

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: **H.B. 770** DATE: **May 20, 1998**
STATUS: **As Introduced** 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*	- 0 -
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 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 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.
- (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	- 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 -

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- (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.

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- (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.
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- (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 (Section 4745.01)

The bill corrects language regarding the process for the Accountancy Board’s collection of licensing fees. Licensing shall be forwarded to the Treasurer of State for deposit only after the Board approves the application. In the event approved, the Board shall return the payment to the applicant. Since this merely codifies existing practice, there is no impact on 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 Central Service Agency Fund of the Department of Administrative Services (DAS). The Central Service Agency administrative, and financial services for state boards and commissions that do not possess the expertise or staff to transfer to DAS' line item, 100-632, Central Service Agency, would be used to cover the deficit that has resulted from the Medical and Pharmacy Boards' use of the fund. The subsidy is necessary because the Pharmacy and Medical Boards contribute to the fund, but DAS' administrative costs would not decrease enough to be sustained by contributions of the other services. The \$150,000 would cover these costs and also cover deficits from the phase-out of other programs, should the fund be insufficient 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 without a vote of the Controlling Board, as long as the project is within 10 percent of its original cost estimate. projects to the Controlling Board within two months after the passage of any capital appropriation act. This item allows Management to create new appropriation items, and transfer appropriations to them. The item has no direct fiscal effect on 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 of minority business needs and how to improve Department of Development services for minority businesses. The earmark these moneys to come from *biennial appropriations*, thus allowing the study to proceed in either fiscal year

EDU

(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
GRF	200-100	Personal Services	1999	\$10,756,210	11,256,210	\$
GRF	200-200	Maintenance	1998	\$8,691,111	\$3,991,111	(\$4,700,000)
GRF	200-200	Maintenance	1999	\$4,597,207	\$6,797,207	\$2,200,000
GRF	200-300	Equipment	1999	\$116,773	\$2,116,773	\$2,000,000
GRF	200-545	Vocational Education Enhancements	1999	\$184,298,314	\$201,991,432	\$17,693,118

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 move of the South Front Street to other facilities. This move, originally scheduled to occur in fiscal year 1998, is now anticipated to occur in fiscal year 1999. Funds would be taken from the Maintenance line item in fiscal year 1998 and divided among three fiscal year 1999 line items (Maintenance and Equipment) according to the anticipated types of expenditures. There would be no effect on state expenditures in fiscal year 1998 or 1999.

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

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

The provision would make two related changes in the temporary law regarding earmarked legal fees within this line to \$1 million in fiscal year 1999 to cover the legal fees associated with desegregation cases brought against the state however, new language would be inserted to the effect that, in fiscal year 1999, "any unobligated balances" in the li 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 appropriation would remain unchanged, there would be no fiscal effect upon the state's expenditures or revenues.

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 fisc language to the effect that this number is to include the GRADS units. The provision would also increase the amou JVSD's from \$125 million to \$134 million in that fiscal year and would increase the line item's appropriation by the sa

Regarding GRADS, the provision would fund the existing \$7,193,118 earmark for fiscal year 1999 by increasing th that amount.

Finally, the provision would increase the amount of funds earmarked for special education at JVSD's from \$3.1 mill 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 th

These additions to the department's appropriations for vocational education would enable the department to fi requirement to remain eligible for federal funds grants. Without these additions, the vocational education spending from the recently estimated FY 1998 spending level and, thus, could jeopardize those grants. (However, it should quite recently estimated that it would lapse approximately \$18 million in vocational education spending for FY 1 estimate for total FY 1998 spending is then revised downward by the \$18 million. With this lower level for FY 19 FY 1999 appropriations would no longer be necessary to meet the maintenance-of-effort threshold, since vo 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. 65

Three changes are made to this section of temporary law. First, the set-aside language for special education reeducation recomputation for fiscal year 1998 is restored. This language was included in the budget act, and inadvertently omitted in Am. Sub. H.B. 650. The second change restores the reference to Revised Code section 3317.026. This will allow school districts to request the Controlling Board to increase the \$9 million set-aside for this adjustment, along with the 3317.027 and 3317.028 adjustments, based on a request to do so from the Department of Education. The third change is a specification of the \$13,861,282 set-aside for additional state aid districts will receive for special education students whose costs exceed \$25,000 in one school year. These costs were included in the appropriations in Am. Sub. H.B. 650 of the 122nd General Assembly. The language merely set aside for such purposes.

Temporary Law – Special Education Enhancements (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 are made by the bill; appropriations remain the same. The changes are listed below.

Set-Aside	Amount in Am. Sub. H.B. 650	Amount in Am. Sub. H.B. 215
Home Instruction/In School Tutoring	\$22,000,000	\$22,000,000
Occupational and physical therapy	\$2,000,000	\$2,000,000
Parent mentoring	\$1,150,000	\$1,150,000
Teacher training	\$100,000	\$100,000
Psychology Interns	\$ 0	\$ 0
Special individual instructional related services	\$ 0	\$ 0
Speech services	\$ 0	\$ 0

In prior years, the home instruction set aside was used to provide tutoring services to two groups of students: a) students with extended illness, required tutoring at home; and b) learning disabled students who received tutoring sessions during school hours. The Department of Education weights should provide funding to pay for the in-school tutoring sessions. Thus, only \$3 million is needed to provide tutoring services in students' homes. New set-aside language for FY 1999 provides up to \$2,500,000 for psychology interns, up to \$14,000,000 for special individual instructional related services including interpreters, guides, and reader services, and up to \$14,000,000 for speech services for students who through an IEP, require speech services only. The Department of Education is instructed to adopt rules for the distribution of the set-aside based on the adjusted total taxable value of each school district, so that poorer districts would receive a greater share than wealthier districts.

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 share the services of special education instructors and supervisors. The contracts are limited to the type of classes de (i.e., special education classes).

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

Permanent Law - ADM under Joint Programs (Section 3313.842)

This section of current law permits two or more school districts to contract for joint programs of instruction. This lan

Further, the section states that a student participating in such a joint program is to be included in the formula AD student is enrolled. The bill, however, would strike all of this section's language concerning the student's inclusion in a

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 adjacent districts (other than allowed tuition students), (2) permits enrollment of students from all adjacent districts students from all other districts.

The bill would change this permission to a requirement, so that each district would have to adopt a resolution establis 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 "actual cost" of serving an IEP student in a given school district, the bill would define an "average county cost" (av within a county) of providing special education and related services to "similarly handicapped children". The eliminated. This new definition would replace the "actual cost" in determining state aid payments to the districts.

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 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 "operating expenses with money received from any of the following sources": (1) a permanent improvement levy to the extent the proceeds are available to be used for the acquisition, replacement, enhancement or repair of capital facilities; or (2) the proceeds of securities whose use is limited to enhancement, maintenance or repair of permanent improvements.

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 an amount equal to 4 percent of all revenues received by the district that would otherwise have been deposited in the general fund. One exception to this requirement is that an amount equal to 4 percent of the proceeds of 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 permanent improvement levy only to the extent that the proceeds are available to be used for the acquisition, replacement, enhancement or repair of capital facilities.

The bill would also provide other exceptions to the general-fund moneys requirement in meeting the 4 percent requirement: (1) proceeds received from any securities whose use is limited to enhancement, maintenance or repair of permanent improvements; (2) insurance proceeds received as the result of damage to 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 acquisition, replacement, enhancement or repair of capital 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 Chapter 3317.02, as follows:

- (1) Concerning the change to weighted ADM for special education: When adopting rules for FTE's, the department of education would have to provide for counting any student in a district's category 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 a district's formula ADM's for the current and preceding two fiscal years. Start-up provisions would be provided for fiscal years 1997 and 2000.
- (3) The formula for determining a district's fiscal year 1997 and fiscal year 1998 ADM's would consist of the October count minus the handicapped ADM, minus one-half of the kindergarten ADM, plus 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 according to existing language in section 3317.015(B), which provides for certain three-year phase-ins of valuations on properties.
- (9) The term "most efficient transportation use cost per student" would be modified to include "per student" before "student" and its definition would be changed from "the most efficient cost per transportation use cost per student 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 greater of formula ADM and the 3-year average 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 (reference to section 3317.015(B)) to provide some relief for districts in which the tax-exempt value of property exceeds 25 percent of the potential taxable value.
- (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, the determination of a district's total effective operating tax rate to "the tax year for which the most recent data are available" 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. 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 require calculating the state funds to be distributed for special education and related services' additional weighted costs: the new 7/8 factor from the formula amount. The bill would also limit, by a formula, the amount of funds that a district may spend in the current year. Finally, the bill would modify the definition of "log density", from the current statistical representation of transportation use cost based on a statewide analysis, to the logarithmic calculation (base 10) of each district's transportation use cost.

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 calculating the state aid in future years which 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 units;

- f) minus an estimated portion of the state money distributed to the school district for approved units 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 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 DI credits;
- b) adjustments for exceeding minimum teacher/pupil ratio minimums, extended service, gifted 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.

The section also directs the treasurer of any school district or educational service center to furnish the data needed by 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 equalization component of Am. Sub. H.B. 650 provides school districts with valuations per pupil less than the state 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 that would be generated if the millage were imposed in a statewide average valuation district.) The bill adds the phrase “ADM” thereby correcting the omission. The bill also adds definitions for the terms “equalized tax rate”, “state district’s taxable value per pupil.” Since the changes correct the section to its original intent, no new fiscal impacts o

Permanent Law – Payments to Districts Educating Students through Shared Education Contracts, Compact 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 the school is located; 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 or 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 – Equalization of Gifted Funding (Section 3317.024)

Am. Sub. H.B. 650 retained unit funding for gifted education through fiscal year 1999. In fiscal year 2000, each district receives 0.1 for 10 percent of its students times the district's state share percentage. The formula in Am. Sub. H.B. 650 inadv the formula that would essentially equalize the formula – the phrase "state share percentage." The bill inserts this phr funding beginning in fiscal year 2000.

As an example of how this change would affect a school district, suppose that School District A has 2,500 students a 30 percent (receives 30 percent of its funding for base cost from the state). As the formula reads in Am. Sub. H.B. (10 percent of the formula amount (\$403.80) for 10 percent of its students (250 students), or \$100,950. Under the bi 10 percent of the formula amount times 10 percent of its students, times its state share percentage, or \$30,285.

The district-by-district projections prepared by the Department of Education and LBO assumed that gifted funding funding were not equalized, additional appropriations in the range of \$35 million (over fiscal year 1998 appropriatio needed for gifted education in fiscal year 2000.

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 intended purposes. Secondly, districts may need a couple of years to rearrange spending along the lines of (remediation and security and class size reduction). The bill addresses this area by deleting the current provisions because they did not match legislative intent), and adding the following provisions. For districts that are capped at or less than or equal to one, a portion of their calculated remediation and security and class size reduction money would be taken from the following general schedule of compliance, if their change in DPIA funds for the year compared to fiscal year 2000 overall aid increase over the same period. If this is true in any year, then the amount of excess is treated as exempt portion is subtracted (this will only apply to a few districts), a percentage of the remaining amount must then be spent on class size reduction, and all day kindergarten excess costs (if any): 25 percent in fiscal year 1999, 50 percent in fiscal year 2001, and 100 percent in fiscal year 2002. In other words, districts with a DPIA index of one or more will be 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 compact, cooperative education agreement, or a contract, are to be counted in the school district of residence, not the district they are receiving such services. This clarification will ensure that such students are only counted once, and should have

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 (in the form of education units) from the Department of Education. Under Amended Substitute House Bill 650, funding for the students was provided directly to school districts with the intent that the school district contract with the entity or entities that provide the services. Because educational services centers believe that they may experience short-term cash flow problems when they are not paid for services, they have 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 agreement. To receive a payment, the educational service center must provide services to a school district or its students. To receive a payment, the educational service center must submit to the contract, compact, or agreement signed by the superintendent or treasurer of the applicable school district. The district must indicate the amounts of the payments or a written statement of the payments owed. The amounts paid by the Department of Education to 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 for school districts receiving the services. The fiscal effect of this provision is that educational service centers may receive the funding they otherwise 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 main appropriations act. The section has been moved to permanent law to make reference to the section in various of

EPA

(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 ag 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, 1 715-503, into line item 716-321 to be used for moving costs as well.

Permanent Law - E-Check Test Fee (Section 3704.14 (D) (7))

In January 1996, the State of Ohio began the vehicle emissions testing program to comply with federal requirements to identify motor vehicles emitting excessive levels of pollutants into the air, and the program tests vehicles in 14 counties required every two years, prior to registration renewal, on gasoline and diesel-powered vehicles up to 25 years old and 10,000 pounds or less. Vehicles with an even-numbered model year will be tested in even years and odd-numbered years. Each E-Check test costs \$19.50. Approximately \$1.75 of each fee will go into Ohio EPA Fund 602, to compensate Envirotest, the testing company.

Under current law, the motorist will not be charged for the first test if the vehicle fails. If the vehicle needs a second test, the motorist will not be charged for the test if the vehicle fails. For the third or any subsequent test, the motorist will be charged, regardless of whether the vehicle passes or fails.

This provision will require the motorist to pay the fee upon the first inspection, regardless if the vehicle passes the first test. If the vehicle fails, then the owner will not pay a reinspection fee for the second test. However, if the vehicle must have a third or subsequent test, the owner must pay a reinspection fee.

This provision may require certain owners to pay for two tests when only one test fee is required under current law. Under current law, the first and second test are required, and a third test is required if the vehicle fails the first two tests. Under current law, the owner would only start paying up to \$19.50 for the third test if the vehicle failed the first two tests. This provision will require the vehicle owner to pay for the first test and the third test.

This provision is expected to increase the revenues received by Ohio EPA and Envirotest. One reason for the increase is the third test penalty described above. Under current law, if an owner tests a vehicle and it fails, the owner may decide not to register the vehicle; thus, the vehicle will never receive additional tests. Therefore, this owner would not pay for a third test. This provision will require the vehicle owner to pay the fee on the first inspection, even if the vehicle fails and is never retested. This will increase the revenues received from the E-Check program. The total expected increase in revenue for Ohio EPA, based on data from December 1997, will be approximately \$130,000 each year.

Under current law, the time schedules for collecting fees from the motorist are different from that in the Ohio Administrative Code contracts with Envirotest. This provision will align the law in Section 3704.14 (D) (7) with that in Chapter 3704 Ohio Administrative Code contracts with Envirotest.

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 2000. In addition, prior to using any moneys in the Scrap Tire Management Fund 4R5, line item 715-656, approval by the Controlling Board is required.

This provision will remove the \$3,000,000 cap from the scrap tire program to allow the program to utilize up to 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 the fund is \$4,605,125.

(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 department did not have enough available funds through GRF and fee revenue, it requested permission from the Office (OBM) to use indirect cash from the central support unit (Fund 211). OBM agreed with the request but want transferred to the Lab Handling Fee Fund (Fund 473) for cleaner accounting purposes. Discussions between DC 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 di of Health. The areas supported with indirect costs provide services to all DOH divisions. Every month, DOH uses the 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 A to accept for review CON applications for nursing home beds in a health care facility and skilled nursing facility bec nursing home, if the application concerns replacing or relocating existing beds within the same county. Following Sul concept of quality assurance.

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

(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 to children between the ages of birth and three who are identified with or at risk of developmental disabilities to fund the Early Start Welcome Visits program. The bill stipulates that the \$4 million will be provided from the state Fund appropriations within the Department of Human Services budget.

(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 appropriated for repair and renovation of the Ohio Department Building for use by the Supreme Court is exempt program. The Per Cent for Arts program, §3379.10 O.R.C., requires that a portion of the money to be spent by state or renovation of public buildings be spent on the acquisition of works of art. The Director of the Office of Budget and provision if the director feels that works of art would be out of place in or on the public building, that there will be appreciation of works of art in or on the public building, that the value of some features or characteristics inherent in public building should apply toward the one per cent requirement, or that the public building is or will be amply supplied without works of art purchased from the Ohio Arts Council. This corrective amendment places this exemption, formerly into §190 of Am. Sub. H.B. 215. This should have no fiscal effect on the Ohio Arts Council and may reduce expenditures of the Ohio Departments Building.

(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 act or loss as long as the trustee acted in good faith and without malicious intent or recklessness when approving contracts. It notwithstanding other sections of the Revised Code in order to make this intention incontrovertible. This was vetoed in Sub. H.B. 215 of the 122nd G.A. It does not have a fiscal effect on state government or political subdivision

(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. Specifically, a number of the corporate tax reforms (for non-financial corporations) first take effect in tax year 1998. Taxpayers wish to apply the novel legal theory that for tax year 1998 the prior law is no longer in effect but that 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 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 Company vs. Cincinnati* (1998). At issue is the implied doctrine of preemption. The specifics of the case are that the City of Cincinnati, the village of Blue Ash, and the village of Fairfax all levy a municipal income tax on the net profits of corporations derived from the same field of taxation. For tax years 1991 through 1993 (and a first quarter estimated payment for tax year 1994), Cincinnati Bell paid municipal income tax to the three municipalities. Cincinnati Bell then requested refunds from each municipality, on the grounds that since all three municipalities tax on its gross receipts from intrastate business pursuant to ORC 5727.30 (the public utility excise tax), municipalities with 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 is that if a field of taxation is already occupied by the state, municipalities are excluded from that field of taxation. Examples include net profits of dealers in securities (e.g. stockbrokers), which was preempted by the state's tax on intangible property; dividends, interest, rent, capital gains, etc.), which was preempted by the state's tax on intangible property; and income from utilities. The specific application of the doctrine to the taxation of the income of utilities was established in *Cincinnati* (1925). The application of this doctrine was upheld by *Haefner v. Youngstown* (1946) and *East Ohio Gas v. City of Akron* (1954).

By ruling in favor of the municipalities, the Supreme Court did not simply rule that the doctrine of implied preemption applied to municipal taxation of utility profits. Instead, the Court ruled that the entire doctrine of preemption has no basis in the Ohio Constitution and is abrogated. This potentially opens up many additional fields to taxation by municipalities. The Court further held that municipal taxation of utility profits 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 City of Cincinnati, Blue Ash, and Fairfax are prevented from prospectively applying the municipal income tax to utilities from the effective date of this bill. The question remains: what would other cities do in the absence of this bill? A spokesperson for the Ohio Municipal Association stated that he would like to see a bill that would allow municipalities to continue to tax utilities from the effective date of this bill.

other municipalities in Ohio are currently contemplating applying the municipal income tax to utility profits. However, in the long run is unclear. LBO has made a rough estimate that applying the municipal income tax to utility profits could add \$25 million to annual tax revenues statewide. Now that economic times are good and municipalities do not need additional revenue, the municipal income tax may not be considered. During the next economic downturn, however, it is quite possible that some municipalities will pick up fiscal shortfalls by taxing utility profits. Nor does the potential revenue impact stop at \$25 million. With no impediment the way, municipalities could also tax insurance company profits and portfolio income of individuals. If every municipality were 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. Municipalities are prevented from collecting tens or even hundreds of millions in tax revenue which they otherwise might collect. Of course, such rampant extension of municipal taxing authority would be politically unpopular, and many municipalities would limit themselves to 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, 5733.0611, 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 of pass-through entities. These pass-through entities are businesses not organized as subchapter C corporations, where the business income "flows through" to the owners. Where the owners are individuals, they are taxed under the personal income tax. Corporate owners of pass-through entities are subject to corporate franchise tax. Examples of pass-through entities are partnerships, limited liability companies (LLCs), and trusts. Under HB 215, nonresident owners of pass-through entities were subject to Ohio income tax and franchise tax, but in many cases it was difficult to catch upon audit. HB 215 did not increase taxpayers' liability, but it provided a mechanism to collect the tax.

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 are not publicly traded 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 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. For example, where an LLC (company A) owns a piece of a partnership (company B) which in turn holds a piece of another partnership (company C), under existing law all three companies might be required to pay withholding tax on the same net income (or net gain). Under the bill, only company A pays its withholding tax on the distributive shares of income and gain that result from its investment in company B. Company B does 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 new withholding tax did not include assumptions of such pyramiding: i.e. our estimates were based on forecasts of net income once only.

2. Investment Companies

Certain companies essentially function as investment conduits, where investors buy an ownership interest in the corporation, and the company then invests the owner's money in various assets. Venture capital companies are an example, although the type is not limited to venture capital. The existing law would subject these pass-through entities to the gross receipts tax. Investment companies based in Ohio (not a large number from the data that LBO has seen) have threatened to relocate to another state to avoid 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, sale, or lease of intangible property, loan fees, financing fees, consent fees, waiver fees, application fees, net management fees, net 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 is from those activities. LBO has been unable to generate a numerical estimate of the lost income tax revenue from this provision. The dollar amount is not large. If some investment companies really did follow through on their threat to relocate, 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 and thus pays the gross receipts tax can deduct any income or gain deriving from that investment from its net income (and add back any expenses and losses derived from the exempted investment). The corporation must also exclude property from the exempted investment from its calculation of apportionment factors in determining its net income or gain that is subject to the gross receipts tax.

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 they are deductible under federal law. Federal law does not provide a general exemption yet - instead there is a pilot program that allows exemptions for 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 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 the operating 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
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 the amount of the one percent cut in Fund 4E2 required by Am. Sub. H.B. 650, from the Veterans' Home General Revenue Fund operating line items, as provided in Am. Sub. H.B. 650, from the Veterans' Home General Revenue Fund to the Veterans' Home Operating Fund (Fund 4E2). This would allow the one percent cut in Fund 4E2 required by 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 in the state treasury. The new fund shall be used for the maintenance costs of the Home. OVH does not currently receive any revenue from the sale of space under license, lease agreements and lease and sharing agreements for services and facilities.