

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: Sub. H.B. 770 DATE: May 21, 1998

STATUS: As Reported by House Finance and Appropriations SPONSOR: Rep. Johnson

LOCAL IMPACT STATEMENT REQUIRED: No — Exempted by ORC 103.143(F)(4)

CONTENTS: To amend, correct, supplement and modify certain authorizations and conditions established for the operation and administration of state programs and to make appropriations for the biennium June 30, 1999.

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Loss from tax provisions	Loss from tax provisions
Expenditures	- 0 -	\$22.5 million increase*	\$70 million increase per year when fully implemented in FY2001
EPA – Fund 491 Moving Expenses			
Revenues	- 0 -	\$1,358,168 gain	- 0 -
Expenditures	- 0 -	\$1,358,168 increase	- 0 -
EPA – Fund 4R5 Scrap Tire Management			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase	Potential increase
DOT – Fund 3B9 Federal Rail Fund			
Revenues	- 0 -	Potential gain	Potential gain
Expenditures	- 0 -	Potential increase	Potential increase
OVH – Fund 484 Rental and Service Revenue			
Revenues	- 0 -	Potential gain	Potential gain
Expenditures	- 0 -	Potential increase	Potential increase

*Includes appropriations transferred from FY 1998 to FY 1999 (\$4.7 million in Education and \$85,000 in EPA) and new FY 1999 appropriations (\$17.7 million for Education).

- (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 reworks special education funding. Changes are cost neutral for FY 1999, but will cost the state about \$70 million per year when the changes are phased in fully in FY 2001.
- (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.
- (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.
- (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.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
School Districts			
Revenues	- 0 -	Varying amounts of gains or losses	\$70 million gain per year after fully implemented in FY2001
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 corrects the formula for gifted education funding in FY 2000 so that such funding is equalized, that is, poorer school districts will receive a greater proportion of the funds than wealthier districts.

- (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 reworks special education funding. School districts will receive some additional revenue in FY 2000 and about \$70 million in FY 2001 and beyond.

- (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
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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 (Sect 4745.01)

The bill corrects language regarding the process for the Accountancy Board’s collection of licensing fees. Licensing be forwarded to the Treasurer of State for deposit only after the Board approves the application. In the event that the Board shall return the payment to the applicant. Since this merely codifies existing practice, there is no fiscal 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 Regulation Central Service Agency Fund of the Department of Administrative Services (DAS). The Central Service Agency Fund provides administrative, and financial services for state boards and commissions that do not possess the expertise or staff to provide these services. The transfer to DAS' line item, 100-632, Central Service Agency, would be used to cover the deficit that has resulted from the Pharmacy Boards' use of the fund. The subsidy is necessary because the Pharmacy and Medical Boards will continue to incur administrative costs but DAS' administrative costs would not decrease enough to be sustained by contributions of the other boards that use the fund. The \$150,000 would cover these costs and also cover deficits from the phase-out of other programs, should any occur. The subsidy is 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 projects.” “Specific higher education projects” are defined as projects for which the Director of Budget and Management can approve without a vote of the Controlling Board, as long as the project is within 10 percent of its original cost estimate. OBM must report to the Controlling Board within two months after the passage of any capital appropriation act. This item allows OBM to create new appropriation items, and transfer appropriations to them. The item has no direct fiscal impact on any 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, to study minority business needs and how to improve Department of Development services for minority businesses. The project is authorized to use these moneys to come from *biennial appropriations*, thus allowing the study to proceed in either fiscal year 1998 or 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	C
GRF	200-100	Personal Services	1999	\$10,756,210	11,256,210	
GRF	200-200	Maintenance	1998	\$8,691,111	\$3,991,111	(\$4
GRF	200-200	Maintenance	1999	\$4,597,207	\$6,797,207	\$
GRF	200-300	Equipment	1999	\$116,773	\$2,116,773	\$
GRF	200-501	Base Cost Funding	1999	\$2,986,915,811	3,047,415,811	\$6
GRF	200-540	Special Education Enhancements	1999	\$136,286,490	\$75,786,490	(\$60
GRF	200-545	Vocational Education Enhancements	1999	\$184,298,314	\$201,991,432	\$1
GRF	N/A	Net change	1998-99	N/A	N/A	\$1

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

The amount of \$4.7 million would be transferred from fiscal year 1998 to fiscal year 1999 in order to support the c
Front Street to other facilities. This move, originally scheduled to occur in fiscal year 1998, is now anticipated for fisc

taken from the Maintenance line item in fiscal year 1998 and divided among three fiscal year 1999 line items (Per Equipment) according to the anticipated types of expenditures. There would be no effect on state expenditures or revenues.

Temporary Law – Potential Value Recomputation (Section 50.07 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 215)

Current law provides for a recomputation of state basic aid for a school district when its tax exempt valuation is at least 25% of total potential valuation (total assessed valuation plus tax exempt valuation). In the recomputation, the difference between the district's actual total assessed valuation and 25% of total potential valuation will be subtracted from the district's actual total assessed valuation. This will result in increased state basic aid for the district. The amendment provides for the payment for all eligible school districts. It will be exempted from the "cap" provisions of H.B. 650, which limit the amount of increased state revenue a district can receive to 110% of the previous year's aid or 106% of the previous year's per pupil aid. The state would see an increase in base aid for all eligible districts would experience state revenue increases as a result of the amendment. The Department of Education estimates that the total amount of the recomputation is approximately \$7 million in FY1998, as it exists under current law.

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

In the temporary law for DPIA, \$3 million is earmarked for school breakfast programs in each fiscal year. Of that amount, \$500,000 would be used by the department to provide start-up grants to rural school districts. The provision would "add to" \$500,000 would be used in each fiscal year for that purpose. Since the total amount of the \$3 million earmarked for DPIA (as well as the line item's appropriation amount) would remain the same, the change would have no fiscal effect on revenues or expenditures, but would reduce the number of rural districts receiving such funds as start-up aid and/or the amounts of such funds going to the districts.

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

The provision would make two related changes in the temporary law regarding earmarked legal fees within this line item. The first change would increase the amount of the earmarked legal fees from \$1 million in fiscal year 1999 to cover the legal fees associated with desegregation cases brought against the state would be inserted to the effect that, in fiscal year 1999, "any unobligated balances" in the line item would be available for use in fiscal year 1999.

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

Temporary Law – Special Education Enhancements (Section 50.13 of Am. Sub. H.B. 215, as amended by Am.

Two changes in the set asides for fiscal year 1999 are made by the bill. The changes are shown in the table below.

Set-Aside	Amount in Am. Sub. H.B. 650	Amount
Home Instruction/In School Tutoring	\$22,000,000	
Psychology Interns	\$ 0	

In prior years, the home instruction set aside was used to provide tutoring services to two groups of students: a) students with chronic illness, required tutoring at home; and b) learning disabled students who received tutoring sessions during school hours. The bill requires that weights should provide funding to pay for the in-school tutoring sessions. Thus, only \$3 million is needed in FY 1999 for students' homes. New set-aside language for FY 1999 provides up to \$2,500,000 for psychology interns.

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

The provision would increase the maximum number of state-supported JVSD units from 2,800 to 3,000 in fiscal year 1999. The effect that this number is to include the GRADS units. The provision would also increase the amount of aid funds from \$131 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 amount.

Finally, the provision would increase the amount of funds earmarked for special education at JVSD's from \$3.1 million to \$3.4 million. The provision 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 of \$18 million.

These additions to the department's appropriations for vocational education would enable the department to meet the requirement to remain eligible for federal funds grants. Without these additions, the vocational education spending would fall below the recently estimated FY 1998 spending level and, thus, could jeopardize those grants. (However, it should be noted that it was recently estimated that it would lapse approximately \$18 million in vocational education spending for FY 1998. With this total FY 1998 spending is then revised downward by the \$18 million. With this lower level for FY 1998, the appropriations would no longer be necessary to meet the maintenance-of-effort threshold, since vocational education 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. 65

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

In addition, new set-aside language states that an amount no greater than \$40,000,000 in fiscal year 1999 is to be distributed on a pro rate basis and paid to county boards of MR/DD. Language specifies that amounts needed for supplemental programs and services and speech language services are to be paid from these appropriations. Amounts for these two areas are specified in the permanent law section.

Temporary and Permanent Law – Special Education Funding (Section 3317.20 and Sections 50.06 and 50.13 amended by Am. Sub. H.B. 650)

Special Education funding is revised as follows:

- a) The cost-of-doing business factor is phased in the determination of the base cost for handicapped students according to the following schedule: the full cost-of-doing business factor is used for these students in FY 1999; 50% of the factor is used in FY 2000, and the full factor is not applied to the portion of additional costs calculated using the weights.
- b) Instead of a weight of 3.01 plus 1 in the base, the weight for category two and three handicapped students is revised to 2.4 in the base cost formula and as 2.4 students in the additional weighted cost formula.
- c) A partially equalized amount for services for “speech only” handicapped students is paid for.
- d) A partially equalized amount for school psychology services is paid for.
- e) Unit funding for county MR/DD boards is eliminated. Students served by county MR/DD boards are counted in the ADMS of the school district in which the students are entitled to attend school. These students are anticipated to be funded by the state. The cost of educating a student in a county MR/DD board is deducted from the school district’s state funds and is paid to the county MR/DD board, capped at \$40 million. The transferred moneys would be used to provide the following: special education funding for county MR/DD and institutions, capped at \$40 million in FY 1999 (this is the amount that would be deducted from school district state funds), psychological services, and speech language services.

These provisions are approximately neutral for state costs for FY1999, but are expected to cost more in FY2000 and FY2001. The long term net effect of these provisions is to increase state costs by about \$70 million annually starting in FY 2000, and the full \$70 million increase would be felt in FY 2001 and annually thereafter.

Temporary Law – Community Schools (Section 50.52 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 6

The bill requires any potential sponsor to notify the proposing group within 30 days as to whether it wishes to enter the proposing group. This provision should help expedite the process of establishing community schools, but would also allow a start-up community school in Lorain County to be sponsored by the educational service center serving the Lorain County Community College. Finally, the bill adds new temporary language stating that the Department of Education will pay schools an amount for all-day kindergarten if the school district in which the student is entitled to attend school does not pay for all-day kindergarten and the student is reported as an all-day kindergarten student at the community school. This provision would cost the state a minimal amount.

For the Lucas County Pilot project, the bill: a) eliminates a requirement that all money received by a start-up community school operation be placed in the custody of the Treasurer of the Lucas County Educational Service Center and requires the governing authority of a pilot project community school to specify that the school be the custodian of all money received in operation unless another custodian is designated in the contract; b) requires that a sponsor notify a community school of nonrenewal 180 days before taking the action; c) eliminates a requirement for program audits and requires audits by the Treasurer with his current standards for school district; and d) requires that various reports of the Legislative Office of Education include schools established under the pilot project and community schools established under Chapter 3314. The bill also permits community schools operating under the Lucas County Pilot Project to use facilities located anywhere in Lucas County. This provision should provide more flexibility to groups proposing the establishment of community schools with minimal impact.

Temporary Law – Relocation of the GRADS earmark (Section 50.14 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 6)

The amendment transfers the FY 1999 GRADS program earmark (\$7,193,118) from its current position as a separate line item 200-545, Vocational Education Enhancements, to a new position within another earmark in the same line item. The new earmark is a \$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.

The total amount of the earmarks under the line item 200-545, Vocational Education Enhancements, would not change. The appropriation for ALI 200-545 would not be changed by this transfer. Therefore, there would be no fiscal effect at the local or state level.

Temporary Law – Extension of Deadline: Teacher Professional Development Task Force Report (Section 50.14 of Am. Sub. H.B. 215, as amended by Am. Sub. H.B. 650)

The amendment extends until January 1, 1999 the deadline date by which the Teacher Professional Development Trust is to be established by 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 January 1, 1997.

Temporary Law – Districts' Repayment of State Overpayments of basic aid (Section 16 of H.B. 770)

This amendment gives certain districts that erroneously included out-of-district vocational education students in their reporting to the Department of Education fifteen years to repay overpayments made by the Department as a result of the reporting. As a result of the reporting to the Department of Education, the amount overpaid to these districts is in the range of \$400,000 to \$900,000. To repay the amount overpaid, the amount will be withheld from the districts' basic aid payments. The repayments will be in fifteen equal yearly installments, and the districts will pay any interest on the amount overpaid to them. Such districts will not be liable for erroneous payments made in previous years.

Temporary Law and Permanent Law – Pupil Transportation Pilot Project (Section 19 of H.B. 770; section 50 of H.B. 650)

Am. Sub. H.B. 650 established two transportation pilot projects (one rural and one urban) to experiment with maximizing the use of school buses for students through cooperative operation of equipment and shared personnel. The permanent-law amendment requires the Department of Education to issue Instruction (with approval of the majority of school districts involved in the transportation pilot projects established by the bill) to an expert in school transportation to develop an experimental plan for more efficient transportation of students with the use of school buses. The previous language, originated by this bill, called for the district superintendents, under the supervision of the Department of Education, to develop the plan themselves.

The temporary-law amendment earmarks up to \$90,000 in each fiscal year to defray the expenses of the pilot projects. The permanent-law amendment adds a new line item 200-502, Pupil Transportation. The line item's appropriation is not increased, so there is no fiscal effect from the permanent-law amendment.

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 agencies to contract for the services of special education instructors and supervisors. The contracts are limited to the type of classes described in section 3313.841 (special education classes).

The bill would change this language; it would eliminate the reference to section 3317.05(B), which allows the contracts to be for "special education" classes only, and would add more-general language to the effect that the contracts would be allowed for "special education" classes. Thus, the permission to contract among districts and ESC's would now be extended to include gifted and talented 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's program is to be included in the formula ADM of the district in which the student is enrolled. The bill, however, would change the law 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 other districts (other than allowed tuition students), (2) permits enrollment of students from all adjacent districts, or (3) permits enrollment from all other districts.

The bill would change this permission to a requirement, so that each district would have to adopt a resolution establishing at least 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. Currently, the "actual cost" of serving an IEP student in a given school district, the bill would define an "average county cost" (average of the actual cost of providing special education and related services to "similarly handicapped children" in each county). The reference to IEP 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 the purchase and repairs of school facilities. Existing language in Am. Sub. S.B. 102 of the 122nd G.A. does not specify additions of school facilities. The amount of the appropriation in the line item CAP-737, School Building Program Assistance, is not changed for FY 1999.

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 : mental retardation and developmental disabilities (MR/DD) who works at, or provides transportation services to, a employee's employment is based on a school year and the employee is not subject to an employment contract that pro

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 s scholarship program.

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 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 "replac expenses with money received from any of the following sources": (1) a permanent improvement levy to the extent t the district board to expenditures for textbooks and instructional materials; or (2) the proceeds of securities whose u textbooks and instructional materials.

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 all revenues received by the district that would otherwise have been deposited in the general fund. One exceptio 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 proceed levy only to the extent that the proceeds are available to be used for the acquisition, replacement, enhancement, m improvements.

The bill would also provide other exceptions to the general-fund moneys requirement in meeting the 4 percent re allowed to replace general fund revenues with (1) proceeds received from any securities whose use is limited enhancement, maintenance or repair of permanent improvements; (2) insurance proceeds received as the result of da a permanent improvement, to the extent the proceeds are placed in a separate fund; (3) proceeds from the sale of

extent the proceeds are placed in a separate fund; (4) proceeds from a tax levy to the extent the proceeds are available for the construction of school facilities; (5) proceeds of certificates of participation issued as part of a lease-purchase agreement.

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 the following:

- (1) Concerning the change to weighted ADM for special education: When adopting rules for weighted ADM's, the department of education would have to provide for counting any student in a district's categorical 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 formula ADM would be just the current October count. The 3-year average formula ADM would be newly defined as the average of the formula ADM's for the current and preceding two fiscal years. Start-up provisions would be provided for fiscal years 1997 and 1998.
- (3) The formula for determining a district's fiscal year 1997 and fiscal year 1998 ADM's would be the October count minus the handicapped ADM, minus one-half of the kindergarten ADM, minus the ADM for students receiving services from another district or service center, minus the ADM for students 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 of 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 under existing language in section 3317.015(B), which provides for certain three-year phase-ins of valuation increases.
- (9) The term "most efficient transportation use cost per student" would be modified to include "student" and its definition would be changed from "the most efficient cost per transported student" to "the most efficient 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 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(D)(4)) for some relief for districts in which the tax-exempt value of property exceeds 25 percent of the potential valuation.
- (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)).

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 determination of a district's total effective operating tax rate to "the tax year for which the most recent data are available" "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 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 calculate the state funds to be distributed for special education and related services' additional weighted costs: the new factor from the formula amount. The bill would also limit, by a formula, the amount of funds that a district may spend each year. Finally, the bill would modify the definition of "log density", from the current statistical representation of the cost based on a statewide analysis, to the logarithmic calculation (base 10) of each district's transportation ADM per pupil.

Permanent Law – State Basic Aid Guarantee, Determination of State Aid for Previous Years (Section 3317.023)

In order to determine the increase in state aid from one year to the next, this section establishes a mechanism for which aid in future years can be compared. The section defines “fundamental fiscal year 1997 state aid” and “fundamental fiscal year 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;
- f) minus an estimated portion of the state money distributed to the school district for approved units of service; school 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 plus the amount of state aid 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 other state aid credits;
- b) adjustments for exceeding minimum teacher/pupil ratio minimums, extended service, gifted units, and other state aid;
- 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 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 omitted. The equalization component of Am. Sub. H.B. 650 provides school districts with valuations per pupil less than the incentive to levy more than 23 effective mills on residential and agricultural property. For each mill above 23 effective mills, the district will receive an enhancement payment equal to the difference between the local revenue generated and the revenue that would be generated if the millage were imposed in a statewide average valuation district.) The bill adds the phrase “thereby correcting the omission. The bill also adds definitions for the terms “equalized tax rate”, “state 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, Compact Agreements (Section 3317.023)

This section would ensure that districts that are educating students from another district pursuant to a shared education 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 school; plus
- b) an amount equal to the formula amount times the state share percentage times any multiple applicable to the services).

These amounts would be deducted from the student's district of residence. In the case of educational service centers (pursuant to section 3317.11 (see above)) are to be deducted from payments to the students' school district of residence to 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 directs 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 DPIA funds for intended purposes. Secondly, districts may need a couple of years to rearrange spending along the lines of the new bill (for safety and security and class size reduction). The bill addresses this area by deleting the current provisions (these are not deemed to match legislative intent), and adding the following provisions. For districts that are capped and have a DPIA index of one or more, a portion of their calculated remediation and security and class size reduction money would be treated as temporarily exempt from the schedule of compliance, if their change in DPIA funds for the year compared to fiscal year 1998 is larger than their average annual change over the period. If this is true in any year, then the amount of excess is treated as exempt for the year. Once the exempt provisions apply to a few districts, a percentage of the remaining amount must then be spent on safety and remediation, kindergarten excess costs (if any): 50 percent in fiscal year 1999, 75 percent in fiscal year 2000, and 100 percent thereafter. Districts with a DPIA index of one or more will have three years to phase into spending their DPIA funds according to the new schedule.

The bill requires any district with a family assistance percentage of at least four times the state average to expend DPIA funds (after any amounts spent for providing all-day kindergarten to the percentage of students it certifies to have the highest ratio of students to instructional personnel to 15 to one in the all-day kindergarten classes serving that certified percentage of students with the highest concentration of need. This provision is expected to only apply to the Cleveland City School District.

Permanent Law - Students in Compacts (Section 3317.03)

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

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 (units) from the Department of Education. Under Amended Substitute House Bill 650, funding for the students received directly to school districts with the intent that the school district contract with the entity or entities that can best provide educational services. Centers believe that they may experience short-term cash flow problems while waiting 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 educational service centers the amounts that are due to it pursuant to contracts, compact or agreements through which the center provides services to a school district or its students. To receive a payment, the educational service center has to provide a contract or agreement signed by the superintendent or treasurer of the applicable school district. The document would have to contain the amount of payments or a written statement of the payments owed. The amounts paid by the Department of Education to the center 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 for the state to receive the services. The fiscal effect of this provision is that educational service centers may receive their funding as if they would have under Amended Substitute H.B. 650.

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 main appropriations act. The section has been moved to permanent law to make reference to the section in various other sections of the act.

(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	Pu
GRF	715-503	Science Advisory Program	1998	\$500,000	\$450,000	(\$50,000)	To transfer into Central Ad agency's moving costs.
GRF	716-321	Central Administration	1999	\$3,780,221	\$3,865,221	\$85,000	Funds transferred from Scie and Water Quality Planning 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 Ad agency's moving costs.
491	715-665	Moving Expenses	1999	\$0	\$1,358,168	\$1,358,168	New fund created to utilize funds within EPA's existing of moving the agency into 1

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 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 item: 715-503, into line item 716-321 to be used for moving costs as well.

(DOH) DEPARTMENT OF HEALTH

Temporary Law - Transfer Cash from Central Support Indirect Fund to Lab Handling Fee Fund (Section 62

The Department of Health (DOH) received a request from the State Public Health Laboratory for additional funding. Since the Laboratory did not have enough available funds through GRF and fee revenue, it requested permission from the Office of Budget Management (OBM) to transfer indirect cash from the central support unit (Fund 211) to the Lab Handling Fee Fund (Fund 473) for cleaner accounting purposes. Discussions between DOH and OBM resulted in the transfer of funds.

Moneys in Fund 211 pay for central support operations that are difficult to accurately assess to each of the various divisions of the Department of Health. The areas supported with indirect costs provide services to all DOH divisions. Every month, DOH uses the indirect cost study 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, the program will accept for review CON applications for nursing home beds in a health care facility and skilled nursing facility beds in a person's home, if the application concerns replacing or relocating existing beds within the same county. Following Sub. S.B. 50, the program will require quality assurance.

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

(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 Health's line item 440-459, Ohio Early Start. The Early Start program is administered by the Department of Human Services for children between the ages of birth and three who are identified with or at risk of developmental disabilities. These children are eligible for the Early Start Welcome Visits program. The bill stipulates that the \$4 million will be provided from the state appropriations within the Department of Human Services budget.

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 for continued eligibility for publicly subsidized child day-care and stipulates that the maximum may not exceed 185 percent of the state income 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 level.

By expanding the initial eligibility income limit for day care services, the bill will increase the number of enrollees in the Ohio Works First state day care program. Thus, expenditures for day care will increase over current expenditures. However, expenditures for FY 1998 are an estimate, making it unlikely that an expansion in eligibility will exceed available funding. In the aggregate, the number of enrollees in Ohio Works First state day care programs are below estimate by 8,738, as cited by the Department of Human Services. For the Non-Guaranteed day care program, the actuals are below the estimate by 19,740 enrollees. For the Non-Guaranteed day care program, the actuals are below the estimate by 12,506. This language will give both the state department and the counties flexibility to meet the child care needs of the low-income and 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 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 reimbursed at the rate that the Department of Human Services establishes, regardless of whether the rate is higher than what the provider would otherwise receive. For providers, this could mean an increase in reimbursement for child care services. Overall, total expenditures will not increase, but expenditures for individual providers could slightly increase.

Permanent Law – Requirement that the Welfare Oversight Council Meets at Least Four Times Annually (S.B. 215)

The bill requires the Welfare Oversight Council to meet at least four times annually instead of twice a year. In addition to the First program, the Council is to review sanctions imposed under OWF. LBO assumes a negligible increase in costs 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. The bill provides that the amount of money for repair and renovation of the Ohio Department Building for use by the Supreme Court is exempted from the Percent for Arts program, §3379.10 O.R.C., requires that a portion of the money to be spent by state agencies on the construction of public buildings be spent on the acquisition of works of art. The Director of the Office of Budget and Management may veto a request for works of art 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 art in or on the public building, that the value of some features or characteristics inherent in the architectural design of the public building toward the one per cent requirement, or that the public building is or will be amply supplied with works of art even if the public building is not supplied with works of art from the Ohio Arts Council. This corrective amendment places this exemption, for this specific purpose, directly into the bill. This provision should have no fiscal effect on the Ohio Arts Council and may reduce expenditures related to the renovation of the Ohio Department Building.

(LSC) LEGISLATIVE SERVICE COMMISSION

Permanent Law – Distribution of Reports, Recommendations, and Documents to General Assembly Members

The bill requires that whenever any statute or rule requires an agency to submit a report, recommendations, or other documents to the President of the Senate and the Speaker of the House of Representatives, the agency must also submit the same documents to the Legislative Service Commission and the Minority Leaders of the Senate and the House of Representatives. If the agency is required to submit such documents to the President of the Senate only, the agency must also submit the same documents to the Director of the Legislative Service Commission and the Minority Leader of the Senate. Similarly, if the agency is required to submit such documents to the Speaker of the House of Representatives only, the agency must also submit the same documents to the Director of the Legislative Service Commission and the Minority Leader of the House of Representatives. This provision will result in a negligible increase in agency copying costs.

(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 action as long as the trustee acted in good faith and without malicious intent or recklessness when approving institutions notwithstanding other sections of the Revised Code in order to make this intention incontrovertible. The section was enacted in 2015 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 - description (Section 101 of Am. Sub. H.B. 215)

The amendment changes the requirements for use of appropriations in line item 415-431, Office for Pec appropriation in this line item is \$192,672 for FY 1998 and \$195,452 in FY 1999. Under current law, \$100,000 of th was to be used for the state match for a federal grant awarded through P.L. 104-166, The Traumatic Brain Injury stipulation apply only to the fiscal year 1999 appropriation, and not to the appropriation for fiscal year 1998. In FY Head Injury will use the line item appropriation for projects recommended by the Ohio Head Injury Advisory Cou. 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 by the School Facilities Commission and the Controlling Board (without funds having been appropriated or encumbered for the projects). These districts could submit the required proposals authorizing a bond issue for the local share of the project and the voters at the November 3, 1998 election, but the districts would not be permitted to actually issue bonds or levy tax for the projects. This provision will allow the School Facilities Commission to go forward in approving additional projects and assistance funds. Since it is expected that additional funds will continue to be appropriated, this provision will facilitate the projects once they are appropriated.

Permanent Law – Public School Building Projects – Changes in Bidding and Contracting (Sections 3318.08 and 3318.09)

The bill makes two changes in regard to bidding and contracting for school building projects that receive state funding. The initial specifications for a school building project have been approved (by the school district board and the Ohio School Facilities Commission), the school districts must advertise for construction bids once a week for four consecutive weeks in a newspaper of general circulation. The bill would reduce the number of weeks the district has to advertise from four weeks to three. According to the School Facilities Commission, this will make the school building assistance law consistent with Chapter 153 of the Revised Code, which is the law governing construction contracts. The fiscal effect of this provision is that it will reduce advertising costs for school districts by one week 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 bidder 60 days after the date on which the bids are opened. Again, this provision conforms with provisions Chapter 153. Although attempting to expedite the construction process, in practical terms it is taking longer than the current 30 days to obtain second approval from the commission and the Controlling Board (if the lowest responsible bids exceed the estimate of the project construction account, and receive certification from the Office of Budget and Management that moneys are available). The proposed 60-day time frame will give all parties a more reasonable amount of time to complete all of the procedural requirements.

The bill would also delete section (M) of section 3318.08 of the Revised Code. This section states that when a school district enters into an agreement with the Ohio School Facilities Commission, the agreement would include a provision to suspend the payment of notes for permanent improvements without the prior consent of the commission as long as any part of the purchase price has not been paid. 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 code. A number of the corporate tax reforms (for non-financial corporations) first take effect in tax year 1999. Apparently, the bill applies 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 taken effect; that the prior law is in effect until the new law begins.

Permanent Law - Preemption of Municipal Taxing Authority (Sections 715.013 and 718.01)

The inclusion of this provision stems from the May 13 1998 decision of the Ohio Supreme Court in the case of *Cincinnati Bell Telephone Co. v. Cincinnati Bell Telephone Co.* (1998). At issue is the implied doctrine of preemption. The specifics of the case are that the city of Cincinnati and the village of Fairfax all levy a municipal income tax on the net profits of corporations derived from business activities during the years 1991 through 1993 (and a first quarter estimated payment for tax year 1994), Cincinnati Bell paid \$955,000 to each municipality. Cincinnati Bell then requested refunds from each municipality, on the grounds that since the state has received receipts from intrastate business pursuant to ORC 5727.30 (the public utility excise tax), municipalities were prevented from levying such taxes.

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 if a field of taxation is already occupied by the state, municipalities are excluded from that field of taxation. Examples of this were taxes on securities (e.g. stockbrokers), which was preempted by the state's tax on intangible property, the tax on dividends, interest, rent, capital gains, etc.), which was preempted by the state's tax on intangible property, and the tax on the income of utilities. The specific application of the doctrine to the taxation of the income of utilities was established in *Cincinnati Bell Telephone Co. v. Cincinnati Bell Telephone Co.* . 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 was abrogated. Instead, the Court ruled that the entire doctrine of preemption has no basis in law. This potentially opens up many additional fields to taxation by municipalities. The Court further held that a municipality may be preempted or otherwise prohibited only by an express act of the General Assembly, which this bill does.

Because of the sweeping nature of the Court decision, the fiscal impact of this bill is difficult to specify. Certainly the Ash, and Fairfax are prevented from prospectively applying the municipal income tax to utilities from the effective date of the bill. The question remains: what would other cities do in the absence of this bill? A spokesperson for the Ohio Municipal Association stated that the bill would be a significant relief to many municipalities.

municipalities in Ohio are currently contemplating applying the municipal income tax to utility profits. However, whether it is unclear. LBO has made a rough estimate that applying the municipal income tax to utility profits could result in significant revenues statewide. Now that economic times are good and municipalities do not need additional revenue, such an extension could be considered. During the next economic downturn, however, it is quite possible that some municipalities would be taxing utility profits. Nor does the potential revenue impact stop at \$25 million. With no implied doctrine of preemption, municipalities could also tax insurance company profits and portfolio income of individuals. If every municipality in Ohio expanded its taxing authority to include 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 impact. Municipalities are prevented from collecting tens or even hundreds of millions in tax revenue which they otherwise might collect. In any case, such rampant extension of municipal taxing authority would be politically unpopular, and many municipalities would be testing the maximum amount of leeway the Supreme Court has granted them in taxation.

Permanent Law - Corporation Franchise Tax Reform and Pass-Through Entities (Sections 573.04, 5733.05, 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 of pass-through entities are businesses not organized as subchapter C corporations, where the business income "passes through" to owners are individuals, they are taxed under the personal income tax. Corporate owners of pass-through entities are subject to franchise tax. Examples of pass-through entities are partnerships, limited liability companies (LLCs), and S-corporations. Nonresident owners of pass-through entities were subject to Ohio income tax and franchise tax, but in many cases the tax was not caught 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 while the third is meant to prevent the flight of certain investment companies to other states. The bill also clarifies which entities are exempt from the pass-through withholding requirements (certain retirement systems, small business trusts that make distributions to partnerships). The bill provides a mechanism for refunds in cases where withholding occurred, and makes clear that the bill does not apply retroactively.

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, the bill provides for a single application of the withholding tax to the first level of pass-through entity, as long as that entity in fact pays the withholding tax. For example, if an LLC (company A) owns a piece of a partnership (company B) which in turn holds a piece of another LLC (company C), then all three companies might be required to pay withholding tax on the same net income (or net gain). Under this bill, only company A would pay withholding tax on the distributive shares of income and gain that result from its investment in company B, then company B would 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 withholding tax did not include assumptions of such pyramiding: i.e. our estimates were based on forecasts of net only.

2. Investment Companies

Certain companies essentially function as investment conduits, where investors buy an ownership interest in the LLC and the company then invests the owner's money in various assets. Venture capital companies are an example of this not limited to venture capital. The existing law would subject these pass-through entities to the new withholding tax. In Ohio (not a large number from the data that LBO has seen) have threatened to relocate to other states as a result of the 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 of intangible property, loan fees, financing fees, consent fees, waiver fees, application fees, net management 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 tax. LBO has been unable to generate a numerical estimate of the lost income tax revenue from this provision. Our best estimate is not large. If some investment companies really did follow through on their threat to relocate if the exemption were not enacted, 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 and thus pays the gross receipts tax can deduct any income or gain deriving from that investment from its net income (after deducting any expenses and losses derived from the exempted investment). The corporation must also exclude property, payments, and the exempted investment from its calculation of apportionment factors in determining its net income or gain that is taxable to Ohio.

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

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 the contributions are deductible under federal law. Federal law does not provide a general exemption yet - instead there is a pilot program that allows certain individuals, which apparently includes some Ohioans. This provision is consistent with the original intent of the MSA law.

(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 of the Rail Development Commission. The fund is to be used to acquire, rehabilitate, or develop rail property service. The fund can also be used for the acquisition of rail property 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
4E2	430-602	Veterans' Home Operating	1999	\$3,320,470	\$3,480,942	\$160,472
484	430-603	Rental and Service Revenue	1999	\$0	\$100,000	\$100,000

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 Veterans' Home General Revenue Fund operating line items, as provided in Am. Sub. H.B. 650, from the Veterans' Home Operating Fund (Fund 4E2). This would allow the one percent cut in Fund 4E2 required in Am. Sub. H.B. 215 to be 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 in the general treasury. The new fund shall be used for the maintenance costs of the Home. OVH does not currently receive revenue from the sale of space under lease and sharing agreements for services and facilities.

(BWC) BUREAU OF WORKERS COMPENSATION

Permanent Law – Removes OBM from Process of Estimating State Employers’ Gross, and Alters Actuarial Calculates State Employer Premiums (Section 4123.40)

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