
OHIO FACILITIES CONSTRUCTION COMMISSION

Elimination of Ohio Cultural Facilities Commission; transfer of authority

- Eliminates the Ohio Cultural Facilities Commission (CFC) as of January 1, 2014.
- Transfers CFC's functions to the Ohio Facilities Construction Commission (FCC).
- Revises the requirements for a cooperative agreement between FCC and a governmental agency or cultural organization to provide construction services for a state-funded cultural project.
- Revises the conditions under which state funds may be spent on a sports facility.
- Makes changes to the permitted content and use of cultural facility-related funds.
- Specifies procedures for the transfer of CFC's responsibilities, financial obligations, employees, equipment, assets, and records to FCC and allows FCC to enter into an agreement to transfer some of those responsibilities to the Department of Administrative Services (DAS).

Transfer of construction authority from Department of Natural Resources

- Transfers from the Department of Natural Resources (DNR) to FCC, with certain exceptions, the authority to administer DNR's capital facilities projects.
- Authorizes DNR to administer improvements under an agreement with the supervisors of a soil and water conservation district.
- Authorizes DNR to administer certain dam, waterway, wildlife, and roadway activities and projects, and requires FCC and DNR to review this provision in two years.
- Allows DNR, in the case of a public exigency, to let contracts for those dam, waterway, wildlife, and roadway activities and projects without competitive bidding or selection.
- Permits the Executive Director of FCC to allow DNR to administer any other project of which the estimated cost is not more than \$1,500,000.

School Facilities Commission

- Requires that the Executive Director of FCC also serve as the Executive Director of the School Facilities Commission (SFC).



- Permits the SFC to delegate contracting authority to FCC.
- Requires the SFC to consider the extent to which its classroom facilities project design standards support the trends in educational delivery methods, including digital access and blended learning.
- Eliminates the requirement that, at the time the SFC conditionally approves projects for which it intends to provide assistance for a fiscal year, it must identify and give priority to the next ten school districts in future fiscal years.
- Specifies that, in the case of a district that participates in the Expedited Local Partnership Program whose tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005, (1) the district's priority for state funding for a districtwide project under the main Classroom Facilities Assistance Program (CFAP) will be based on the *smaller* of its wealth percentile when it entered into the Expedited Local Partnership agreement or its current percentile, and (2) the district's share of its CFAP project cost will be the *lesser* of (a) the percentage locked in when the district signed the Expedited Local Partner agreement or (b) the percentage computed using its current wealth percentile rank.
- Requires that school facilities project agreements contain stipulations ensuring compliance by the school district with the provision of continuing law requiring a district to offer to sell or lease unused real property.
- Conditions approval of a district board's request to incur indebtedness for energy conservation measures on the SFC determining that the request for approval is complete and that the modifications are consistent with a specific state-assisted school facilities project.
- Provides specific conditions for a district in fiscal watch or fiscal emergency or that has an academic distress commission to receive approval to incur indebtedness for energy conservation measures.
- Requires that energy savings installment contracts contain a provision requiring that payment be stated as a percentage of savings and avoided costs attributable to one or more measures to be taken over a defined period of time and prescribes that payments will be made only to the extent that the projected savings and avoided costs actually occur.

Other provisions

- Requires a public authority that plans to contract for design-build services and that uses an in-house criteria architect or engineer to notify FCC, instead of DAS, before the architect or engineer performs the work.
- Transfers from DAS to the Executive Director of FCC the authority to contract for the design and implementation of energy and water conservation programs for state institutions and the authority to adopt and enforce rules regarding those contracts.

Elimination of Ohio Cultural Facilities Commission; transfer of authority

(R.C. 123.19, 123.201, 123.21, 123.27, 154.01, 154.23, 307.674, 3383.01 (123.28), and 3383.07 (123.281); Section 282.90; R.C. 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.08, and 3383.09 (repealed))

Effective January 1, 2014, the bill eliminates the Ohio Cultural Facilities Commission (CFC), and transfers its functions to the Ohio Facilities Construction Commission (FCC). The bill provides for CFC to continue its operations under existing law and at a similar level of funding during the period between July 1 and December 31, 2013.

Cooperative agreements to administer cultural projects

Beginning January 1, 2014, the bill requires FCC to administer the construction of state-funded cultural projects, unless FCC has entered into a cooperative agreement with a governmental agency or cultural organization in order for that agency or organization to administer the project. Under existing law, FCC may enter into an agreement with CFC or with a governmental agency or cultural organization to administer a project.

The bill removes state agencies and state institutions of higher education from the definition of "governmental agency," and adds the Ohio Historical Society to the definition of "cultural organization." Under continuing law, a political subdivision, a combination of political subdivisions, the U.S. government, and entities established pursuant to an interstate compact are considered governmental agencies. The continuing definition of "cultural organization" includes a governmental agency or Ohio nonprofit corporation that provides cultural programs or activities and a regional arts and cultural district.



Under the bill, a cooperative agreement between FCC and a governmental agency or cultural organization must include provisions that do all of the following:

- Specify how the project will support culture;
- Specify that the funds must be used only for construction;
- Identify the facility to be constructed, renovated, remodeled, or improved;
- Specify that the project scope meets the intent and purpose of the project appropriation and that the project can be completed and ready for full occupancy without exceeding appropriated funds;
- Specify that the governmental agency or cultural organization must hold FCC harmless from all liability for the operation and maintenance costs of the facility; and
- Provide that amendments to the agreement require FCC's approval.

Continuing law requires such an agreement to specify the following:

- That the governmental agency or cultural organization has local contributions amounting to not less than 50% of the total state funding for the project;
- That the agreement and any actions taken under it are not subject to Chapters 123. (public works) or 153. (public improvements) of the Revised Code, except for the requirements regarding the use of domestic steel products; and
- That the agreement and those actions are subject to the wage and hour requirements for public works projects.

However, under continuing law, a cooperative agreement with a cultural organization regarding a state historical facility is not required to include 50% local contributions, and the agreement and any actions taken under it are not subject to the domestic steel and wage and hour requirements.

The bill also eliminates provisions of law that specified under what circumstances CFC, a cultural organization, or the Ohio Building Authority were responsible to provide general building services for an Ohio cultural facility.



Requirements for Ohio sports facilities

Effective January 1, 2014, the bill makes several changes to the requirements for the construction of Ohio sports facilities. First, the bill eliminates provisions of law that required the governmental agency or nonprofit corporation that will own an Ohio sports facility that is financed in part by state bonds to administer the construction of the facility and to provide general building services for the facility.

The bill also eliminates the requirements that the agreement for such a facility and for the provision of general building services for the facility specify (1) that the agreement and any actions taken under it are not subject to Chapters 123. (public works) or 153. (public improvements) of the Revised Code, except for the requirements regarding the use of domestic steel products, and (2) that the agreement and those actions are subject to the wage and hour requirements for public works projects.

Finally, the bill eliminates a provision of law that prohibited state funds from being spent on an Ohio sports facility unless CFC had determined that a need for the facility existed in that region of the state.

Under continuing law, state funds may not be spent on an Ohio sports facility unless the owner of the facility has presented a satisfactory financial and development plan and has provided for a contribution of not less than 85% of the total construction cost, excluding any site acquisition cost, from sources other than the state.

Changes to funds

As of January 1, 2014, the bill transfers responsibility for three CFC funds to FCC – the Ohio Cultural Facilities Administration Fund, the Cultural and Sports Facilities Building Fund, and the Capital Donations Fund. Under the bill, the Director of Budget and Management must transfer any existing encumbrances against the current CFC Administration Fund to FCC's new Ohio Cultural Facilities Administration Fund.

Subject to applicable tax law limitation, the bill allows the Executive Director of FCC to ask the Director of Budget and Management to transfer to FCC's Ohio Cultural Facilities Administration Fund moneys credited to the Cultural and Sports Facilities Building Fund, instead of only interest earnings and bond premiums, to pay the cost of administering projects funded through the Cultural and Sports Facilities Building Fund.

The bill also creates the Theater Equipment Maintenance Fund to receive all theater-related revenues of the Department of Administrative Services (DAS) and to pay DAS's theater-related expenses. The fund's investment earnings are to be credited to it. Under the bill, the Director of Budget and Management must transfer from the



former CFC Administration Fund to the new Theater Equipment Maintenance Fund any funds that were collected under a management contract for the Riffe Theatres.

Transfer provisions

The bill includes several provisions of law to facilitate the transfer of CFC's responsibilities, financial obligations, equipment, assets, records, and any employees to FCC. FCC also may enter into an interagency agreement with DAS to require DAS to perform any of the functions transferred from CFC to FCC.

The bill allows FCC to designate the CFC employees, if any, to be transferred to FCC, along with any equipment assigned to those positions. Under the bill, any transferred employee retains the employee's respective classification, but FCC may reassign and reclassify the employee's position and classification if FCC determines this change to be in the best interest of office administration.

The bill specifies that FCC must complete any construction activities begun but not finished by CFC, and that CFC's rules, orders, and determinations related to CFC's construction functions continue in effect as rules, orders, and determinations of FCC. The bill also provides that any reference to CFC in any statute, rule, contract, grant, or other document is deemed to refer to FCC, and that FCC replaces CFC as a party to any pending judicial or administrative action or proceeding.

Transfer of construction authority from Department of Natural Resources

(R.C. 1501.011; Section 715.10)

With certain exceptions, the bill transfers from the Department of Natural Resources (DNR) to FCC the authority to administer DNR's construction projects. FCC currently administers construction and improvement projects on behalf of most state agencies.

Under the bill, DNR, like other state agencies, still may administer construction projects whose estimated cost is less than \$200,000. Beginning on September 29, 2016, that amount will be adjusted periodically to reflect inflation. Additionally, the bill requires DNR to administer the following types of construction and improvement projects that FCC otherwise would administer:

- (1) The construction of improvements under an agreement with the supervisors of a soil and water conservation district;
- (2) Dam repairs administered by the Division of Engineering;



(3) Projects or improvements administered by the Division of Watercraft and funded through the Waterways Safety Fund;

(4) Projects or improvements administered by the Division of Wildlife; and

(5) Activities conducted by DNR in cooperation with the Department of Transportation to maintain DNR's roadway inventory.

For dam, waterway, wildlife, and roadway projects, the bill allows DNR to award a contract without competitive bidding or selection if the contract involves a public exigency. The bill also allows the Executive Director of FCC to authorize DNR to administer any other project or improvement whose estimated cost, including design fees, construction, equipment, and contingency amounts, is not more than \$1,500,000.

Regarding the projects that DNR administers, the bill eliminates the current requirements under which DNR advertises for bids, awards contracts using competitive bidding and selection, alters existing contracts under certain circumstances, and uses a modified bidding process for contracts that involve a public exigency. Instead, the Public Improvements Law will govern DNR-administered projects. That Law establishes the administrative, bidding, and other requirements for most public improvement projects.

Finally, two years after this portion of the bill takes effect, FCC and DNR must review the provisions that give DNR construction authority for dam, waterway, wildlife, and roadway projects.

School Facilities Commission

Background on School Facilities Commission programs

(R.C. Chapter 3318.)

The School Facilities Commission (SFC) administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Other smaller programs address the



particular needs of certain types of districts and schools but most assistance continues to be based on relative wealth.

Executive director; contracting authority

(R.C. 3318.31)

H.B. 487 of the 129th General Assembly retained SFC as an independent agency within FCC, an agency created by that act. The bill removes the current provision for appointment of a separate executive director for both commissions and instead requires that the Executive Director of FCC also serve as the Executive Director of SFC. The bill also permits SFC to authorize FCC to make and enter into contracts and to execute all corresponding instruments on behalf of SFC. Under continuing law, SFC already shares employees and facilities with FCC.

Next ten list

(R.C. 3318.023 (repealed))

Under continuing law, SFC annually conditionally approves for assistance a select number of districts from the list of those with the lowest valuations and which have not already received CFAP assistance based on the districts' estimated project costs and the amount of funding available for the fiscal year. Under current law, SFC, each fiscal year when it determines the districts it plans to serve during that year, must fix the priority of the next ten school districts according to their adjusted valuation per pupil. Such districts are generally given priority for funding in future fiscal years.

The bill eliminates the requirement to create the next list and to give those districts priority.

Project design standards

(R.C. 3318.031)

The bill replaces the current requirement that SFC consider the extent to which its design standards support and facilitate smaller classes and smaller schools and replaces it with a requirement to consider the extent to which the design standards support the trends in educational delivery methods, including digital access and blended learning. Under continuing law, not changed by the bill, SFC must also consider the extent to which the design standards support the following:

- Provision of sufficient space for training new teachers and promotion of collaboration among teaching professionals;

- Provision of adequate space for teacher planning and collaboration;
- Provision of adequate space for parent involvement activities; and
- Provision of sufficient space for innovative partnerships between schools and health and social service agencies.

CFAP shares for Expedited Local Partner districts with large amount tangible personal property valuation

(R.C. 3318.36)

The bill makes an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their local share percentage for when they eventually become eligible for CFAP. Under the bill, when an Expedited Local Partner district becomes eligible for CFAP, if the district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005 (the year the tax on that property began to phase out), the district's priority for state funding for a districtwide project under the CFAP will be based on the *smaller* of its wealth percentile when it entered into the Expedited Local Partnership agreement or its current percentile. In addition, the district's share of its CFAP project cost will be the *lesser* of (1) the percentage locked in under the Expedited Local Partner agreement or (2) the percentage computed using its current wealth percentile rank.

Background

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, averaged over three years. That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years, and is now fully phased out.¹¹² Thus, the value of that tangible personal property is no longer included in a district's current total taxable value. As each district's three-year average adjusted valuation is computed each year, the impact of the tangible personal property valuation will decrease. This decline in total valuation could eventually lower a district's wealth percentile and increase the amount of state funding available for its school facilities projects.

But districts participating in the Expedited Local Partnership Program "lock in" the percentage of their districtwide CFAP projects when they enter into their expedited

¹¹² R.C. 5711.22, not in the bill.

agreements. Under the Expedited Local Partner Program, a participating district may go ahead with some of its districtwide project using local funds, and apply that local expenditure toward its share when it becomes eligible for CFAP. Since a district's percentage of the total project cost is set in the expedited agreement, changes in the district's valuation (up or down) do not affect its share of the eventual CFAP project. Accordingly, districts that had a relatively higher amount of tangible personal property in their total taxable values when the tax was phased out may experience a negative effect from having locked in the percentages of their local shares of their CFAP projects. That is, their shares may be lower now, if computed using their lower valuations, than they were when the districts entered into their expedited agreements.

Disposal of school district property

(R.C. 3318.08)

The bill requires that the agreement between a school district and SFC for the construction of a state-assisted classroom facilities project contain stipulations ensuring that SFC will not release project funds or approve demolition of a facility unless and until the district complies, and remains in compliance, with the provision of continuing law requiring districts to offer unused property for sale or lease to community schools and college-preparatory schools.¹¹³ Continuing law already requires the agreement to contain a similar stipulation regarding the required right of first refusal for community schools and college preparatory boarding schools located within the district when it decides voluntarily to sell a parcel of real property.¹¹⁴

Energy conservation measures

(R.C. 133.06 and 3313.372)

Report of costsavings

A school district, subject to approval by SFC, may issue bonds to purchase energy conservation improvements without voter approval in an amount up to $\frac{1}{10}$ of 1% of the district's tax valuation. In applying for approval, a district must submit to SFC a report that includes estimates of all costs of design, engineering, installation, maintenance, repairs, debt service, and amounts by which energy consumption and resultant operational and maintenance costs may be reduced. Under continuing law, the report must also include estimates of both (1) forgone residual value of materials or equipment replaced by the new energy conservation measures, and (2) a baseline

¹¹³ R.C. 3313.411, not in the bill.

¹¹⁴ R.C. 3314.41, not in the bill.



analysis of actual energy consumption data for the preceding three years. However, under the bill, the utility baseline analysis must be based only on the actual energy consumption data for the preceding 12 months. Districts also may enter into a series of installment contracts for energy conservation improvements with the approval of SFC.

Requests for approval

Under the bill, SFC may approve a district board's request for approval to incur indebtedness only after SFC determines (1) that the request for approval is complete, and (2) that the installations, modifications, or remodeling are consistent with any project to construct or acquire classroom facilities, or to reconstruct or make additions to existing classroom facilities under a state-assisted school facilities project. Continuing law also requires that prior to approval, SFC must determine that the district board's findings are reasonable.

The bill also permits SFC, in consultation with the Auditor of State, to deny a request if the district has been declared to be in a state of "fiscal watch" and SFC finds that the expenditure of funds is not in the best interest of that district. Moreover, under the bill, a district that has been declared to be under "fiscal emergency" must submit evidence that the installations, modifications, or remodeling have been approved by the district's financial planning and supervision commission. Likewise, a district for which the Superintendent of Public Instruction is required to establish an academic distress commission must receive prior approval of their request by their academic distress commission.¹¹⁵

Debt service

Under current law, debt service on energy conservation bonds is paid with estimated savings on energy costs. The bill requires that the terms of any installment contract for energy savings measures include a provision requiring that all payments,

¹¹⁵ The Superintendent of Public Instruction must establish an academic distress commission for each school district that meets any of the following conditions for three or more consecutive years: (1) the district has been declared to be in academic emergency and has failed to make "adequate yearly progress" under the federal No Child Left Behind Act, (2) the district has received a grade of "F" for the performance index score *and* a grade of "D" or "F" for the overall value-added progress dimension, (3) the district has received an overall grade of "F" *or* a grade of "F" for the overall value-added progress dimension, or (4) at least 50% of the schools operated by the district have received an overall grade of "D" or "F." The commission ceases to exist when the district for two of the three prior school years either (a) is rated in need of continuous improvement or better, or (b) receives a grade of "C" or better for *both* the performance index score and overall value-added progress dimension. (See R.C. 3302.10, not in the bill.) The ratings referred to in (1) and (a) are as used under the former rating system recently replaced by H.B. 555 of the 129th General Assembly. The ratings referred to in (2), (3), (4), and (b) are as under the new rating system created by that act effective for the 2012-2013 school year and thereafter.

except payments for repairs and obligations upon premature contract termination, be stated as a percentage of savings and avoided costs attributable to one or more measures to be taken over a defined period of time. The bill also requires that debt service on energy conservation contracts be paid only to the extent that the projected savings outlined in the contract *actually* occur. The bill also requires the contractor to warrant and guarantee that the energy conservation measures will realize guaranteed savings and to pay the amount of any shortfall in the projected savings.

Notification of use of criteria architect or engineer

(R.C. 153.692)

The bill requires a public authority that plans to contract for design-build services and that uses an in-house criteria architect or engineer to notify FCC, instead of DAS, before the architect or engineer performs the work.

Energy and water conservation programs

(R.C. 156.02, 156.03, 156.04, and 156.05)

The bill transfers from DAS to the Executive Director of FCC the authority to contract for the design and implementation of energy and water conservation programs for state institutions and to adopt and enforce rules regarding those contracts.