

- (OBM) The bill makes changes concerning “specific higher education projects” to expand existing authority to allow the Director of Budget and Management to create new appropriation items and transfer appropriations to them.
- (DEV) The bill would change temporary law governing the funding for the study of minority business needs from 1998 appropriations to biennial appropriations.
- (EDU) The bill makes various changes in how Disadvantage Pupil Impact Aid moneys have to be spent to address concerns about districts affected by the cap on overall state increases, and the fact that districts may need several years to rearrange their spending to conform with new DPIA requirements.
- (EDU) The bill permits districts to use the proceeds from a permanent improvement levy used to purchase textbooks and instructional materials, or the proceeds of securities issued for such purposes, in meeting the requirement to deposit 4 percent of all operating revenues into a textbook and instructional materials fund.
- (EDU) The bill eliminates the formula for gifted education funding in FY 2000. Studies were previously authorized to make recommendations for the future of this program.
- (EDU) The bill increases FY 1999 GRF appropriations by \$17.7 million for vocational education purposes including: an additional 200 state-supported JVSD units, full funding for the GRADS earmark for FY 1999, and an increase in funds earmarked for special education at JVSDs from \$3.1 million to \$4.6 million in FY 1999.
- (EDU) The bill changes a number of definitions used in determining basic aid to school districts. There is no substantial fiscal impact associated with these changes, as they essentially clarify original legislative intent.
- (EDU) The bill alters the formula for the basic aid calculation to conform with legislative intent in HB 650. Therefore, there is no substantial fiscal effect.
- (EDU) The bill establishes a mechanism for calculating a baseline amount of state basic aid for future year comparisons, and defines state basic aid for FY 1998 and following years. Again, there is no substantial fiscal impact associated with these changes, as they essentially clarify original legislative intent.
- (EDU) The bill requires school construction appropriations to the Ohio School Facilities Commission to be not less than \$300 million per fiscal year, until such time as the sexennial committee on the methodology for costing an adequate education issues its first report.
- (EDU) The bill makes several changes in special education funding including the elimination of unit funding for county boards of MR/DD, and the requirement that school districts employ one speech-pathologist for every 2,000 students and one school psychologist for every 2,500 students.
- (EPA) The bill creates Fund 491, line item 715-665, Moving Expenses, to be used to pay for the cost of moving the agency into new facilities. Cash balances from various non-GRF funds within EPA’s existing resources will be transferred to this new fund.
- (EPA) The bill would remove the \$3,000,000 cap from the scrap tire program to allow the program to utilize up to the balance in the Scrap Tire Management Fund 4R5, line item 715-656. Approval by the Controlling Board will be needed for all expenditures from Fund 4R5.

- (DOH/HUM) The bill exempts a nursing home meeting specific criteria from Certificate of Need requirements. According to the Department of Human Services, this will apply to one facility which will increase potential Medicaid expenditures by \$2.0 million, and will increase potential federal revenue by \$1.2 million.
- (HUM) The bill would allow a transfer of \$4 million from state share GRF in any Department of Human Services GRF line item to Department of Health's appropriation item 440-459, Ohio Early Start. These moneys will be targeted to serve children under the age of three who are at risk of developmental disabilities. This provision will increase available funding from \$6.15 million to \$10.15 million.
- (HUM) The bill requires the Department to write rules to allow for the expansion of eligibility for subsidized child care up to 185 % of poverty, and allows counties individually to expand eligibility up to 185%, regardless of what eligibility level the state sets. Since current underspending is running around \$30 million for FY 1998, this should have no effect on state expenditures. Recipients of subsidized child care also are required to pay a portion of the cost, based on a sliding fee scale.
- (TAX) The bill, through changes in the corporate franchise tax and the personal income tax, creates three types of exemptions from the pass-through entity tax. Two are clearly meant to avoid multiple taxation of the same income, while the third is meant to prevent the flight of certain investment companies to other states.
 1. Prevents Pyramiding of pass-through entity taxes,
 2. Exempts most income of investment companies, and
 3. Exempts investments in pass-through entities that won and operate public utilities

LBO does not have an estimate of the revenue loss associated with these provisions. However, funds impacted by this change would include the General Revenue Fund, the Local Government Fund, the Library and Local Government Support Fund and the Local Government Revenue Assistance Fund.

- (OVH) The bill permits a cash transfer of \$160,472 from the Ohio Veteran's Home Fund 604, used for equipment and capital, to the Ohio Veteran's Home Operating Fund 4E2, used for operating expenditures, to replace the one percent reduction in FY 1999 operating accounts required in Am. Sub. H.B. 650.
- (OVH) The implementation of the Veterans' Home Network would presumably result in an increased number of individuals receiving domiciliary and nursing home care. Additional revenue to Fund 3L2 may be generated from additional federal VA per diem grants, and additional revenue may be deposited in Fund 4E2 (Operating) and Fund 604 (Improvement) as a result of additional resident assessments.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
School Districts			
Revenues	- 0 -	Varying amounts of gains or losses	- 0 -
Expenditures	- 0 -	Varying amounts of gains or losses	- 0 -
Joint Vocational School Districts			
Revenues	- 0 -	\$17,693,118 gain	- 0 -
Expenditures	- 0 -	\$17,693,118 increase	- 0 -
Counties, Municipalities and Townships			
Revenues	- 0 -	Loss from tax provisions	Loss from tax provisions
Expenditures	- 0 -	- 0 -	- 0 -

- (EDU) The bill makes various changes in how Disadvantage Pupil Impact Aid moneys have to be spent to address concerns about districts affected by the cap on overall state increases, and the fact that districts may need several years to rearrange their spending to conform with new DPIA requirements.
- (EDU) The bill permits districts to use the proceeds from a permanent improvement levy used to purchase textbooks and instructional materials, or the proceeds of securities issued for such purposes, in meeting the requirement to deposit 4 percent of all operating revenues into a textbook and instructional materials fund.
- (EDU) The bill eliminates the formula for gifted education funding in FY 2000. Studies were previously authorized to make recommendations for the future of this program.
- (EDU) The bill increases FY 1999 GRF appropriations by \$17.7 million for vocational education purposes including: an additional 200 state-supported JVSD units, full funding for the GRADS earmark for FY 1999, and an increase in funds earmarked for special education at JVSDs from \$3.1 million to \$4.6 million in FY 1999.
- (TAX) The bill, through changes in the corporate franchise tax and the personal income tax, creates three types of exemptions from the pass-through entity tax. Two are clearly meant to avoid multiple taxation of the same income, while the third is meant to prevent the flight of certain investment companies to other states.
 1. Prevents Pyramiding of pass-through entity taxes,
 2. Exempts most income of investment companies, and
 3. Exempts investments in pass-through entities that won and operate public utilities

LBO does not have an estimate of the revenue loss associated with these provisions. However, funds impacted by this change would include the General Revenue Fund, the Local Government Fund, the Library and Local Government Support Fund and the Local Government Revenue Assistance Fund.

- (TAX) The bill explicitly prohibits municipalities from taxing certain activities, entities, or receipts. This is a reaction to the recent Supreme Court ruling over turning the implicit doctrine of preemption and allowing municipalities to tax utility profits. The result is a long-run loss of revenue to municipalities.

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(ACC) ACCOUNTANCY BOARD

Permanent Law – To Correct Language Regarding Process for Board’s Collection of Licensing Fees (Sections 4701.10, 4701.20, 4743.05, 4745.01)

The bill corrects language regarding the process for the Accountancy Board’s collection of licensing fees. Licensing fees submitted to the Board shall be forwarded to the Treasurer of State for deposit only after the Board approves the application. In the event that the application is not approved, the Board shall return the payment to the applicant. Since this merely codifies existing practice, there is no fiscal effect on the state or political subdivisions.

(DAS) DEPARTMENT OF ADMINISTRATIVE SERVICES

Temporary Law – Central Services Agency Transfer (Section 20.05 of Am. Sub. H.B. 215 of the 122nd G.A.)

This provision would authorize the transfer of up to \$150,000 from Fund 4K9, the Occupational Licensing and Regulatory Fund, to Fund 115, the Central Service Agency Fund of the Department of Administrative Services (DAS). The Central Service Agency Fund allows for payroll, administrative, and financial services for state boards and commissions that do not possess the expertise or staff to perform these functions. The transfer to DAS' line item, 100-632, Central Service Agency, would be used to cover the deficit that has resulted from the phase-out of the Medical and Pharmacy Boards' use of the fund. The subsidy is necessary because the Pharmacy and Medical Boards will soon cease to contribute to the fund, but DAS' administrative costs would not decrease enough to be sustained by contributions of the other boards that use these central services. The \$150,000 would cover these costs and also cover deficits from the phase-out of other programs, should any more occur. The subsidy would be sufficient until the 2000 and 2001 budget.

(OBM) OFFICE OF BUDGET AND MANAGEMENT

Permanent Law – Expand OBM Authority Over “Specific” Higher Education Projects (Section 126.14)

This item adds text to an existing section of law to increase OBM’s ability to account for, and flexibility in controlling, “specific higher education projects.” “Specific higher education projects” are defined as projects for which the Director of Budget and Management can approve expenditures without a vote of the Controlling Board, as long as the project is within 10 percent of its original cost estimate. OBM provides a list of these projects to the Controlling Board within two months after the passage of any capital appropriation act. This item allows the Director of Budget and Management to create new appropriation items, and transfer appropriations to them. The item has no direct fiscal effect on the state or its political subdivisions.

(DEV) DEPARTMENT OF DEVELOPMENT

Temporary Law – Study of Minority Business Needs (Section 47.13 of Am. Sub. H.B. 215)

Current temporary law designates \$250,000 in fiscal year 1998 from line item 195-646, Minority Business Enterprise Loan, to be used for a study of minority business needs and how to improve Department of Development services for minority businesses. The bill would earmark these moneys to come from *biennial appropriations*, thus allowing the study to proceed in either fiscal year 1998 or fiscal year 1999.

(EDU) DEPARTMENT OF EDUCATION

Appropriation Authority Changes (Section 50 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

Fund	Line Item #	Line Item Name	Fiscal Year	Current	Proposed	Change	Purpose
GRF	200-100	Personal Services	1999	\$10,756,210	11,256,210	\$500,000	For office move
GRF	200-200	Maintenance	1998	\$8,691,111	\$3,991,111	(\$4,700,000)	Transfer to FY 1999
GRF	200-200	Maintenance	1999	\$4,597,207	\$6,797,207	\$2,200,000	For office move
GRF	200-300	Equipment	1999	\$116,773	\$2,116,773	\$2,000,000	For office move
GRF	200-545	Vocational Education Enhancements	1999	\$184,298,314	\$201,991,432	\$17,693,118	Add JVSD units and funds; add funds for special education units in JVSD's; fund GRADS
GRF	N/A	Net change	1998-99	N/A	N/A	\$17,693,118	Net Change

Temporary Law – Moving Expenses of the Department of Education (Section 50 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The amount of \$4.7 million would be transferred from fiscal year 1998 to fiscal year 1999 in order to support the department's move from 65 South Front Street to other facilities. This move, originally scheduled to occur in fiscal year 1998, is now anticipated for fiscal year 1999. The funds would be taken from the Maintenance line item in fiscal year 1998 and divided among three fiscal year 1999 line items (Personal Services, Maintenance and Equipment) according to the anticipated types of expenditures. There would be no effect on state expenditures or revenues in the biennium.

Temporary Law – Disadvantaged Pupil Impact Aid (DPIA) (Section 50.09 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

In the temporary law for DPIA, \$3 million is earmarked for school breakfast programs in each fiscal year. Of that amount, the language currently calls for \$500,000 to be used by the department to provide start-up grants to rural school districts. The provision would change that language to state that "up to" \$500,000 would be used in each fiscal year for that purpose. Since the total amount of the \$3 million earmark for the breakfast programs (as well

as the line item's appropriation amount) would remain the same, the change would have no fiscal effect on breakfast programs overall but might reduce the number of rural districts receiving such funds as start-up aid and/or the amounts of such funds going to these districts.

Temporary Law – Desegregation Legal Fees (Section 50.12 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The provision would make two related changes in the temporary law regarding earmarked legal fees within this line item. First, the earmark of up to \$1 million in fiscal year 1999 to cover the legal fees associated with desegregation cases brought against the state would be eliminated. Second, however, new language would be inserted to the effect that, in fiscal year 1999, "any unobligated balances" in the line item may be used to cover the legal fees associated with such cases.

These two changes have the effect of enabling more than the original \$1 million to be used for this purpose. However, since the total amount of the appropriation would remain unchanged, there would be no fiscal effect upon the state's expenditures or revenues.

Temporary and Permanent Law – Special Education (Section 50.13 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

Several changes in the set asides for fiscal year 1999 for line item 200-540, Special Education Enhancement, are made by the bill; appropriations remain the same. The changes are shown in the table below.

Set-Aside	Amount in Am. Sub. H.B. 650	Amount Proposed in the Bill
County Boards of MR/DD and institutions	\$42,000,000	\$40,000,000 for county boards of MR/DD; \$2,500,000 for institutions
Home Instruction/In School Tutoring	\$22,000,000	\$3,000,000
Occupational and physical therapy	\$2,000,000	\$0
Parent mentoring	\$1,150,000	1,150,000 (no change)
Teacher training	\$100,000	\$100,000 (no change)
Psychology Interns	\$ 0	\$2,500,000
Special education transition funding for collaborative services	\$ 0	\$18,000,000

In prior years, the home instruction set aside was used to provide tutoring services to two groups of students: a) students who, because of an extended illness, required tutoring at home; and b) learning disabled students who received tutoring sessions during school hours. The new special education weights should provide funding to pay for the in-school tutoring sessions. Thus, only \$3 million is needed in FY 1999 to pay for tutoring services in students' homes. New set-aside language for FY 1999 provides up to \$2,500,000 for psychology interns, and up to \$18,000,000 in FY 1999 is to be used for special education transition funding for collaborative efforts which shall be used under a plan prepared by the Department of Education and approved by the Controlling Board. Funding for county boards of MR/DD is limited to \$40 million in FY 1999, \$44 million in FY 2000, and \$48.4 million in FY 2001.

Several changes are made in special education funding, as follows:

- a) Unit funding for county boards of MR/DD is eliminated in fiscal years 1999 through 2001, and is replaced with a per pupil amount calculated under the school funding formulas.
- b) School districts are required to provide one speech-language pathologist per 2,000 students and one school psychologist per 2,500 students.
- c) School districts are required to document to the Department of Education that they employ the appropriate number of licensed or certificated personnel to serve the needs of handicapped children.
- d) School districts are required to comply with the provisions of state special education rules in effect on May 1, 1998, limiting the number of students per licensed or certificated professional.
- e) The Department of Education is required to annually audit a sample of school districts to ensure that handicapped students are being appropriately served.
- f) County boards of MR/DD are allowed to elect not to participate in the education of disabled children ages 6 through 21, if they provide notice by a certain date.
- g) A Special Education Implementation Review Committee is established.

It is unknown at this time if the provision to require school districts to provide one speech-language pathologist per 2,000 students and one school psychologist per 2,500 students will be more costly to school districts than the amounts they are currently paying to provide these services.

Temporary Law – Vocational Education (Section 50.14 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The provision would increase the maximum number of state-supported JVSD units from 2,800 to 3,000 in fiscal year 1999 and would add language to the effect that this number is to include the GRADS units. The provision would also increase the amount of aid funds earmarked for JVSD's from \$125 million to \$134 million in that fiscal year and would increase the line item's appropriation by the same amount.

Regarding GRADS, the provision would fund the existing \$7,193,118 earmark for fiscal year 1999 by increasing the line item's appropriation by that amount.

Finally, the provision would increase the amount of funds earmarked for special education at JVSD's from \$3.1 million to \$4.6 million and would increase the line item's appropriation by the same amount.

The fiscal effect on the state of these three changes would be an increase in fiscal year 1999 GRF appropriations by the amount \$17,693,118.

These additions to the department's appropriations for vocational education would enable the department to fulfill its maintenance-of-effort requirement to remain eligible for federal funds grants. Without these additions, the vocational education spending would incur a slight reduction from the recently estimated FY 1998 spending level and, thus, could jeopardize those grants. (However, it should be noted that the department quite recently estimated that it would lapse approximately \$18 million in vocational education spending for FY 1998. With this revision, the estimate for total FY 1998 spending is then revised downward by the \$18 million. With this lower level for FY 1998, the above additions to the FY 1999 appropriations would no longer be necessary to meet the maintenance-of-effort threshold, since vocational education's currently appropriated FY 1999 spending would be at approximately the same level as for FY 1998.)

Temporary Law – Base Cost Funding (Section 60.06 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

Three changes are made to this section of temporary law. First, the set-aside language for special education recomputation and vocational education recomputation for fiscal year 1998 is restored. This language was included in the budget act, and inadvertently removed in Am. Sub. H.B. 650. The second change restores the reference to Revised Code section 3317.026. This will allow school districts to receive payments based on the recalculation of the foundation formula taking into account refunds of tangible personal property taxes. New language also permits the Controlling Board to increase the \$9 million set-aside for this adjustment, along with the 3317.027 and 3317.028 adjustments, if the Board receives a request to do so from the Department of Education. The third change is a specification of the \$13,861,282 set-aside in fiscal year 1999 in additional state aide districts will receive for special education students whose costs exceed \$25,000 in one school year. The funds to cover this cost were included in the appropriations in Am. Sub. H.B. 650 of the 122nd General Assembly. The language merely specifies that \$13,861,282 be set aside for such purposes.

Temporary Law – Community Schools (Section 50.52 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

In calculating funding for special education services in community schools, the bill uses the average cost within a county of serving a particular handicapping condition instead of the costs within a district of serving a particular handicapped student. This provision should ensure that community schools receive a more uniform amount to educate special education students with a particular handicap.

The bill requires any potential sponsor to notify the proposing group within 30 days as to whether it wishes to enter into a preliminary agreement with the proposing group. This provision should help expedite the process of establishing community schools, but would not have a fiscal impact. Finally, the bill adds new temporary language stating that the Department of Education must pay community schools an amount for all-day kindergarten if the school district in which the student is entitled to attend school is eligible but does not receive a payment for all-day kindergarten and the student is reported as an all-day kindergarten student at the community school. It is estimated that the amount this provision would cost the state would be minimal.

For the Lucas County Pilot project, the bill: a) eliminates a requirement that all money received by a start-up community school during its first year of operation be placed in the custody of the Treasurer of the Lucas County Educational Service Center and requires the contract between the sponsor and the governing authority of a pilot project community school to specify that the school be the custodian of all money received during the first year of its operation unless another custodian is designated in the contract; b) requires that a sponsor notify a community school of a proposed termination or nonrenewal 180 days before taking the action; c) eliminates a requirement for program audits and requires audits by the Auditor of State in accordance with his current standards for school district; and d) requires that various reports of the Legislative Office of Education Oversight on community schools include schools established under the pilot project and community schools established under Chapter 3314. of the Revised Code. The bill also permits community schools operating under the Lucas County Pilot

Project to use facilities located anywhere in any county contiguous to Lucas County. This provision should provide more flexibility to groups proposing the establishment of community schools, but would not have a fiscal impact.

The bill eliminates the requirement that individuals or groups wishing to start new community schools first offer the opportunity to sponsor the community school to the board of education of the school district in which the school would be located. Instead, the individual or group is allowed to go directly to the Lucas County Educational Service Center or the University of Toledo Board of Trustees.

Temporary Law – Relocation of the GRADS earmark (Section 50.14 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The amendment transfers the FY 1999 GRADS program earmark (\$7,193,118) from its current position as a separate earmark under line item 200-545, Vocational Education Enhancements, to a new position within another earmark in the same line item. This other earmark is the current \$17,000,000 earmark of additional funds for the Vocational Education Programs in comprehensive high schools. The transfer of the GRADS earmark to within the Vocational Education Programs earmark increases the latter earmark's amount from \$17,000,000 to \$24,193,118.

Temporary Law – Extension of Deadline: Teacher Professional Development Task Force Report (Section 50.44 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The bill extends until January 1, 1999 the deadline date by which the Teacher Professional Development Task Force must issue its report to the General Assembly concerning the development of a comprehensive structure for the delivery of continuing professional development for teachers employed in the state's primary, secondary, vocational and special educational system. The previous deadline date was August 1, 1998.

Temporary Law – Extension of Deadline: Schools Technology Implementation Task Force Report (Section 50.43 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The bill extends until January 1, 1999 the date by which the task force must issue its report concerning a comprehensive framework for coordinating the planning and implementation of technology in Ohio schools. The previous deadline date was August 1, 1998.

Temporary Law – Interactive Distance Learning Pilot Project (Section 69.03 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The amendment changes the provisions governing the interactive distance learning program and requires the Office and Information, Learning, and Technology Services to use the appropriations to establish a distance learning pilot project consisting approximately 100 sites and including school districts and/or consortia of school districts and non-school entities. The pilot project is designed to test and evaluate the universal connectivity potential of the technology known as Asynchronous transmission mode and other various classroom technology.

Temporary Law – School District Budget Reserve fund – NEW SECTION

The bill requires any board of education that has a balance in its budget reserve fund of less than the five percent requirement established in H.B. 412 of the 122nd General Assembly, and receives from the Bureau of Workers' Compensation a refund or other reimbursement of moneys previously paid into the Bureau, to first use the refund to establish the five percent required balance. If the board already has a five percent balance in the fund, the refund can be used for any lawful purpose. This provision would ensure that districts use any Bureau of Workers' Compensation refunds to establish their budget reserve funds. The reserve funds would then be available should the district encounter unforeseen fiscal problems.

Permanent Law – Local District Report Cards (Section 3801.0711)

Amends permanent law so that race and gender information is not included on local district report cards. This provision does not have a fiscal impact.

Permanent Law – Proficiency Tests (Section 3302.03)

Permanent law is amended so that the Department of Education is not required to release field test questions to the public. Since the development and testing of such questions is costly, this provision should reduce costs to the Department.

Permanent Law - Shared Services Extended to Gifted Education (Section 3313.841)

The language currently permits city, local, exempted village and joint vocational school districts and educational service centers to contract to share the services of special education instructors and supervisors. The contracts are limited to the type of classes described in section 3317.05(B) (i.e., special education classes).

The bill would change this language; it would eliminate the reference to section 3317.05(B), which allows the contracts for special education classes only, and would add more-general language to the effect that the contracts would be allowed for "special education and related services and gifted education" classes. Thus, the permission to contract among districts and ESC's would now be extended to include gifted education classes.

Permanent Law - ADM under Joint Programs (Section 3313.842)

Current law permits two or more school districts to contract for joint programs of instruction, and states that a student participating in such a joint program is to be included in the formula ADM of the district in which the student is enrolled. The bill, however, would eliminate all references concerning the student's inclusion in an ADM count.

Permanent Law - Open Enrollment Policies Required (Section 3313.98)

Concerning open enrollment, current law permits a school district to adopt a resolution that (1) entirely prohibits enrollment of students from adjacent districts (other than allowed tuition students), (2) permits enrollment of students from all adjacent districts, or (3) permits enrollment of students from all other districts.

The bill would change this permission to a requirement, so that each district would have to adopt a resolution establishing for the district one of the above three policies concerning open enrollment.

Permanent Law - Definition of Special Education Cost (Section 3314.08)

The bill would change the definition of the cost of providing special education and related services to handicapped children. Instead of using an "actual cost" of serving an IEP student in a given school district, the bill would define an "average county cost" (averaged among school districts within a county) of providing special education and related services to "similarly handicapped children". The reference to IEP's would be eliminated. This new definition would replace the "actual cost" in determining state aid payments to the districts.

Permanent Law - School Building Program Assistance (Chapter 3318.)

This bill would allow the Ohio School Facilities Commission to provide funds to the Big 8 school districts to be used for major renovations, additions, and repairs of school facilities. Existing language in Am. Sub. S.B. 102 of the 122nd G.A. does not specify additions as one of the potential uses of SFC funds. The amount of the appropriation in the line item CAP-737, School Building Program Assistance, is not changed from its current \$300 million for FY 1999.

Permanent Law - \$300 Million per Fiscal Year for Classroom Construction (Section 107.031)

The bill requires that, until the General Assembly receives the first report of the sexennial committee on the methodology for costing an adequate education, the governor's budget recommendations will include recommendations for appropriations to the Ohio School Facilities Commission that aggregate not less than \$300 million per fiscal year for constructing, acquiring, replacing, reconstructing or adding to classroom facilities.

Permanent Law - Vacation Leave for County Employees (Section 325.19)

The bill would clarify that current law, which provides for vacation leave for county employees, does not apply to an employee of a county board of mental retardation and developmental disabilities (MR/DD) who works at, or provides transportation services to, a special education program, if the employee's employment is based on a school year and the employee is not subject to an employment contract that provides for the law to apply.

Permanent Law - Cleveland City School District Transportation Reimbursement (Section 3313.975)

Eliminates the payment to the Cleveland City School District for reimbursement of the costs of transporting students participating in the pilot scholarship program.

Permanent Law - Transportation Funding (Sections 331.03, 3317.022)

The bill permits the Department of Education to recalculate each district's "most efficient transportation use cost per transported student" annually instead of biennially. Further, it permits the department to utilize the most recent data available in updating the use cost per student; and it requires a 2.8% annual inflation rate to be used when the data for the calculation are not current. Finally, the bill distinguishes between those students transported by a district and those transported by other means.

Permanent Law - Replacement of District Revenues for the Textbook Fund (Section 3315.171)

Current law (section 3315.17(A)) requires each district and JVSD to establish a textbook and instructional materials fund and to deposit into that fund 4 percent of all revenues received by the district for operating expenses.

The bill would add a new section that would permit a school district, when meeting the above requirement, to "replace revenues received for operating expenses with money received from any of the following sources": (1) a permanent improvement levy to the extent that the proceeds are restricted by the district board to expenditures for textbooks and instructional materials; or (2) the proceeds of securities whose use is restricted to expenditures for textbooks and instructional materials. School districts may also use any other revenue source identified by the Auditor of State through rules adopted in consultation with the Department of Education.

Permanent Law - Replacement of District Revenues for the Capital and Maintenance Fund (Section 3315.181)

Current law (section 3315.18(A)) requires each district and JVSD to establish a capital and maintenance fund and to deposit into that fund 4 percent of all revenues received by the district that would otherwise have been deposited in the general fund. One exception is that money received from a permanent improvement levy may replace general revenue moneys in meeting this requirement.

The bill would provide a restriction to the above exception: the district would be allowed to substitute the proceeds from a permanent improvement levy only to the extent that the proceeds are available to be used for the acquisition, replacement, enhancement, maintenance or repair of permanent improvements.

The bill would also provide other exceptions to the general-fund moneys requirement in meeting the 4 percent requirement. The district would be allowed to replace general fund revenues with (1) proceeds received from any securities whose use is limited to the acquisition, replacement, enhancement, maintenance or repair of permanent improvements; (2) insurance proceeds received as the result of damage to or theft or destruction of a permanent improvement, to the extent the proceeds are placed in a separate fund; (3) proceeds from the sale of a permanent improvement to the extent the proceeds are placed in a separate fund; (4) proceeds from a tax levy to the extent the proceeds are available for the maintenance of capital facilities; (5) proceeds of certificates of participation issued as part of a lease-purchase agreement; (6) proceeds from school district income tax permanent improvement levies; and (7) any other revenue identified by the Auditor of State through rules, adopted in consultation with the Department of Education.

Permanent Law - Definitions Used in Determining Basic Aid to School Districts (Section 3317.02)

The bill would make several changes in this section, which only contains the definitions of certain terms used in Chapter 33. The changes are the following:

- (1) Concerning the change to weighted ADM for special education: When adopting rules for the determination of districts' FTE's, the department of education would have to provide for counting any student in a district's category 1, 2 or 3 special education ADM in the same proportion in which the student is counted in formula ADM.
- (2) The formula ADM, instead of being the greater of the current October count and the 3-year average of the October counts, would be just the current October count. The 3-year average formula ADM would be newly defined as the average of a district's formula ADM's for the current and preceding two fiscal years. Start-up provisions would be provided for fiscal years 1999 and 2000.

- (3) The formula for determining a district's fiscal year 1997 and fiscal year 1998 ADM's would be newly provided. It would consist of the October count minus the handicapped ADM, minus one-half of the kindergarten ADM, minus 3/4 of the JVSD ADM, plus the ADM for students receiving services from another district or service center, minus the ADM for students from other districts receiving services from the district.
- (4) The definition of "family assistance" would be stricken.
- (5) A handicapped preschool child would be defined as a handicapped child at least three years old but not of compulsory school age and who has not entered kindergarten.
- (6) The definitions for "DPIA ADM" and "DPIA percentage" would be stricken.
- (7) The definition of "three-year average formula ADM" would be stricken.
- (8) The term "recognized valuation" would be newly defined in this section as the amount calculated for a district according to existing language in section 3317.015(B), which provides for certain three-year phase-ins of valuation increases of carryover properties.
- (9) The term "most efficient transportation use cost per student" would be modified to include the word "transported" before "student" and its definition would be changed from "the most efficient cost per transported student" to "a statistical representation of transportation costs as calculated under section 3317.022(D)(4)".
- (10) The definition of "valuation per pupil" would change from a district's recognized valuation divided by the formula ADM, to the recognized valuation divided by the greater of formula ADM and the 3-year average formula ADM.
- (11) To the definition of "adjusted total taxable value" would be added an exception (ref. section 3317.022) in order to provide some relief for districts in which the tax-exempt value of property exceeds 25 percent of the potential value of the district.
- (12) The definition of "recognized valuation" would be stricken.
- (13) The definition of "county MR/DD board" would be stricken.
- (14) The definition of "handicapped pre-school child" would be stricken.
- (15) The definition of "fiscal year 1997 or fiscal year 1998 ADM" would be stricken (see item (3) above).

Permanent Law - State Taxable Value Per Pupil (Section 3317.021)

Concerning the tax commissioner's annual certification to the department of education of the districts' taxable property values, the bill would limit the determination of a district's total effective operating tax rate to "the tax year for which the most recent data are available". In addition, the definition of "state taxable value per pupil" would be stricken.

Permanent Law - Basic Aid Calculation (Section 3317.022)

The formula for the calculation of state basic aid would be modified. The first term of the formula, instead of the current . . .

formula amount X cost-of-doing-business-factor X ADM,

would become . . .

formula amount X cost-of-doing-business-factor X (the greater of formula ADM or 3-year average formula ADM).

This results in no actual change. This change is a result of changing the definition of ADM to correspond to only one year. Thus for each formula, it is specified whether the ADM figure is current year, prior year, three year average or some other combination.

The bill would also provide new language in this section to define "related services" for special education. It would also revise the formula for calculating the state funds to be distributed for special education and related services' additional weighted costs: the new formula would remove the $7/8$ factor from the formula amount. The bill would also limit, by a formula, the amount of funds that a district may spend on related services in the current year. Finally, the bill would modify the definition of "log density", from the current statistical representation of the most efficient transportation use cost based on a statewide analysis, to the logarithmic calculation (base 10) of each district's transportation ADM per linear mile.

Permanent Law – State Basic Aid Guarantee, Determination of State Aid for Previous Years (Section 3317.0212)

In order to determine the increase in state aid from one year to the next, this section establishes a mechanism for calculating a baseline amount to which aid in future years can be compared. The section defines “fundamental fiscal year 1997 state aid” and “fundamental fiscal year 1998 state aid” as the total amount of state money received by the district in that district adjusted as follows:

- a) minus the amount received for transportation;
- b) minus amount for preschool handicapped units;
- c) minus additional amounts as a result of the reappraisal guarantee;
- d) plus amounts deducted for payments to an education service center;
- e) plus an estimated portion of the state money distributed to other school districts or educational service centers for approved units;
- f) minus an estimated portion of the state money distributed to the school district for approved units in which students from other districts received services;
- g) plus any additional amount paid for vocational education recomputation;
- h) plus any additional amount paid for special education recomputation;
- i) plus an amount for equity aid.

The section also defines “enhanced fiscal year 1998 state aid” as the district’s fundamental fiscal year 1998 state aid (defined above) plus the amount the district received for transportation.

“State basic aid” in any fiscal year after fiscal year 1998 is defined as:

- a) the amount computed for basic formula aid, special education costs in excess of \$25,000, and DPIA, before any deductions or credits;
- b) adjustments for exceeding minimum teacher/pupil ratio minimums, extended service, gifted units, and supplemental unit allowances;
- c) and any equity aid.

There is no fiscal impact of this provision. The purpose of the changes is to clarify the original intent in Am. Sub. H.B. 650.

The section also directs the treasurer of any school district or educational service center to furnish the data needed by the Department of Education to make the above calculations.

Permanent Law – Power Equalization (Section 3317.0215)

In Am. Sub. H.B. 650, a portion of the formula needed to calculate a district’s power equalization aid was inadvertently omitted. (The power equalization component of Am. Sub. H.B. 650 provides school districts with valuations per pupil less than the statewide valuation per pupil, an incentive to levy more than 23 effective mills on residential and agricultural property. For each mill above 23 effective Class I mills levied, up to a maximum of 2 mills, the district will receive an enhancement payment equal to the difference between the local revenue generated and the amount that would be generated if the millage were imposed in a statewide average valuation district.) The bill adds the phrase “times the district’s formula ADM” thereby correcting the omission. The bill also adds

definitions for the terms “equalized tax rate”, “state taxable value per pupil”, and “district’s taxable value per pupil.” Since the changes correct the section to its original intent, no new fiscal impacts occur.

Permanent Law – Payments to Districts Educating Students through Shared Education Contracts, Compacts or Agreements (Section 3317.023)

This section would ensure that districts that are educating students from another district pursuant to a shared education agreement, contract or compact, receive payments from the Department of Education equal to:

- a) an amount equal to the formula amount times the cost of doing business factor of the school district in which the student is entitled to attend school; plus
- b) an amount equal to the formula amount times the state share percentage times any multiple applicable to the student (for special education services).

These amounts would be deducted from the student’s district of residence. In the case of educational service centers, the amounts paid to the centers (pursuant to section 3317.11 (see above)) are to be deducted from payments to the students’ school district of residence. These provisions merely clarify how payments will be made to districts with such arrangements; no fiscal impact is projected.

The section also expands the definition of “regular student population” to include open enrollment students.

Permanent Law – Elimination of Gifted Pupil Formula (Section 3317.024)

The funding formula for gifted pupil education established for fiscal year 2000 and beyond is eliminated in the bill. The bill states that it is the intent of the General Assembly to review and revise the gifted pupil funding formula for future years.

Permanent Law – Disadvantaged Pupil Impact Aid (DPIA) Implementation Change (Section 3317.029)

The original concern was that with the cap on overall state increases, a district might not be able to use all of its calculated DPIA funds for the intended purposes. Secondly, districts may need a couple of years to rearrange spending along the lines of the new DPIA requirements (remediation and security and class size reduction). The bill addresses this area by deleting the current provisions (these are not described here because they did not match legislative intent), and adding the following provisions. For districts that are capped and have a DPIA index greater than or equal to one, a portion of their calculated remediation and security and class size reduction money would be treated as temporarily exempt, from the following general schedule of compliance, if their change in DPIA funds for the year compared to fiscal year 1998 is larger than their overall aid increase over the same period. If this is true in any year, then the amount of excess is treated as exempt for the year. Once the exempt portion is subtracted (this will only apply to a few districts), a percentage of the remaining amount must then be

spent on safety and remediation, class size reduction, and all day kindergarten excess costs (if any): 25 percent in fiscal year 1999, 50 percent in fiscal year 2000, and 75 percent in fiscal year 2001, and 100 percent thereafter. In other words, districts with a DPIA index of one or more will have four years to phase into spending their DPIA funds according to the new formula.

Permanent Law - Students in Compacts (Section 3317.03)

For purposes of the so-called “October count”, this section clarifies that students receiving educational services in a school district pursuant to a compact, cooperative education agreement, or a contract, are to be counted in the school district of residence, not in the school district in which they are receiving such services. This clarification will ensure that such students are only counted once, and should have no fiscal impact.

Permanent Law – Payments to Educational Service Centers (Section 3317.11)

Currently, when educational service centers provide special education services to students, the centers generally receive funding (for special education units) from the Department of Education. Under Amended Substitute House Bill 650, funding for the students receiving these services was provided directly to school districts with the intent that the school district contract with the entity or entities that can best provide the desired services. Because educational services centers believe that they may experience short-term cash flow problems while waiting for contracts to be agreed to and for payments to be received from school districts, section 3317.11 is included in the bill. This section requires the Department of Education to pay each educational service center the amounts that are due to it pursuant to contracts, compact or agreements through which the service center provides services to a school district or its students. To receive a payment, the educational service center has to provide a copy of the contract, compact, or agreement signed by the superintendent or treasurer of the applicable school district. The document would have to clearly indicate the amounts of the payments or a written statement of the payments owed. The amounts paid by the Department of Education to the educational service centers would then be deducted from payments to the appropriate school district.

Under this new section educational service centers will continue to receive funding from the state instead of waiting to be paid by the school districts receiving the services. The fiscal effect of this provision is that educational service centers may receive their funding more quickly than they otherwise would have under Amended Substitute H.B. 650.

Permanent Law – Combining Nonadjacent Educational Service Centers (Section 3311.053)

Notwithstanding the above section, which permits mergers among "adjoining" educational service centers, the bill would permit a merger of two or more educational service centers that are "nonadjacent", provided that three conditions are met: (1) the mergers must take place between September 15, 1998 and November 30, 1998; (2) the governing boards of the merging educational service centers must adopt identical resolutions combining the centers; and (3) the Superintendent of Public Instruction must determine that the merger would be "in the best interests of the students".

Permanent Law – Combining Educational Service Centers (Section 50.48 of Am. Sub. H.B. 215 of the 122nd G.A.; section 45.32 of H.B. 117 of the 121st G.A., as amended by Am. Sub. H.B. 215 of the 122nd G.A)

The bill replaces current law governing the employment of a superintendent of an educational service center created by the merger, on or before July 1, 1997, of two educational service centers, each of which contained one local school district. In new language, the bill provides for the service center and the two school districts to agree to have one individual serve as both superintendent of one of the districts and superintendent of the service center and to have another individual serve as both superintendent of the other district and the assistant superintendent of the service center.

Further, the bill requires the two educational service centers to notify the Superintendent of Public Instruction of the merger by June 1, 2000.

Permanent Law – Codification of Supplemental Unit Allowance Provision (Section 3317.162)

This section, which provides for supplemental unit allowances, formerly appeared in temporary law in the Department of Education's section of the main appropriations act. The section has been moved to permanent law to make reference to the section in various other sections of the bill easier.

(EPA) ENVIRONMENTAL PROTECTION AGENCY

Appropriation Authority Changes (Section 58 of Am. Sub. H.B. 215)

Fund	Line Item #	Line Item Name	Fiscal Year	Current	Proposed	Change	Purpose
GRF	715-503	Science Advisory Program	1998	\$500,000	\$450,000	(\$50,000)	To transfer into Central Administration Fund to use for agency's moving costs.
GRF	716-321	Central Administration	1999	\$3,780,221	\$3,865,221	\$85,000	Funds transferred from Science Advisory Program Fund and Water Quality Planning and Assessment Fund to use for agency's moving costs.
GRF	718-321	Water Quality Planning and Assessment	1998	\$7,783,614	\$7,748,614	(\$35,000)	To transfer into Central Administration Fund to use for agency's moving costs.
491	715-665	Moving Expenses	1999	\$0	\$1,358,168	\$1,358,168	New fund created to utilize cash balances from various funds within EPA's existing resources to pay for the cost of moving the agency into new facilities.

Temporary Law – Moving Expenses (Section 58 of Am. Sub. H.B. 215)

This item creates Fund 491, line item 715-665, Moving Expenses, to be used to pay for the costs of moving the agency into new facilities. Cash balances from various non-GRF funds within EPA's existing resources will be transferred to this new fund.

In order to keep GRF and non-GRF funds separate, the item also transfers GRF appropriations from two line items, line item 718-321 and line item 715-503, into line item 716-321 to be used for moving costs as well.

Permanent Law - Scrap Tire Program Funds Disbursement Cap (Section 3734.82)

Under current law, the scrap tire program at Ohio EPA is not permitted to spend over \$3,000,000 during each of fiscal years 1998, 1999, and 2000. In addition, prior to using any moneys in the Scrap Tire Management Fund 4R5, line item 715-656, approval must be secured from the Controlling Board.

This provision will remove the \$3,000,000 cap from the scrap tire program to allow the program to utilize up to the balance in the Scrap Tire Management Fund 4R5, line item 715-656. Approval by the Controlling Board will still be needed for all expenditures from Fund 4R5. The unencumbered balance of the fund at the end of fiscal year 1997 was \$6,418,523. As of March, 1998, the unencumbered balance of Fund 4R5 was \$4,605,125.

Permanent Law - Hazardous Waste Cleanup Fund Section 3734.28

Under current law, the funding to support the staff in the Voluntary Action Program (VAP) comes from Fund 4R9, ALI 715-658. VAP had to borrow approximately \$3 million in 1994 from Fund 503, Hazardous Waste Facility Management, to cover startup costs. Originally the division had three years to pay it back, but this wasn't feasible due to insufficient funds in the program. The budget act for this biennium extended the repayments by an extra ten years for a total of thirteen years. Current law requires the division to pay back Fund 503 in installments of \$280,000 each year. However, this is not possible because the division only brings in about \$300,000 to \$400,000 each year. VAP is not as popular as it had been expected, and the division is not bringing in as much money from the program as what had been anticipated. In fact, it costs the division approximately \$1 million each year to operate, and Fund 505, ALI 715-623, has already been helping to subsidize the program by footing the deficit.

This corrective bill item gives Ohio EPA the authority to fund VAP until June 30, 1999 through Fund 505, ALI 715-623, Hazardous Waste Cleanup Fund. Revenues received under the VAP will continue to be deposited into Fund 4R9. Operating costs for implementing, administering, and enforcing VAP will come from Fund 505.

(DOH) DEPARTMENT OF HEALTH

Temporary Law - Transfer Cash from Central Support Indirect Fund to Lab Handling Fee Fund (Section 62.01 of Am. Sub. H.B. 215)

The Department of Health (DOH) received a request from the State Public Health Laboratory for additional funding assistance. Since the department did not have enough available funds through GRF and fee revenue, it requested permission from the Office of Budget and Management (OBM) to use indirect cash from the central support unit (Fund 211). OBM agreed with the request but wanted the requested funds to be transferred to the Lab Handling Fee Fund (Fund 473) for cleaner accounting purposes. Discussions between DOH and OBM resulted in the amount, \$600,000, to be transferred.

Moneys in Fund 211 pay for central support operations that are difficult to accurately assess to each of the various divisions within the Department of Health. The areas supported with indirect costs provide services to all DOH divisions. Every month, DOH uses the amount paid in direct payroll to determine the amount to be transferred to Fund 211.

Temporary Law - Certificate of Need Fund (Fund 471) Uses (Section 62.01 of Am. Sub. H.B. 215)

Although the Certificate of Need (CON) program was phased out as a result of Sub. S.B. 50 of the 121st General Assembly, DOH still is required to accept for review CON applications for nursing home beds in a health care facility and skilled nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. Following Sub. S.B. 50, DOH moved to the concept of quality assurance.

Under existing law, Fund 471 can only be used to pay the administrative costs dealing with activities listed in sections 3702.51 through 3702.62 of the Revised Code. This change will allow DOH to use Fund 471 moneys to pay for the administrative expenses for sections 3702.11 through 3702.20 and 3702.30 of the Revised Code. Use of Fund 471 for these additional purposes will be for fiscal year 1999 only.

Permanent Law - Exemption of Up to 30 Nursing Home Beds from the Certificate of Need Requirements (Section 3702.5212)

The bill exempts from the certificate of need requirement the addition of up to 30 nursing home beds by a nursing home that meets the following criteria: (1) the facility has been in continuous operation for not less than one hundred twenty years prior to the effective date of the bill; (2) the facility is located in an inner city area; (3) the facility is operated as a non-profit facility. According to a spokesperson for the Department of Human Services, the facility in question is currently licensed by the Department of Health as a home for the aged. That facility currently has 21 nursing home beds (non-Medicaid) and 23 rest home beds. The bill will allow for the construction of up to 30 new nursing home beds. According to the spokesperson, the new nursing home beds will be Medicaid certified and the existing 21 nursing home beds will automatically become Medicaid certified also. The average per diem cost for Medicaid certified nursing home beds is \$108. Assuming all 51 nursing home beds are paid through Medicaid, the additional cost will be approximately \$2.0 million per year (\$108 per day x 365

days x 51 beds). The state will be responsible for approximately 40 percent, or \$800,000 per year. The federal government will be responsible for the remaining 60 percent, or \$1.2 million per year. Current total Medicaid expenditures are well below estimate for fiscal year 1998. However, current Medicaid expenditures for nursing homes are counter to the underspending trend and are well above estimate for fiscal year 1998.

(HUM) DEPARTMENT OF HUMAN SERVICES

Temporary Law – Correct Revised Code References (Section 67.05 of Am. Sub. H.B. 215)

This technical correction in the bill replaces incorrect references to the Revised Code with the correct ones.

Temporary Law – Early Start Appropriation Transfer (Section 67.08 of Am. Sub. H.B. 215)

The bill adds permissive temporary law that governs the transfer of \$4 million in fiscal year 1999 from the Department of Human Services to the Department of Health's line item 440-459, Ohio Early Start. The Early Start program is administered by the Department of Health to target services to children between the ages of birth and three who are identified with or at risk of developmental disabilities. These dollars are provided to fund the Early Start Welcome Visits program. The bill stipulates that the \$4 million will be provided from the state share of General Revenue Fund appropriations within the Department of Human Services budget.

Permanent Law - Exemption of Up to 30 Nursing Home Beds from the Certificate of Need Requirements (Section 3702.5212)

The bill exempts from the certificate of need requirement the addition of up to 30 nursing home beds by a nursing home that meets the following criteria: (1) the facility has been in continuous operation for not less than one hundred twenty years prior to the effective date of the bill; (2) the facility is located in an inner city area; (3) the facility is operated as a non-profit facility. According to a spokesperson for the Department of Human Services, the facility in question is currently licensed by the Department of Health as a home for the aged. That facility currently has 21 nursing home beds (non-Medicaid) and 23 rest home beds. The bill will allow for the construction of up to 30 new nursing home beds. According to the spokesperson, the new nursing home beds will be Medicaid certified and the existing 21 nursing home beds will automatically become Medicaid certified also. The average per diem cost for Medicaid certified nursing home beds is \$108. Assuming all 51 nursing home beds are paid through Medicaid, the additional cost will be approximately \$2.0 million per year (\$108 per day x 365 days x 51 beds). The state will be responsible for approximately 40 percent, or \$800,000 per year. The federal government will be responsible for the remaining 60 percent, or \$1.2 million per year. Current total Medicaid expenditures are well below estimate for fiscal year 1998. However, current Medicaid expenditures for nursing homes are counter to the underspending trend and are well above estimate for fiscal year 1998.

Permanent Law – Publicly Funded Day Care Income Eligibility Limits (Section 5104.32 of Am. Sub. H.B. 215)

The bill requires the Department of Human Services to adopt rules specifying the maximum amount of income a family may have for initial and continued eligibility for publicly subsidized child day-care and stipulates that the maximum may not exceed 185 percent of the federal poverty guidelines. In addition, it requires the Department to establish procedures under which a county department of human services may establish an income eligibility limit that is higher than the amount the Department establishes as long as it is less than 185 percent of the federal poverty guidelines.

By expanding the initial eligibility income limit for day care services, the bill will increase the number of enrollees in the state's day care programs. Thus, expenditures for day care will increase over current expenditures. However, expenditures for FY 1998 are approximately \$30 million below estimate, making it unlikely that an expansion in eligibility will exceed available funding. In the aggregate, the number of enrollees in the subsidized and Ohio Works First state day care programs are below estimate by 8,738, as cited by the Department of Human Services. For the Ohio Works First day care program, the actuals are below the estimate by 19,740 enrollees. For the Non-Guaranteed day care program, the actuals exceed the estimates by 12,506. This language will give both the state department and the counties flexibility to meet the child care needs of the working poor, up to the 185% of poverty level. Eligible recipients contribute toward their child care expenses, based on a sliding fee scale.

Permanent Law – Provider Reimbursement Rate for Day Care Providers Who Provide Services Parents Who Work Nontraditional Hours (5104.38 of Am. Sub. H.B. 215)

The bill stipulates that a provider who provides child-care to a caretaker parent who works nontraditional hours is to be paid the reimbursement rate that the Department of Human Services establishes, regardless of whether the rate is higher than what the provider customarily charges. For some providers, this could mean an increase in reimbursement for child care services. Overall, total expenditures will not increase, simply the amount paid to individual providers could slightly increase.

Permanent Law – Requirement that the Welfare Oversight Council Meets at Least Four Times Annually (Section 5101.93 of Am. Sub. H.B. 215)

The bill requires the Welfare Oversight Council to meet at least four times annually instead of twice a year. In addition to reviewing the Ohio Works First program, the Council is to review sanctions imposed under OWF. LBO assumes a negligible increase in costs in lodging and travel expenses associated with this change.

(JSC) JUDICIARY/SUPREME COURT

Temporary Law – Ohio Departments Building (Section 190 of Am. Sub. H.B. 215)

This provision corrects a technical problem of Section 190 by deleting language that had been inadvertently repeated. Additionally, the appropriation for repair and renovation of the Ohio Department Building for use by the Supreme Court is exempted from the Per Cent for Arts program. The Per Cent for Arts program, §3379.10 O.R.C., requires that a portion of the money to be spent by state agencies on the construction or renovation of public buildings be spent on the acquisition of works of art. The Director of the Office of Budget and Management may waive this provision if the director feels that works of art would be out of place in or on the public building, that there will be little opportunity for public appreciation of works of art in or on the public building, that the value of some features or characteristics inherent in the architectural design of the public building should apply toward the one per cent requirement, or that the public building is or will be amply supplied with works of art even without works of art purchased from the Ohio Arts Council. This bill places this exemption, for this specific purpose, directly into §190 of Am. Sub. H.B. 215. This should have no fiscal effect on the Ohio Arts Council and may reduce expenditures related to the renovation of the Ohio Departments Building.

LOCAL GOVERNMENT

Permanent Law – Requires that the Property of a Village that Surrenders Its Corporate Powers Be Divided Among Townships Within the Village and Not the School District (Section 703.21)

Permanent law mandates that when a village surrenders its corporate powers, its assets must be given to the “school district embracing the village.” This provision changes permanent law so that assets of a village surrendering its corporate powers would be divided among any townships located wholly or partially within the village. The impact of this provision could be a loss of revenue in the form of assets and/or cash to any school district located within a village that surrenders its corporate powers and a gain in such revenue to area townships. Any loss to a school district and gain to any township(s) could vary widely depending upon the village, but could range from tens of thousands of dollars to millions of dollars. However, because a school district may not be able to directly use many of a village’s assets, such as a fire truck, a district might have to incur costs to liquidate certain assets. A school district could also incur costs to maintain assets, such as buildings and equipment, it would receive under current law. This could include costs associated with the hiring of additional personnel. These costs would reduce what overall would be a gain in revenue to the school district. Under this provision such costs and revenue would fall to townships partially or wholly within the village surrendering its corporate powers.

(BOR) BOARD OF REGENTS

Permanent Law – Eliminate Most Liability for Higher Education Trustees (Section 3345.122)

Section 3345.122 specifies that trustees on higher education boards of trustees are not liable for damages in civil actions brought for injury, death, or loss as long as the trustee acted in good faith and without malicious intent or recklessness when approving institutional expenditures or contracts. It notwithstanding other sections of the Revised Code in order to make this intention incontrovertible. The section was unintentionally vetoed in Sub. H.B. 215 of the 122nd G.A. It does not have a fiscal effect on state government or political subdivisions including universities.

(RSC) REHABILITATION SERVICES COMMISSION

Temporary Law – Office for People with Head Injury Change in Set Aside (Section 101 of Am. Sub. H.B. 215)

The bill would change the requirements for use of appropriations in line item 415-431, Office for People with Head Injury. The total appropriation in this line item is \$192,672 for FY 1998 and \$195,452 in FY 1999. Under current law, \$100,000 of the appropriation in each fiscal year was to be used for the state match for a federal grant awarded through P.L. 104-166, The Traumatic Brain Injury Act. The bill makes this stipulation apply only to the fiscal year 1999 appropriation, and not to the appropriation for fiscal year 1998. In FY 1998, the Office for People with Head Injury will use the line item appropriation for projects recommended by the Ohio Head Injury Advisory Council, and to re-apply for the P. L. 104-166 grant in FY1999.

(SFC) SCHOOL FACILITIES COMMISSION

Temporary Law - Approval of Additional Projects (Section 18)

New temporary law permits up to twelve additional school districts to be approved for school building assistance projects by the Ohio Facilities Commission and the Controlling Board (without funds having been appropriated or encumbered for the projects). Under the provision, the school districts could submit the required proposals authorizing a bond issue for the local share of the project and the half mill tax for maintenance to the voters at the November 3, 1998 election, but the districts would not be permitted to actually issue bonds or levy taxes until the state encumbers funds for the projects. This provision will allow the School Facilities Commission to go forward in approving additional projects to receive school building assistance funds. Since it is expected that additional funds will continue to be appropriated, this provision will facilitate the expenditure of such funds once they are appropriated.

Permanent Law – Public School Building Projects – Changes in Bidding and Contracting (Sections 3318.08 and 3318.10)

The bill makes two changes in regard to bidding and contracting for school building projects that receive state funds. Under current law, once the initial specifications for a school building project have been approved (by the school district board and the Ohio School Facilities Commission), school districts must advertise for construction bids once a week for four consecutive weeks in a newspaper of general circulation in the county. The bill would reduce the number of weeks the district has to advertise from four weeks to three. According to the School Facilities Commission, the change will make the school building assistance law consistent with Chapter 153 of the Revised Code, which is the governing section for other state construction contracts. The fiscal effect of this provision is that it will reduce advertising costs for school districts bidding for construction services as part of the school building assistance program.

The second change would increase the number of days school districts have to enter into contracts with the lowest responsible bidder, from 30 to 60 days after the date on which the bids are opened. Again, this provision conforms with provisions Chapter 153. Although the commission is in general attempting to expedite the construction process, in practical terms it is taking longer than the current 30 days to open and tabulate bids, obtain a second approval from the commission and the Controlling Board (if the lowest responsible bids exceed the estimated project costs), transfer funds to the project construction account, and receive certification from the Office of Budget and Management that moneys are available in the appropriation. The proposed 60-day time frame will give all parties a more reasonable amount of time to complete all of the procedures required by law.

The bill would also delete section (M) of section 3318.08 of the Revised Code. This section states that when a school district board enters into an agreement with the Ohio School Facilities Commission, the agreement would include a provision to suspend the power of the board to issue bonds or notes for permanent improvements without the prior consent of the commission as long as any part of the purchase price of the project is unpaid. The bill would delete this section, thereby permitting the school board to issue bonds.

(TAX) DEPARTMENT OF TAXATION

Temporary Law – Clarification of Franchise Tax Laws for Tax Year 1998 (Section 210 of Am. Sub. H.B. 215)

The bill amends Section 210 of Am. Sub. HB 215 to clarify the effective dates of various sections that change the corporate franchise tax. Specifically, a number of the corporate tax reforms (for non-financial corporations) first take effect in tax year 1999. Apparently some corporate taxpayers wish to apply the novel legal theory that for tax year 1998 the prior law is no longer in effect but that the new law has not yet begun. This bill makes it clear that the prior law is in effect until the new law begins.

Permanent Law - Preemption of Municipal Taxing Authority (Sections 715.013, 718.01, and 5747.511) in conjunction with temporary law in Section 16

The inclusion of this provision stems from the May 13, 1998 decision of the Ohio Supreme Court in the case of *Cincinnati Bell Telephone Company vs. Cincinnati* (1998). At issue is the implied doctrine of preemption. The specifics of the case are that the city of Cincinnati, the city of Blue Ash, and the village of Fairfax all levy a municipal income tax on the net profits of corporations derived from business activities within the municipality. For tax years 1991 through 1993 (and a first quarter estimated payment for tax year 1994), Cincinnati Bell paid \$955,361 in income tax to the three municipalities. Cincinnati Bell then requested refunds from each municipality, on the grounds that since the state taxed the company on its gross receipts from intrastate business pursuant to ORC 5727.30 (the public utility excise tax), municipalities were prevented from taxing the same income or receipts.

The doctrine of implied preemption goes back a long way in Ohio case law. Generally, what the doctrine has been taken to mean is that when a field of taxation is already occupied by the state, municipalities are excluded from that field of taxation. Examples of this were the taxation of the net profits of dealers in securities (e.g. stockbrokers), which was preempted by the state's tax on intangible property, the taxation of income from intangibles (dividends, interest, rent, capital gains, etc.), which was preempted by the state's tax on intangible property, and the taxation of income from utilities. The specific application of the doctrine to the taxation of the income of utilities was established in *Cincinnati v. Am. Tel. & Tel. Co.* (1925). The application of this doctrine was upheld by *Haefner v. Youngstown* (1946) and *East Ohio Gas v. City of Akron* (1966).

By ruling in favor of the municipalities, the Supreme Court did not simply rule that the doctrine of implied preemption does not fit in the case of municipal taxation of utility profits. Instead, the Court ruled that the entire doctrine of preemption has no basis in the Constitution and is thereby abrogated. This potentially opens up many additional fields to taxation by municipalities. The Court further held that the taxing authority of a municipality may be preempted or otherwise prohibited only by an express act of the General Assembly, which this bill provides.

Because of the sweeping nature of the Court decision, the fiscal impact of this bill is difficult to specify. Certainly the municipalities of Cincinnati, Blue Ash, and Fairfax are prevented from prospectively applying the municipal income tax to utilities from the effective date of the bill forward. The question remains: what would other cities do in the absence of this bill? A spokesperson for the Ohio Municipal League has stated that no other municipalities in Ohio are currently contemplating applying the municipal income tax to utility profits. However, whether this

would be true in the long run is unclear. LBO has made a rough estimate that applying the municipal income tax to utility profits could result in about \$25 million in annual tax revenues statewide. Now that economic times are good and municipalities do not need additional revenue, such an extension of the income tax may not be considered. During the next economic downturn, however, it is quite possible that some municipalities would try to make up fiscal shortfalls by taxing utility profits. Nor does the potential revenue impact stop at \$25 million. With no implied doctrine of preemption in the way, municipalities could also tax insurance company profits and portfolio income of individuals. If every municipality in Ohio expanded its tax to cover all portfolio income (income from intangible assets), statewide revenues would run into the hundreds of millions.

In summary, the bill's explicit prohibition against municipal taxation of certain activities has a large potential revenue impact in the long run. Municipalities are prevented from collecting tens or even hundreds of millions in tax revenue which they otherwise might be able to tax. In practice, of course, such rampant extension of municipal taxing authority would be politically unpopular, and many municipalities would not avail themselves of the maximum amount of leeway the Supreme Court has granted them in taxation.

Recapture of Previously Levied Taxes

The bill has two sections that attempt to safeguard against municipalities taking advantage of the window between the Supreme Court decision in *Cincinnati Bell Telephone Company vs. Cincinnati (1998)* and the effective date of this bill to levy taxes against utilities and other entities. Section 16 attempts to stop municipalities from collecting any tax on the activities or entities now explicitly prohibited in the bill, unless the taxes were assessed prior to the Supreme Court's decision on May 13, 1998. There is some question whether this attempt to stop collection of taxes is constitutional. That being the case, there is another provision in Section 16 that states that if the ban on collecting taxes not assessed before May 13 is unconstitutional, then municipalities have only 30 days after the effective date of the section to make claims for taxes in the now-prohibited areas. Finally, there is a permanent law section (5747.511) that provides for recapture of municipal taxes on utilities in case the prohibitions in Section 16 are ineffective.

If a municipal corporation imposes an income tax on an electric company, natural gas company, or telephone company, then the county auditor is required to recapture the taxes collected from the municipality's share of state local government fund (LGF) money. So, if a municipality levied an income tax on a utility or utilities in calendar year (CY) 1997, in CY 1998 the county auditor would have to deduct the amount of tax collected from the municipality's share of state LGF collections. Municipalities get LGF money through two sources: there is a share of the state LGF that flows directly to municipalities that levy an income tax, where each municipality's share is proportional to its share of statewide municipal income tax collections. There is also an allocation of state LGF money to municipalities from the amounts that are first distributed to the county undivided local government funds (ULGFs). The county auditor would be empowered to deduct municipal income tax collections from utility companies from both sources, although the allocation of the municipal share that does not go through the county ULGF is not really a function of the county auditor.

The amounts deducted from municipal LGF allocations would be redirected to other political subdivisions receiving LGF money. Each of the other subdivisions would get a share of the redirected LGF money equal to its share of countywide property tax collections in the preceding calendar year.

At this point, LBO does not know if any municipality, including Cincinnati, Blue Ash, and Fairfax, levied its municipal income tax on utility profits in CY 1997 or is doing so already in CY 1998. Therefore we do not know if there will be any redirection of LGF money in CY 1998 or CY 1999 (the provision sunsets at the end of CY

2000). From this point forward, it would seem that the recapture serves as a sufficient deterrent that municipalities will not tax utility profits, and so there should be no redistribution in CY 2000.

Addendum

The bill specifically prohibits municipal corporations from levying any tax that is "the same as or similar to" many of the taxes currently levied by the state and counties. These prohibited areas of taxation are:

- Sales and use taxes
- Estate tax
- Tax on public utilities
- Motor fuel tax
- Highway use tax
- Tax on insurance companies (foreign and domestic)
- Tax on financial institutions and dealers in intangibles
- Tax on cigarettes and tobacco products
- Tax on alcoholic beverages
- Tax on employers to fund workers' compensation system
- Tax on employers to fund unemployment compensation system
- Severance (natural resources extraction) tax
- Grain handling tax
- Tax on horse racing wagering
- Real estate transfer tax
- Fees for disposal of hazardous and solid waste and on tire sales

In addition, the bill also expressly prohibits municipal corporations from levying a tax on the income of a public utility when the utility is subject to the public utility excise ("gross receipts") tax.

Permanent Law - Corporation Franchise Tax Reform and Pass-Through Entities (Sections 573.04, 5733.05, 5733.057, 5733.058, 5733.0611, 5733.12, 5733.40, 5733.401, 5733.402, 5733.98, 5747.01, 5747.08, 5747.43, 5747.98)

Am. Sub. H.B. 215 imposed a mandatory withholding tax on distributions of net income made to nonresident owners by pass-through entities. These pass-through entities are businesses not organized as subchapter C corporations, where the business income "passes through" to the owners. Where the owners are individuals, they are taxed under the personal income tax. Corporate owners of pass-through entities are taxed under the corporate franchise tax. Examples of pass-through entities are partnerships, limited liability companies (LLCs), and S-corporations. Even prior to HB 215, nonresident owners of pass-through entities were subject to Ohio income tax and franchise tax, but in many cases they did not pay and were difficult to catch upon audit. HB 215 did not increase taxpayers' liability, but it provided a mechanism to collect the tax already owed.

This bill creates three types of exemptions from the pass-through entity tax. Two are clearly meant to avoid multiple taxation of the same income, while the third is meant to prevent the flight of certain investment companies to other states. The bill also clarifies what kind of organizations are exempt from the pass-through withholding requirements (certain retirement systems, small business trusts that make an election, and publicly traded

partnerships). The bill provides a mechanism for refunds in cases where withholding occurred, and makes clear that the credit is refundable.

1. Pyramiding of pass-through entity taxes

In cases where the existing law would subject each link in a chain of pass-through entities to taxation of the same net income, this bill instead limits the application of the withholding tax to the first level of pass-through entity, as long as that entity in fact pays the withholding tax. So, in the case where an LLC (company A) owns a piece of a partnership (company B) which in turn holds a piece of another LLC (company C), under the existing law all three companies might be required to pay withholding tax on the same net income (or net gain). Under this bill, as long as company A pays its withholding tax on the distributive shares of income and gain that result from its investment in company B, then companies C and B do not have to pay tax on that amount of income or gain.

LBO does not have an estimate of the revenue loss associated with this provision. It must be noted that our original estimate of the gain from the new withholding tax did not include assumptions of such pyramiding: i.e. our estimates were based on forecasts of net income that would be taxed once only.

2. Investment Companies

Certain companies essentially function as investment conduits, where investors buy an ownership interest in the LLC or partnership or S corporation, and the company then invests the owner's money in various assets. Venture capital companies are an example of this sort of firm, although the type is not limited to venture capital. The existing law would subject these pass-through entities to the new withholding tax. The investment companies based in Ohio (not a large number from the data that LBO has seen) have threatened to relocate to other states as a result of this tax. This bill creates an exemption for investment companies that meet the following requirements:

- (i) at least 90% of company gross income derives from transaction fees in connection with the acquisition, ownership, or disposition of intangible property, loan fees, financing fees, consent fees, waiver fees, application fees, net management fees, dividend income, interest income, net capital gains from intangible property, or distributive shares of income from pass-through entities;
- (ii) at least 90% of the net book value of company assets is from intangible assets.

The exemption is for the income or gain from activities listed in (i) above. So, at least 90% of the firm's income will be exempt from the withholding tax. LBO has been unable to generate a numerical estimate of the lost income tax revenue from this provision. Our best guess is that the dollar amount is not large. If some investment companies really did follow through on their threat to relocate if the exemption were not granted, then in the long run the loss due to the bill would be quite small, because the tax base would erode under the existing law.

3. Public Utilities

To avoid multiple taxation, the bill specifies that a corporation that invests in a pass-through entity that owns and operates a public utility in Ohio and thus pays the gross receipts tax can deduct any income or gain deriving from that investment from its net income (the corporation must also add back any expenses and losses derived from the exempted investment). The corporation must also exclude property, payroll, and sales deriving from the exempted investment from its calculation of apportionment factors in determining its net income or gain that is taxable in Ohio.

LBO does not have an estimate of the revenue loss associated with this provision.

Permanent Law - Specification of the Sales Tax Exemption for Prescription Drugs (Section 5739.02)

The bill specifies that the sales tax exemption for prescription drugs dispensed by a pharmacist applies only to prescriptions written by a licensed health professional authorized to prescribe drugs to human beings. This clarifying specification responds to an unintentional change to this exemption made in Am. Sub. S.B. 66 of the 122nd General Assembly.

Permanent Law - Prevent "Double-Dipping" in Medical Savings Account Deductions (Section 5747.01)

The bill specifies that MSA contributions are deductible from Ohio federal income tax only to the extent that they are not already excluded under federal law. Federal law does not provide a general exemption yet - instead there is a pilot program that allows exemption to a limited number of individuals, which apparently includes some Ohioans. This provision is consistent with the original intent of the MSA legislation.

(DOT) DEPARTMENT OF TRANSPORTATION

Permanent Law – Federal Rail Fund (Section 4981.091)

The bill creates the Federal Rail Fund. The fund will receive money from the sale or lease of rail property owned by the Rail Development Commission. The fund is to be used to acquire, rehabilitate, or develop rail property service. The fund can also be used to pay administrative expenses of the Rail Development Commission. Finally, the fund can not be used to provide loan guarantees.

(OVH) OHIO VETERANS' HOME

Appropriation Authority Changes (Section 119 of Am. Sub. H.B. 215)

Fund	Line Item #	Line Item Name	Fiscal Year	Current	Proposed	Change	Purpose
4E2	430-602	Veterans' Home Operating	1999	\$3,320,470	\$3,480,942	\$160,472	This appropriation increase is to permit the transfer of cash from Fund 604 to Fund 4E2 to cover the one percent reduction in operating lines required in Am. Sub. H.B. 650.
484	430-603	Rental and Service Revenue	1999	\$0	\$100,000	\$100,000	This appropriation increase is to provide appropriation authority in this fund for OVH maintenance.

Temporary Law - Cash Transfer from Veterans' Home Fund to Operating Fund (Section 119 of Am. Sub. H.B. 215)

Language is added which permits the Director of Budget and Management to transfer cash in an amount equal to a one percent reduction in the Ohio Veterans' Home General Revenue Fund operating line items, as provided in Am. Sub. H.B. 650, from the Veterans' Home Fund (Fund 604) to the Veterans' Home Operating Fund (Fund 4E2). This would allow the one percent cut in Fund 4E2 required in Am. Sub. H.B. 650 to be essentially absorbed by the capital money in Fund 604.

Permanent Law - Ohio Veterans' Home Rental and Service Fund (Section 5907.15)

OVH currently receives a negligible amount of revenue from the sale of meals at dining halls. This revenue is currently deposited directly to the state treasury. The new fund shall be used for the maintenance costs of the Home. OVH does not currently receive revenue from temporary use agreements and lease and sharing agreements for services and facilities.

Permanent Law - Ohio Veterans' Home Network (Section 5907.22)

This bill permits the Board of Trustees of the Ohio Veteran's Home (OVH) to expand nursing home or domiciliary care to veterans at sites other than the Secrest Nursing Home by entering into contracts and agreements to acquire real property, facilities, and services to establish a network of care facilities. The bill is silent on the nature of this expansion, making fiscal estimates of the creation of this network problematic. It is believed, in future years, to fully implement expansion of veterans' care to an additional five facilities in southern Ohio would cost in millions of dollars to state special revenue line items. It is assumed that part of this cost would be offset by reimbursement from the U.S. Department of Veterans' Affairs, which would be deposited in funds located in the Federal Special Revenue Fund Group.

The implementation of the Veterans' Home Network would presumably result in an increased number of individuals receiving domiciliary and nursing home care. Additional revenue to Fund 3L2 may be generated from additional federal VA per diem grants, and additional revenue may be deposited in Fund 4E2 (Operating) and Fund 604 (Improvement) as a result of additional resident assessments.

The bill creates the Committee to Establish the Veterans' Home Network. This seven-member committee will not be paid for its work, but will be reimbursed for travel, lodging, and meal expenses. It is estimated that the cost for this committee will be a few thousand dollars to the GRF, at most. The cost is dependent on how frequently the committee meets, and the extent of travel to potential network sites in Ohio. On these issues, the bill is silent. It is assumed, at this time, that the committee will complete research for the establishment of this network without use of outside staff or consultants.

(BWC) BUREAU OF WORKERS' COMPENSATION

Permanent Law – Removes OBM from Process of Estimating State Employers' Gross, and Alters Actuarial Method by which the BWC Calculates State Employer Premiums (Section 4123.40)

The Bureau of Workers' Compensation assesses premium rates for state agencies on a quarterly basis, using agencies' previous payroll records to project future payroll and premium rates. As a matter of practice, OBM is not involved in this procedure and this correction formally removes its role. The correction also alters current actuarial methods used to fix state agency premiums. The measure allows BWC to calculate premium rates based on an agency's previous claims experience and amounts already paid on injury awards. This change would allow BWC to determine its reserve requirements more accurately.