
OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Requires a state agency or official to obtain additional approval from the General Assembly or Controlling Board to enter into or commit to enter into a public obligation offering fractionalized interests in payments drawn from appropriations.
- Requires a state agency or official to obtain additional approval from the General Assembly or Controlling Board to agree or commit to provide from future appropriations financial assistance or other payments of charges and costs regarding capital facilities.
- Permits transfers of statewide indirect costs of debt service paid for the enterprise resource planning system (OAKS) to the OAKS Support Organization Fund to support costs of system development and upgrades.
- Changes the funding sources of the OAKS Support Organization Fund to: (1) transfers from statewide indirect costs attributable to debt service paid for the system and (2) agency payroll charge revenues.
- Modifies the definition of "statewide indirect costs" to include disbursements from other funds (not just the GRF) and thus permits these disbursements to be recovered according to the statewide indirect cost allocation plan.
- Authorizes the Director of Budget and Management to transfer cash between funds other than the GRF in order to correct an erroneous payment or deposit.
- Authorizes the Director to transfer up to \$60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted to ensure that GRF receipts and balances are sufficient to support GRF appropriations.
- Provides that the Director must not make transfers from a non-GRF fund if more than 30% of the total fund value consists of cash from donations.
- Eliminates requirements that state agencies submit biennial spending plans to the General Assembly and the Director of Budget and Management, and that the Director of Administrative Services oversees implementation.
- Eliminates an outdated requirement for the submission of state agency spending reduction plans.
- Requires state agency employees to use the state-contracted, preferred rental vehicle provider for all vehicle rentals over 100 miles.



- Allows the Director of Budget and Management and the Director of Transportation, in accordance with the provisions of the act, to enter into contracts outsourcing to private sector entities or local or regional public entities the provision of highway services.
- Requires the Director of Budget and Management, before releasing any invitation for qualifications or for proposals, to submit to the General Assembly the material terms of any invitation for qualifications or proposals, which must include a draft of the invitation document, and authorizes the Director to proceed with the release of that invitation if within 90 days of the receipt of the Director's submission the General Assembly acts by concurrent resolution to approve the invitation.
- Allows the Director of Budget and Management to provide compensation to unsuccessful bidders for a proposal to lease the turnpike, up to the value of the proposal.
- Makes any transfer of money or appropriations necessary to support highway services subject to the approval of the Controlling Board.
- Establishes a proposal selection process that requires the Director of Budget and Management to evaluate proposals and proposer qualifications, rank the proposers, and conduct negotiations to procure an outsourcing contract for the provision of highway services.
- Exempts from Ohio's Collective Bargaining laws any employees on a project involving real or personal property, or both, and related construction and other improvements to them, used to provide highway services.
- Allows the Director of Transportation to exercise the powers of the Ohio Turnpike Commission to work with the Director of Budget and Management regarding Turnpike-related outsourcing contracts.
- Requires that all money received by the Director of Budget and Management, under a contract for the provision of highway services, be deposited into the state treasury and credited to the Highway Services Fund, which is created by the act.
- Exempts from state and local taxation all (1) projects involving real or personal property, or both, and related construction and other improvements to them, used to provide highway services, (2) outsourcing contracts, and (3) gross receipts and income generated by them.

- Exempts from the sales and use tax any transfer or lease of a project involving real or personal property, or both, and related construction and other improvements to them, used to provide highway services, if the state retains any part of ownership.
- Permits the Director to issue guidelines to agencies applying for federal money made available to the state for fiscal stabilization and recovery purposes.
- Requires the Office of Internal Auditing to monitor, measure, and report on the effectiveness of federal stimulus funds allocated to Ohio under the federal American Recovery and Reinvestment Act of 2009 (ARRA) to certain members of the General Assembly.
- Requires the Office of Budget and Management, with respect to the quarterly reports required to be made to the federal government under the ARRA regarding the effectiveness of allocated funds, to send those same reports to certain members of the General Assembly.
- Makes the Ohio Board of Regents subject to internal audit under internal audit programs conducted by the Office of Internal Auditing.
- Requires that all members of the State Audit Committee be external to the management structure of state government.
- Requires all Committee member terms, in the year that they expire, do so on June 30 and alters the terms of currently serving members.
- Permits a Committee member to continue to serve past the end of the member's term until a successor is appointed or until a period of 90 days elapses, whichever occurs first.
- Repeals the requirement that the Governor's appointee to the Committee be a person who is external to the management structure associated with preparing financial statements of state government.

Approval of state agency obligations

(R.C. 126.11)

The act requires, in addition to approval of the Director of Budget and Management as continuing law requires, a state agency or official must obtain approval from the General Assembly or the State Controlling Board to (1) enter into or commit to enter into a public obligation offering fractionalized interests in payments drawn from



appropriations, or (2) agree or commit to provide from future appropriations financial assistance or other payments of charges and costs regarding capital facilities.

Transfers to and funding sources of the OAKS Support Organization Fund

(R.C. 126.12 and 126.24)

The act permits the Director of Budget and Management to make transfers of statewide indirect costs for debt service for the state's enterprise resource planning system (Ohio Administrative Knowledge System or OAKS) to the OAKS Support Organization Fund to support costs of system development and upgrades. Under the act, such transfers may be made either directly from the appropriate fund of the state or, if the statewide indirect costs already have been deposited in the GRF, from the GRF. The act establishes these transfers and designated agency payroll charge revenues as the funding sources of the Fund. The act eliminates as funding sources cash transfers from the Accounting and Budgeting Fund, the Human Resources Services Fund, and other revenues.

The act expands the definition of "statewide indirect costs" to include operating costs incurred by an agency providing unbilled services to another agency and for which disbursements have been made from funds other than the GRF. Former law only included disbursements from the GRF as part of the definition. The change enacted by the act permits disbursements made from other funds (and not just from the GRF) to be recovered from any fund of the state according to the statewide indirect cost allocation plan. Under continuing law, statewide indirect costs are recovered from any fund of the state and then transferred to the GRF by OBM according to this plan.

Transfers of cash between non-GRF funds

(R.C. 126.21)

The act permits the Director of Budget and Management to transfer cash between funds other than the GRF in order to correct an erroneous payment or deposit – regardless of the fiscal year during which the erroneous payment or deposit occurred.

Transfers to the General Revenue Fund

(Section 512.30)

The act authorizes the Director of Budget and Management, notwithstanding any law to the contrary, to transfer up to \$60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted during fiscal years 2012 and 2013. These transfers are to be made to ensure that GRF receipts and balances are sufficient to support GRF



appropriations in each fiscal year. The act prohibits the Director from making transfers from a non-GRF fund if more than 30% of the total fund value consists of cash from donations.

State agency spending plans and spending reduction plans

(R.C. 126.501, 126.502, and 126.507 (repealed); conforming changes in R.C. 126.50)

The act repeals a requirement that state agencies submit biennial spending plans to the General Assembly and the Director of Budget and Management. Specifically, under prior law, each such plan was required to address, for the two upcoming fiscal years, savings, lack of savings, or costs that could have resulted from a number of enumerated strategies for purchasing supplies and services. Examples of the strategies include requiring an agency director's approval for purchases of \$1,000 or more, cooperative purchasing with other state agencies, and cancelling certain noncapital-funds contracts. Prior law required the Director of Budget and Management to issue guidance to each agency on which strategies to implement. The Director of Administrative Services was required to oversee implementation, in consultation with the Director of Budget and Management.

The act also repeals an expired requirement that state agencies submit, by November 1, 2009, to the General Assembly and the Director of Budget and Management, spending plans outlining 30% reductions in spending for supplies and services for FYs 2010 and 2011.

Highway services provided by private, local, or regional entities

(R.C. 126.60 to 126.605, 718.01(A)(1), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(ff))

Notwithstanding any Revised Code provision to the contrary, the act permits the Director of Budget and Management and the Director of Transportation, in accordance with the terms of the act, to execute a contract with a private sector entity (such as any type of profit or nonprofit corporation, partnership, joint venture or other similar entity), local or regional public entity or agency, or any combination thereof for the purpose of outsourcing highway services in order to more efficiently and effectively provide highway services, including by generating additional resources in support of those highway services and related projects. "Highway services" under the act means the operation or maintenance of any highway in Ohio, the construction of which was funded by proceeds from state revenue bonds that are to be repaid primarily from revenues derived from the operation of the highway and any related facilities, and not primarily from the gas tax. The Ohio Turnpike is the primary highway meeting this definition. The provisions of the act on outsourcing the turnpike are to be liberally construed to effect those purposes.



Contract details

The contract may be a purchase and sale agreement, lease, service agreement, franchise agreement, concession agreement, or other written agreement for the provision of highway services or a related project. It may contain the terms and conditions established by the Director of Budget and Management and the Director of Transportation and is to be sufficient to effect its purpose, notwithstanding any provision of the Revised Code to the contrary. The Director of Budget and Management is authorized to receive and deposit any money received under the contract.

Proposal selection process

General Assembly approval

"Before releasing any invitation for qualifications or for proposals,"²³ the act requires the Director of Budget and Management to submit the material terms and conditions of that invitation to the General Assembly; the submission must include a draft of the invitation document. If within 90 days of receiving the Director's submission the General Assembly approves the invitation by adopting a concurrent resolution, the Director is authorized to proceed to release the invitation.

Public notice

The act requires the Director of Budget and Management to publish notice of its intent to enter into a contract for the highway services and any related project. The notice is to provide interested parties the opportunity to submit their qualifications or proposals, or both, for consideration and must be published at least 30 days prior to the deadline for submitting those qualifications or proposals. The Director also may advertise the information contained in the notice in appropriate trade journals and otherwise notify parties believed to be interested in providing the highway services and any related projects. The notice must include a general description of the highway services to be provided and any related project, and of the qualifications or proposals being sought, and instructions for obtaining the invitation.

Qualification evaluation

The act specifies that after inviting qualifications, the Director of Budget and Management, in consultation with the Department of Transportation, is to evaluate the qualifications submitted and may hold discussions with proposers to further explore

²³ It is not clear from this language whether the Director may be required to make two submissions to the General Assembly and seek two concurrent resolutions if the process of outsourcing the turnpike separately involves both an invitation for qualifications and also an invitation for proposals.



their qualifications. Following the evaluation, the Director, in consultation with the Department of Transportation, may determine a list of qualified proposers based on criteria in the invitation and invite only those proposers to submit a proposal for the provision of the highway services and any related projects.

Proposal evaluation and selection

After inviting proposals, the Director of Budget and Management, in consultation with the Department of Transportation, must evaluate the proposals submitted and may hold discussions with the proposers to further explore their proposals, the scope and nature of the highway services they would provide, and the various technical approaches they may take regarding the highway services and related projects. After the evaluation, the Director, in consultation with the Department of Transportation must do the following:

(1) Select and rank at least the three most qualified proposers, unless fewer are qualified;

(2) Negotiate a contract with the most qualified proposer to provide the highway services at a fair and reasonable compensation, and to purchase, lease, or otherwise take a legal interest in the project;

(3) Upon failure to negotiate a contract with the most qualified proposer, the Director must inform the proposer of the termination of negotiations and may enter into negotiations with the proposer ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified proposer selected and ranked, in order of ranking, until a contract is negotiated.

(4) If the Director fails to negotiate a contract with any of the ranked proposers, the Director, in consultation with the Department of Transportation, may terminate the process or select and rank additional proposers, based on their qualifications or proposals, and negotiations are to continue as with the proposers selected and ranked initially until a contract is negotiated.

The Director may, after consultation with the Department of Transportation, include in any contract any terms the Director deems appropriate, including the following:

- The contract duration (not to exceed 75 years);
- Rates or fees for the highway services to be provided or the methods or procedures for determining them;

- Standards for the highway services to be provided;
- Responsibilities and standards for operation and maintenance of any related project;
- Required financial assurances;
- Financial and other data reporting requirements;
- Terms regarding contract termination and retaking possession or title of the project;
- Events of default and remedies upon default, including mandamus, actions at law or equity, or any combination of such remedial actions.²⁴

Rejection of qualification or proposal

The act specifies that the Director of Budget and Management may reject any and all submissions of qualifications or proposals.

Compensation to unsuccessful bidders

The act authorizes the Director of Budget and Management to provide compensation for the preparation of a responsive proposal from unsuccessful bidders for a proposal to lease the turnpike. The Director is further authorized to establish policies or procedures to determine the amount of compensation to be provided for each project and the method of evaluating the value of the preliminary proposal submitted. The act specifies that the compensation may not exceed the value of the proposal.

Exemption from the Public Employee Collective Bargaining Law

The act specifies that the Public Employee Collective Bargaining Law does not apply to any employees working at or on a project to provide highway services.

Director of Transportation to exercise powers of Ohio Turnpike Commission

Notwithstanding any contrary provisions in the law governing the Ohio Turnpike, the act allows the Director of Transportation to exercise all powers of the Ohio Turnpike Commission for purposes of the act. The Director with the Director of Budget and Management is authorized to execute any contract for the provision of highway services.

²⁴ The Director appears to be given discretionary authority to include these terms in any contract, but the 75-year limitation on the contract duration may imply that at least some of these terms are mandatory.

Highway Services Fund

The act requires that all money received by the Director of Budget and Management under a contract for the provision of highway services be deposited into the Highway Services Fund, which the act creates. The act requires the Fund to retain any interest it earns. Any transfer of money or appropriations necessary to support highway services is subject to Controlling Board approval.

Contract for consulting services

The act permits the Director of Budget and Management, in consultation with the Department of Transportation, to retain or contract for the services of commercial appraisers, engineers, investment bankers, financial advisers, accounting experts, and other consultants to carry out the Director's powers and duties under the act, including the identification of highway services and related projects to be subject to invitations for qualifications or proposals, the development of those invitations and related evaluation criteria, and the evaluation of those invitations, and negotiation of any contract.

Tax exemption

The act states that any project or part thereof owned by the state and used for performing highway services pursuant to a contract that would be exempt from taxation or assessments in the absence of the contract is to remain exempt from taxation and assessments levied by the state and its subdivisions. The gross receipts and income of a proposer derived from providing highway services under a contract are to be exempt from taxation levied by the state and its subdivisions. Accordingly, deductions are made available for such receipts or income under the commercial activity tax and the state and municipal income taxes. In addition, any transfer or lease between a proposer and the state of a project or part thereof is to be exempt from the sales and use tax if the state is retaining ownership of the project or part thereof that is being transferred or leased.

Federal money made available to the state for fiscal stabilization and recovery purposes

(Section 521.60)

To ensure the level of accountability and transparency required by federal law, the act permits the Director of Budget and Management to issue guidelines to any agency applying for federal money made available to the state for fiscal stabilization and recovery purposes and to prescribe the process by which agencies are to comply with any reporting requirements established by the federal government.



Reports monitoring the effectiveness of federal stimulus funds

(Sections 521.70 and 801.20)

Under continuing law, the Office of Internal Auditing in the Office of Budget and Management is required to conduct internal audits of certain state agencies generally with the intent of improving their operations regarding risk management, internal controls, and governance. The law also requires the Office to issue preliminary and final reports of individual audit findings and recommendations. The Office also must annually submit a report to the Governor, President of the Senate, Speaker of the House, and the Auditor of State. State agencies subject to internal audit are OBM, the Departments of Commerce, Administrative Services, Transportation, Agriculture, Natural Resources, Health, Job and Family Services, Public Safety, Mental Health, Developmental Disabilities, Insurance, Development, Youth Services, Rehabilitation and Correction, Aging, Alcohol and Drug Addiction, Veteran Services, Taxation, the Environmental Protection Agency, and the Bureau of Workers' Compensation.

Semi-annual reports

The act requires the Office, in addition to its duties under ongoing law, to (1) monitor and measure the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 (ARRA) and (2) review how funds allocated to each state agency subject to internal audit under continuing law are spent. In addition to all the reports it must issue under continuing law, the Office must submit a report of its findings regarding the effectiveness and expenditure of the federal stimulus funds to the President, Senate Minority Leader, Speaker, House Minority Leader, and the Chairs of the House and Senate committees that handle finance and appropriations. The reports are to be issued according to the following schedule and time frames:

Report Date	Report Coverage Period
February 1, 2012	July 1, 2011 – December 31, 2011
August 1, 2012	January 1, 2012 – June 30, 2012
February 1, 2013	July 1, 2012 – December 31, 2012
August 1, 2013	January 1, 2013 – June 30, 2013



Quarterly reports

The act also requires that, if the Office of Budget and Management is required to submit quarterly reports to the federal government regarding the effectiveness of federal stimulus funds allocated under the ARRA for which Ohio is the prime recipient and the reporting requirement has not been delegated to a sub-recipient, then it must submit those reports to the same General Assembly members described above, as well as the ranking members of the House and Senate committees that handle finance and appropriations. The act requires OBM to continue to submit the quarterly reports to the legislature for as long as the reports are required by the federal government.

Board of Regents subject to internal audit

(R.C. 126.45)

The act makes the Ohio Board of Regents a state agency subject to internal audit under internal audit programs conducted by the Office of Internal Auditing.

Changes to State Audit Committee

(R.C. 126.46)

The act requires that all members of the State Audit Committee be external to the management structure of state government. The act also repeals the requirement that the Governor's appointee to the Committee be a person who is external to the management structure associated with preparing financial statements of state government.

The act requires all Committee members serve three-year terms to begin on July 1, and end on June 30. Members are permitted to continue to serve past the end of the member's term until a successor is appointed or until a period of 90 days elapses, whichever occurs first. The act also alters the terms of currently serving members as follows:

- The terms of the members appointed by the President of the Senate expire on June 30, 2012.
- The term of the member appointed by the Speaker of the House scheduled to expire on November 17, 2012, expires on June 30, 2013.
- The term of the other member appointed by the Speaker of the House expires on June 30, 2014.

- The term of the member appointed by the Governor expires on June 30, 2014.

Under continuing law, the State Audit Committee is a five-member committee with responsibilities that include, for example, ensuring that internal audits conducted by the OIA conform to the Institute of Internal Auditors' Code of Ethics and International Professional Practices Standards, and reviewing and commenting on the process used by OBM to prepare the state's comprehensive annual financial report. Two of the members are appointed by the President of the Senate, two members are appointed by the Speaker of the House, and one is appointed by the Governor.²⁵

²⁵ R.C. 126.46(A) and (B).

