for each megawatt of name plate capacity. The payment will be allocated to counties, school districts, and local governments in the same manner that revenue from public utility tangible personal property taxes is disbursed.
- The local county board of commissioners may require an additional service payment beyond the $6,000 to $8,000 amount required by the bill. The potential payment cannot cause the total amount of service payments to exceed $9,000 per megawatt. This separate payment of $1,000 to $3,000 per megawatt must be directed to the county's general fund and may be used for any purpose.
- The bill authorizes the expansion of current municipal solar panel revolving loan programs to include other alternative energy and energy efficiency technologies. Municipalities may incur additional costs, which would be permissive, to issue and administer loans under such programs, which may be partially or wholly offset by any additional revenues authorized by a municipality to fund the program.
- The bill adds certain alternative energy and energy efficiency technologies to the list of eligible technologies that may be the subject of special energy improvement projects, and adds consulting and energy auditing to the list of eligible activities and costs for special improvement projects. This may increase the costs of such districts to engage in such projects. However, these costs would be permissive, and may be partially or wholly offset by any new revenue the district collects to fund such expanded projects.

Detailed Fiscal Analysis

S.B. 232 provides an exemption from real and tangible personal property taxes and assessments for certain types of renewable and advanced energy facilities. Smaller energy facilities with an aggregate nameplate capacity of 250 kilowatts (kW) or less are exempt if their construction or installation is completed on or after January 1, 2010. A facility larger than 250 kW that is engaged in the business of generating, transmitting, or distributing electricity is considered an "energy company" and would be regarded as a public utility. Energy companies may undertake "qualified energy projects" that are energy projects certified by the Department of Development. These larger qualified energy projects qualify for real and tangible personal property tax exemptions only if the projects meet certain conditions specified by S.B. 232.

The Department of Development is required to certify a larger renewable resource energy facility as "qualified," and thereby tax exempt, if it meets certain conditions, including: (1) an application to the Power Siting Board or the applicable local siting authority is submitted before December 31, 2011, (2) project construction begins on or after January 1, 2009, and before January 1, 2012, (3) the property on or around the project site was not previously used to supply electricity, and (4) approval for the property tax exemption is granted by the local board of county commissioners if the project is five megawatts or greater. The resolution adopted by a board of county commissioners may include a modification to the service payment stipulated in the bill (i.e., $6,000 to $8,000 per megawatt), and the resolution may specify additional requirements for the property tax exemption beyond what is required by state law. However, the total of the two service payments cannot exceed $9,000 per megawatt. The facility must be placed in service on or before December 31, 2013 in order to qualify for the permanent tax exemption beginning in tax year (TY) 2013.

Energy facilities using clean coal technology, advanced nuclear technology, or cogeneration technology must meet criteria similar to those specified for renewable energy facilities, but there are some differences. These types of energy facilities must be placed into service before January 1, 2017, and the owners must file an application to the Director of Development before December 31, 2013, which is two years after the deadline set for applications for renewable energy projects. Property tax exemptions for energy facilities using clean coal technology, advanced nuclear technology, or cogeneration technology are also subject to county approval. Counties may modify the amount of the service payment in lieu of taxes.

Applicants seeking the Director of Development's certification as a qualified energy project must meet certain additional requirements to qualify for the designation. The applicant must employ in the project at least the number of workers that are projected by a generally accepted job estimating model, including but not limited to the Job and Economic Development Impact (JEDI) model. A majority of the full-time equivalent employees must be domiciled in this state.

The qualified energy project is also required to pay annual service payments in lieu of taxes to the treasurer of the county where the facility is located in an amount equal to $6,000 to $8,000 per megawatt (MW) of name plate capacity. The exact amount depends on what type of energy resource is used in the qualified energy project and the percentage of Ohio domiciled full-time equivalent (FTE) employees working in the construction and installation of the project. All solar energy projects must make a service payment equal to $7 per kilowatt, or $7,000 per megawatt. Qualified energy projects with any other resource must pay $6 per kilowatt ($6,000 per MW) if the projects maintain an Ohio workforce of 75% or more. The required service payment is $7 per kilowatt ($7,000 per MW) if the project maintains a percentage greater than 60% but less than 75%. A facility maintaining a percentage greater than 50% but less than 60% must pay $8 per kilowatt ($8,000 per MW). This service payment will be shared by all taxing jurisdictions within the project area in the same manner that property tax collections would otherwise be allocated to counties, school districts, and local governments. The local county board of commissioners may require an additional $1,000 to $3,000 per megawatt payment beyond those required by S.B. 232, but the cumulative total of both service payments cannot exceed $9,000 per megawatt.

The bill requires the facility to offer to sell power or renewable energy credits first to electric distribution utilities and electric service companies subject to the alternative energy portfolio requirements of current law before offering the power and credits to others. Other requirements apply including restoring roads affected by facility construction, and providing training and equipment to fire and emergency responders where the facility is located.

The bill clarifies the sales tax treatment of the newly defined "energy conversion equipment." Specifically, the bill exempts this equipment from the sales tax, but the energy conversion equipment may already be exempt from the sales tax given that it is used by a public utility and the Revised Code exempts[6] tangible personal property that is used for the delivery of a public utility service. Therefore this provision is expected to have no fiscal effect.

S.B. 232 requires the Public Utilities Commission of Ohio (PUCO) to conduct a study to review the condition of reactive power in the state. The Commission is required to issue a report of its findings to the General Assembly within one year after the effective date of the bill. According to PUCO, there will be no cost to the agency to complete this study because the Federal Energy Regulatory Commission preempts PUCO from doing such a study.

Fiscal effect

According to the Department of Development, the bill will not have a significant fiscal impact on the agency. Agency staff believe that the responsibilities under the bill can be sufficiently handled with existing resources by its Office of Tax Incentives. This

[6] R.C. 5739.01(B)(3)(b).

office is supported by appropriations to the Tax Incentive Programs line item (195630), a non-GRF line item, as well as revenues derived from filing fees for various types of tax credit applications.

There will be a fiscal effect on some political subdivisions. For counties, the fiscal effects are permissive for larger projects. The bill gives authority only to boards of county commissioners to override the tax exemption, however, meaning that other political subdivisions that could be affected by the tax exemption could experience a loss of revenue from real and tangible personal property taxes, offset partially by revenue gains from the $6,000 to $8,000 payments in lieu of taxes. Counties may require an additional $1,000 to $3,000 payment such that the total amount of service payments does not exceed $9,000 per megawatt, and this separate service payment would not be shared with other taxing jurisdictions within the county.

According to the sponsor testimony, which utilizes information from the Wind Energy Association, a 100 megawatt commercial wind facility could have a personal property tax liability of approximately $4 million and a real property tax of about $200,000. Such a facility would make a $600,000 to $900,000 payment in lieu of the public utility tangible personal property and real property taxes, but counties, school districts, and other local governments would forego future payments for the property taxes.

Currently, Ohio does not have any large renewable or advanced energy facilities that would be eligible for the "qualified energy project" certification and the resulting property tax exemption. However, six wind facilities (Table 1 below) have applications that were either approved or still pending before the Power Siting Board. Assuming the three remaining applications are approved, these facilities may qualify for the tax exemption if they were put into service before January 31, 2012. If all six wind facilities are put into service with the maximum estimated generating capacity, it would yield up to $8.8 million in annual shared revenue to the counties from payments in lieu of taxes, which would offset the $2.2 million loss (maximum possible amount) in real property tax revenue that the county treasurers might currently be collecting on those lands where wind facilities are proposed to be built. But the bill's exemption from public utility tangible property taxes would eliminate millions in additional property tax revenue that would have been raised if those projects had been undertaken in the absence of the bill.[7]

[7] Property tax estimate made using examples provided in the sponsor testimony, which utilitized information from participating companies and trade associations.

Table 1: Wind Projects with Cases Approved or Still Pending Before the Ohio Power Siting Board[8]			
Case No.	**Project (County)**	**Company**	**Generating Capacity (Est.)**
08-0666-EL-BGN	Buckeye Wind Project (Champaign)	Buckeye Wind, LLC, a subsidiary of EverPower Wind Holdings, Inc.	125 to 175 MW
09-0277-EL-BGN	Hardin County North Wind Farm (Hardin)	JW Great Lakes Wind, LLC, a subsidiary of juwi Wind GmbH	50 MW (approx.)
09-0479-EL-BGN	Hardin Wind Farm (Hardin)	Hardin Wind Energy, LLC, a subsidiary of Invenergy LLC	300 MW
09-0546-EL-BGN	Black Fork Wind Project (Crawford and Richland)	Black Fork Wind LLC	201.6 MW
09-0980-EL-BGN	Timber Road Wind Farm (Paulding)	Paulding Wind Farm, LLC, a subsidiary of Horizon Wind Energy	48.6 MW
09-1066-EL-BGN	Blue Creek Wind Farm Project (Paulding and Van Wert)	Heartland Wind, LLC, a subsidiary of Iberdrola Renewables	Up to 350 MW

Although the six projects are all wind facilities, wind projects are not the only energy facilities that would qualify for the real and tangible personal property tax exemption authorized by S.B. 232. The total number of projects that may qualify for the tax exemptions is potentially larger than the six facilities mentioned above, including solar energy facilities as well as energy facilities using clean coal technology, advanced nuclear technology, or cogeneration technology. The net fiscal effect on local governments may vary from the example above based on the type of facilities and the tangible personal and real property taxes in the counties where those projects may be located. County governments will retain the ability to approve or deny the tax exemptions to these facilities as well as the option of negotiating an additional $1,000 to $3,000 payment made solely to their general fund, but school districts and other taxing jurisdictions within the county may lose local property tax revenues without their consent. All taxing authorities would share the larger (i.e., $6,000 to $8,000 per MW) service payment in lieu of taxes in the same manner that property taxes are allocated to the appropriate jurisdictions.

Solar energy facilities can be conceived and constructed in the shortest amount of time relative to the other types of energy facilities. Wind energy facilities tend to be larger scale projects and require more lead time before their construction. It is likely that more solar projects than wind projects will file property tax exemption applications to the Director of Development before the December 31, 2011 deadline.

Energy facilities using clean coal technology or advanced nuclear technology require a great deal of time for planning and construction. LSC staff does not know how many qualified energy projects could be ready to meet the December 31, 2013 application deadline. Clean coal facilities would cost $1.75 billion or more and most involve some sort of federal funding or federal loan guarantee. LSC does not know of

[8] Source: http://www.opsb.ohio.gov.

any federal support for clean coal or advanced nuclear energy facilities. Advanced nuclear energy facilities are distinguished by their third or fourth generation reactors. Third generation facilities have yet to be built in the United States, but they are in operation in Japan and under construction elsewhere in Asia and Europe. It is unclear whether Duke Energy will propose an advanced nuclear energy plant for its proposed nuclear facility in Piketon, Ohio, but it is highly unlikely an advanced energy facility could be constructed within the timeframe specified by S.B. 232.

Energy facilities using cogeneration technology have already been developed in Ohio, which indicates that more facilities could be added in the future. These types of facilities can vary widely in their capacity. For example, the OPSB approved construction of a 47 MW facility in Butler County in 2009, but industry data from 2006 suggests that average system capacity in Ohio was 11.8 MW while the median system capacity was 3.3 MW. The spectrum of possibilities prevents LSC staff from estimating future construction and the corresponding revenue impact on local taxing jurisdictions.

Municipal alternative energy revolving loans

Current law allows the legislative authority of a municipal corporation to establish a low cost solar panel revolving loan program to assist residents in installing solar panels on their residences. The bill amends current law to expand the existing authority for solar panel loans into a broader alternative energy revolving loan program. Eligible alternative energy technologies under the bill are solar photovoltaic energy, solar thermal energy, wind energy, geothermal energy, or other energy efficiency technologies, products, and activities that reduce energy consumption or support clean and renewable energy production. If a municipality chooses to create such a program, it must establish an alternative energy revolving loan fund in the municipal treasury with a dedicated funding source.

Special energy improvement projects

Current law allows the board of directors of a special improvement district within a municipality, township, or any combination thereof to adopt plans for special energy improvement projects, including solar photovoltaic and solar thermal energy projects. The bill adds wind energy, geothermal energy, biomass energy, and gasification projects, as well as energy efficiency improvements, to the list of eligible special energy improvement projects. The bill also adds consulting and energy auditing to the list of eligible activities and eligible costs under special improvement project plans. These provisions may increase the costs to special improvement districts, depending on the size of the alternative energy and energy efficiency projects engaged in by special improvement districts under the bill, and the extent to which existing or new revenues authorized by the districts cover such costs.

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Appendix

All House Bills Enacted in 2010

House Bill	LIS Required?	Subject
5	No	Regulates transition accounts, makes specified provisions for certain special elections, and declares an emergency
10	Yes	Gives juvenile courts jurisdiction over child protective orders and makes other changes
27	No	Creates certain special license plates and designates certain memorial highways, a memorial bridge, and an interchange
48	No	Makes an appropriation for specified veterans benefits, changes election laws, and creates a new type of employee leave benefit
50	No	Motor vehicle certificates of registration and pilot certification to carry passengers
102	No	Enacts sections 2108.61 to 2108.63 of the Revised Code regarding umbilical cord blood donations
190	No	Modifies certain licensing procedures for dentists and dental hygienists and establishes the Oral Health Access Supervision Program for the provision of dental hygiene services
198	No	Establishes the Patient Centered Medical Home Education Pilot Project, authorizes implementation of a primary care component of the Choose Ohio First Scholarship Program, extends the moratorium concerning most favored nation clauses in hospital contracts, and revises the law governing Medicaid reimbursement for nursing facilities' tax costs
215	No	Modifies the law governing investigations and hearings conducted by the State Dental Board and licensure of audiologists and speech-language pathologists, and makes other changes related to administrative adjudication, and Medicaid claims for Medicare cost-sharing expenses
238	No	Modifies laws pertaining to disclosure of assets; modifications of a division or distribution of property; Putnam County judgeships; Montgomery County judgeships; life insurance coverage for municipal and county court judges; firearm notifications in domestic violence cases; Chardon, Lyndhurst, and Miamisburg Municipal Court judges; and fees for performing a marriage ceremony
292	No	Limits the use of transfer fee covenants and modifies laws pertaining to disposal of estates and conservatorships
300	No	Makes changes to the law governing the licensure and regulation of insurance agents and certain insurance-related taxes and extends the time after employment during which a person can keep the person's health insurance coverage
313	No	Authorizes a county with a population greater than 60,000 to organize a county land reutilization corporation and makes other changes
330	No	Authorizes the Director of Transportation to include school districts in purchase contracts for various items and makes other changes
338	No	Modifies laws pertaining to court jurisdiction regarding driver's licenses, Putnam County judgeships, and makes other sentencing changes
393	No	Revises township notice requirements regarding nuisance properties, makes other changes, and declares an emergency
398	No	Revises the waiting list provisions of the PASSPORT, PACE, and Assisted Living programs, revises the law governing the collection of long-term care facilities' Medicaid debts, and revises the law governing the reasons for denying a Certificate of Need application
414	No	Establishes the Ohio Livestock Care Standards Board pursuant to the Ohio Constitution and declares an emergency
449	No	Makes various changes to the law regarding the Adjutant General's Department and the Department of Veterans Services
462	No	Makes capital appropriations and reappropriations
495	No	Incorporates certain changes in the Internal Revenue Code into Ohio law, postpones the operation of the Sunset Review Law until July 1, 2011, and declares an emergency
519	No	Creates the Ohio Casino Control Commission and establishes casino gaming statutes under Ohio Constitution, Article XV, Section 6(C)

All Senate Bills Enacted in 2010

Senate Bill	LIS Required?	Subject
51	No	Designates the last week of May as "Ohio Turfgrass Week"
58	No	Revises laws pertaining to biological evidence training and bodily substances
77	Yes	Revises laws concerning DNA testing, preservation of biological evidence, custodial interrogations, and witness identification
85	No	Authorizes certain political subdivisions to use professional service contracts for water storage tank maintenance
110	Yes	Revises the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law
131	No	Requires the Department of Administrative Services to establish a biobased product preference program and extends an alternative fuel tax credit
147	No	Gives the right of disposal to the U.S. Secretary of Veterans Affairs regarding unclaimed cremated remains of persons who are entitled to be buried in a national cemetery
155	No	Allocates a portion of scrap tire fee revenue for soil and water conservation districts, makes changes to other state programs, and adjusts certain operating and capital appropriations
162	No	Revises state regulation of telephone companies and removes telegraph companies from utility regulation
165	No	Makes various changes to the Oil and Gas Law
181	No	Grants certain reclamation activities immunity from liability, authorizes cash transfers for certain Department of Natural Resources and Department of Education functions, makes appropriations, and makes other changes
183	No	Eliminates a grandfather exemption from the requirements of the Architects Law granted to certain corporations
187	No	Establishes the Ohio Planned Community Law
194	No	Permits an individual taxpayer to direct the state to transmit an income tax refund directly to taxpayer's checking, savings, or individual retirement account or individual retirement annuity if the taxpayer files a return electronically
204	No	Modifies the law relative to the termination of franchises and prohibited acts under the Motor Vehicle Dealers Law
210	Yes	Establishes the Healthy Choices for Healthy Children Council, restricts the sale of certain foods and beverages to students in schools, and makes other changes
232	Yes	Exempts qualifying energy facilities from property taxation upon county approval and requires payments in lieu of taxes on the basis of each megawatt of production capacity of such facilities
235	No	Revises laws pertaining to trafficking in persons
270	No	Creates a pilot program for permitting certain dam construction projects and authorizes the Franklin Park Conservatory to issue revenue bonds and maintain lines of credit

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