
OHIO FACILITIES CONSTRUCTION COMMISSION

Declaration of public exigency

- Expands the authority of the Executive Director of the Ohio Facilities Construction Commission (OFCC) to declare a public exigency regarding any public works.
- Allows the Executive Director to declare a public exigency upon the request of a state institution of higher education or any other state instrumentality.

Cultural facilities cooperative use agreements

- Renames a "cooperative contract" under the Public Works Law a "cooperative use agreement."
- Specifies, when an Ohio sports facility is financed in part by state bonds, that construction services must be provided on the state's behalf or at the direction of the governmental agency or nonprofit corporation that will own or manage the facility.
- Specifies that the construction services must be specified in a cooperative use agreement between the OFCC and the governmental agency or nonprofit corporation.
- Exempts the cooperative use agreement and actions taken under it from the Public Works and Public Improvements Laws, but subjects the agreement and actions to phases of those laws relating to cultural facilities and the use of domestic steel and to the Prevailing Wage Law.
- Specifies that a cooperative use agreement must have a provision requiring a cultural project to be completed and ready to support culture, rather than completed and ready for full occupancy.
- Expands the definition of "governmental agency" in the Public Works Law to include state agencies and state institutions of higher education.

State agency bid specifications requiring project labor agreements

- Requires a state agency to hold a public hearing before issuing bid specifications for a proposed public improvement that require a contractor or subcontractor to enter into a project labor agreement.
- Requires the state agency to decide whether to include that requirement in the bid specifications not earlier than 30 days after the hearing.



State-financed historical facilities

- Specifies that a cultural organization financing a historical facility project with state money may use not more than 3% of the money to pay its cost of administering the project.

Surety bonds

- Transfers from the Director of Administrative Services to the Executive Director authority to adopt rules regarding certain surety bonds.

Electronically filed bids

- Allows a public bid guaranty to be provided by means of an electronic verification and security system.
- Limits the ability to broadcast a public bid opening by electronic means to only bids that are filed electronically.
- Eliminates the requirement that submitted bids be tabulated on duplicate sheets.

Energy and water conservation

- Clarifies that the Executive Director has authority to enter into energy or water conservation contracts on the Executive Director's own initiative or at the request of a state agency.

School Facilities Commission (SFC)

- Provides that the new conditional approval of a district's project scope and basic project cost, after a lapse of a previous conditional approval, are valid for 13 months, rather than one year as under prior law.
- Permits certain funds appropriated to SFC for classroom facilities projects that were not spent or encumbered during the first year of each biennium to be used for various SFC programs.
- Permits a school district, educational service center, or community school to enter into a lease-purchase agreement providing for the construction or improvement and eventual acquisition of "facilities or improvements to facilities," rather than just "buildings" as under prior law.
- Requires that a lease-purchase agreement must provide for a series of one-year renewable lease terms totaling not more than the number of years equivalent to the useful life of the asset but not to exceed 30 years.



- Requires SFC, in consultation with the Office of Budget and Management, to prepare a study of the impacts, benefits, and risks associated with a school district funding its share of the cost of a school facilities project under any SFC program with cash-on-hand resulting from a lease-purchase agreement.
- Eliminates the Education Facilities Trust Fund and the Ohio School Facilities Commission Fund.
- Requires SFC to provide funding to a "qualifying partnership" of school districts that are part of a career-technical education compact in the acquisition of classroom facilities for a joint STEM education program.
- Authorizes a "qualifying partnership," subject to voter approval, to levy a property tax for up to ten years to pay its portion of the cost the classroom facilities for the joint STEM program.
- Permits SFC to provide grants to (1) high-performing community schools that satisfy specified conditions or (2) newly established community schools implementing a community school model that have a track record of high quality academic performance, as determined by the Department of Education.

Declaration of public exigency

(R.C. 123.10)

The act expands the authority of the Executive Director of the Ohio Facilities Construction Commission (OFCC) to declare a public exigency. Under prior law, the Executive Director was authorized to declare a public exigency when an injury or obstruction occurred in any public work of the state maintained by the Director of Administrative Services. The act removes the limitation "maintained by the Director of Administrative Services" to allow the Executive Director to declare a public exigency regarding any public work of the state.

Continuing law allows the Executive Director to declare a public exigency on the Executive Director's own initiative or upon the request of the director of a state agency. The act expands this authorization to allow the Executive Director also to declare a public exigency upon the request of a state institution of higher education or any other state instrumentality.



Cultural facilities cooperative use agreements

(R.C. 123.28 and 123.281)

Ohio's Public Works Law defines "cooperative contract" to mean a contract between the OFCC and a cultural organization providing the terms and conditions of the cooperative use of an Ohio cultural facility. The act changes the name "cooperative contract" to "cooperative use agreement." The act also expands the meaning of "governmental agency," as it is used in the Public Works Law, to include a state agency and state institutions of higher education.

Instead of the previous requirement that a cooperative use agreement include a provision specifying that a project is to be completed and ready "for full occupancy" without exceeding appropriated funds, the act requires the specification to be that the project is to be completed and ready "to support culture" without exceeding appropriated funds.

Prior law provided that a cooperative use agreement generally was not subject to Public Works Law. The act subjects a cooperative use agreement to provisions of the Public Works Law regarding cultural facilities and the use of domestic steel.

The act provides that when an Ohio sports facility is financed in part by state bonds, construction services must be provided on the state's behalf or at the direction of the governmental agency or nonprofit corporation that will own or manage the facility. The construction services must be specified in a cooperative use agreement between the OFCC and the governmental agency or nonprofit corporation. The cooperative use agreement, and actions taken under it, generally are exempt from Public Works and Public Improvements Laws, but are subject to provisions of those laws relating to cultural facilities and the use of domestic steel and to the Prevailing Wage Law.

State agency bid specifications that require project labor agreements

(R.C. 153.83)

The act requires a state agency to hold a public hearing before a state agency may issue a bid specification for a proposed public improvement that requires a contractor or subcontractor to enter into a project labor agreement. The state agency must publish notice of the hearing not less than 30 days before the hearing date. The state agency must decide whether to include the project labor agreement requirement in the bid specification not earlier than 30 days after the hearing.

For purposes of this provision, "public improvement" means any of the following:



- (1) A road, bridge, highway, street, or tunnel;
- (2) A waste water treatment system or water supply system;
- (3) A solid waste disposal facility or a storm water and sanitary collection, storage, and treatment facility;
- (4) Any structure or work constructed by a state agency or by another person on behalf of a state agency pursuant to a contract with the state agency.

State-financed historical facilities

(R.C. 123.281)

The act specifies that a cultural organization financing a historical facility project with state money may not use more than 3% of the money to pay the organization's cost of administering the project.

Continuing law authorizes cultural organizations to enter into agreements with the OFCC whereby the organization provides construction services on behalf of the state to construct, partly with state funds, a "state historical facility," which is a site or facility used for cultural activities and that is created, operated, and maintained by the Ohio History Connection (OHC), owned at least partly by the state or the OHC, and managed by or under contract with the OFCC.

To the extent the state funds are raised by state-issued bonds, the use of the bond proceeds must comply with certain federal restrictions if the bonds are to qualify bondholders for federal income tax exemption on the interest. Noncompliance jeopardizes the bonds' tax-exempt status and invokes the federal anti-arbitrage "rebate" requirements, causing the state to have to pay the federal government the extra yield the state receives from using the bond proceeds for purposes other than the governmental purposes that qualify the bonds for tax exemption. The purpose of the anti-arbitrage rebate provision is to discourage state and local governments from using federally tax exempt bond issuances to raise money that is used to invest in higher-yielding securities, thereby profiting from the spread between the higher yield and the government's interest cost (i.e., arbitrage). One of the federal anti-arbitrage restrictions limits, in effect, the portion of bond proceeds that may be used to pay working capital (i.e., operating) expenditures by counting a limited amount of those expenditures among the legitimate public purpose uses of the bond proceeds. Working capital expenditures in excess of that limit are considered not to be for the public purpose and therefore could invoke the rebate requirement.⁷¹

⁷¹ Internal Revenue Code sec. 148; 26 C.F.R. 1.148-6.



Surety bond authority

(R.C. 9.333 and 153.70)

The act transfers from the Director of Administrative Services to the Executive Director of the OFCC the authority to adopt rules regarding surety bonds provided by a construction manager at risk, or by a design-build firm, to a public authority.

Electronically filed bids

(R.C. 153.08)

The act modifies provisions of the Ohio Public Improvements Law regarding the competitive bidding process for the selection of a contractor for the construction of buildings or structures for the use of the state or any institution supported by the state. Previously, a public bid opening could be broadcast by electronic means. The act limits this to allow only the opening of bids filed electronically to be broadcast by electronic means. Continuing law requires all electronically filed bids to be made available to the relevant public authority after the public bid opening. The act provides that this may be achieved by means of an electronic verification and security system established under rules adopted by OFCC under the Administrative Procedure Act. Finally, the act removes a prior requirement that all submitted bids be tabulated upon duplicate sheets.

Contracts for energy and water conservation

(R.C. 156.01, 156.02, and 156.04)

The act clarifies that the Executive Director has authority to enter into energy or water conservation contracts on the Executive Director's own initiative or at the request of a state agency. Continuing law authorizes the Executive Director to contract with various entities for a report containing an analysis and recommendations pertaining to the implementation of energy or water conservation measures, and to enter into an installment payment contract for the implementation of energy or water saving measures.

The act also replaces references to the Department and Director of Administrative Services with references to the Executive Director, who replaced the Department and Director in previous legislation.

School Facilities Commission

Background

As an independent agency of the OFCC, the School Facilities Commission (SFC) administers several programs that provide state assistance to school districts and



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

New conditional approval for CFAP funding

(R.C. 3318.054)

For a district for which offered state funding lapses due to failure to secure voter approval of local funding, the law prescribes procedures for the district board to follow if it wishes to revive its project. To do so, the board must request that SFC set a new scope and basic project cost for the project based on the district's current wealth percentile and tax valuation. The act extends the validity of the new scope and basic project cost to 13 months, instead of one year as under prior law.

Reuse of unspent funds

(R.C. 3318.024)

In addition to CFAP as under continuing law, the act permits funds appropriated to SFC for classroom facilities projects that were not spent or encumbered during the first year of each biennium, and which are greater than half of such appropriations for the entire biennium, to be used for the following:

(1) Funding for school districts that voluntarily develop joint use or other cooperative agreements that significantly improve the efficiency of the use of facility space within or between districts;

(2) The School Building Emergency Assistance Program;

(3) Early assistance to a school district that has entered into an Expedited Local Partnership agreement;

(4) The Exceptional Needs School Facilities Assistance Program, including assistance for the relocation or replacement of facilities required as a result of any contamination of air, soil, or water that impacts the occupants of the facility;



(5) The Accelerated Urban School Building Assistance Program; and

(6) The Vocational School Facilities Program.

Funding projects with lease-purchase agreements

(R.C. 3313.375; Section 285.80)

The act permits a school district, educational service center, or community school to enter into a lease-purchase agreement providing for the construction or improvement and eventual acquisition of "facilities or improvements to facilities," rather than merely to "buildings" as under prior law. Moreover, the act expressly states that such facilities or improvements may include buildings, playgrounds, parking lots, athletic facilities, and safety enhancements.

The act also specifies that a lease-purchase agreement must provide for a series of one-year renewable lease terms "totaling not more than the number of years equivalent to the useful life of the asset" but not to exceed 30 years. Prior law specified only that the one-year renewable lease terms could not exceed 30 years.

Study

The act requires SFC, in consultation with the Office of Budget and Management, to prepare a study of the impacts, benefits, and risks associated with a school district funding its share of the cost of a school facilities project under any SFC program with cash-on-hand resulting from a lease-purchase agreement. The study must be completed by March 31, 2016 (nine months after the provision's effective date) and must be submitted to the Governor and the General Assembly. Except in limited circumstances specified by the act and with approval of SFC, until the study is completed, the act prohibits a school district from funding its share of the cost of a project with cash-on-hand resulting from a lease-purchase agreement. With SFC approval, a district may use such proceeds to pay its share of project cost overruns, locally funded initiatives (nonstate-funded portions of a project), and district costs under the Expedited Local Partnership programs.

Education Facilities Trust Fund

(R.C. 183.26 (repealed); conforming change in R.C. 3318.40)

The act eliminates the Education Facilities Trust Fund, which consisted of a portion of the state's tobacco master settlement agreement proceeds.



Ohio School Facilities Commission Fund

(R.C. 3318.33 (repealed); conforming changes in R.C. 3318.02 and 3318.30)

The act eliminates the Ohio School Facilities Commission Fund, which consisted of (1) transfers of moneys authorized by the General Assembly, (2) investment earnings on the Public School Building Fund, Education Facilities Trust Fund, and School Building Program Assistance Fund, and (3) revenues received by SFC.

Career-technical compact facilities for STEM education

(R.C. 3318.71, 5705.214, and 5705.2112)

The act requires SFC to establish guidelines for assisting a qualifying partnership in the acquisition of classroom facilities to be used for a joint science, technology, engineering, and mathematics (STEM) program. For purposes of this provision, a "qualifying partnership" is a group of city, exempted village, or local school districts that meets all of the following criteria:

(1) The districts that comprise the group are part of a career-technical education compact;

(2) The districts have entered into an agreement for joint or cooperative establishment and operation of a STEM education program;

(3) The aggregate territory of the districts is located in two adjacent counties, each having a population greater than 40,000 but less than 50,000, and at least one of which borders another state.

Proposal

A qualifying partnership must submit a written proposal to SFC in order to receive funding for the acquisition of classroom facilities to be used for a STEM program. The proposal must be submitted in a form and in the manner prescribed by SFC and must indicate both the total amount of funding requested from SFC and the amount of other funding pledged for the acquisition of the classroom facilities, the latter of which must not be less than the total amount of funding requested from SFC.

Funding provided by SFC

Upon receiving a written proposal from a qualifying partnership, subject to the approval of the Controlling Board, SFC must provide funding to assist that qualifying partnership in the acquisition of classroom facilities to be used for a joint STEM program. In doing so, it must enter into an agreement with the qualifying partnership and must encumber the approved funding from the amounts appropriated to SFC for



classroom facilities assistance projects. This agreement must include a stipulation of the ownership of the classroom facilities in the event the qualifying partnership ceases to exist.

Qualifying partnership classroom facilities levy

The act authorizes a qualifying partnership to levy a tax for the purpose of funding the acquisition of classroom facilities to be used for the joint STEM program. To propose such a levy, the board of education of each participating school district must adopt an identical resolution specifying the rate, purpose, term of the levy, and the date of the election at which the levy will be submitted for voter approval. The term of the levy may be for any period of time up to ten years. The levy may not be renewed or replaced upon its expiration. The levy is subject to the approval of the majority voters in the combined territory of all school districts participating in the qualifying partnership.

Before submitting a classroom facilities levy to the voters, the qualifying partnership must designate the board of education of one of the participating school districts as the "fiscal board" of the qualifying partnership. The fiscal board is responsible for submitting the resolutions proposing the tax levy to the appropriate county boards of elections, administering levy funds, and issuing bonds and anticipation notes backed by such funds. The fiscal board has the same rights and responsibilities with respect to funds levied for a qualifying partnership as boards of education do with respect to traditional tax levies.

Revenue from a classroom facilities levy is to be credited to a special fund established by the fiscal board of the qualifying partnership. The fiscal board may issue anticipation notes in a principal amount not exceeding 50% of the estimated proceeds of the levy to be collected in the ensuing five-year period. Issuance of the notes is governed by the state Public Securities Law.

The act specifies that a classroom facilities levy by a qualifying partnership is a proper public purpose. The act also specifies that where, in the school funding law, reference is made to the amount of a school district's taxes, the reference does not include taxes levied by the fiscal board of a qualifying partnership in which the school district is a participant.

Community school classroom facilities assistance funding

(Section 501.10)

The act permits SFC to provide grants for the purchase, construction, reconstruction, renovation, remodeling, or addition to classroom facilities to (1) "eligible high-performing community schools" and (2) newly established community schools that have a track record of high quality academic performance, as determined by the



Department of Education. The act requires that SFC's guidelines or rules for administration of these grants include provisions for the ownership and disposal of the facilities in the event a community school closes at any time.

For purposes of this provision, an "eligible high-performing community school" is a community school that has available and has certified that it will supply at least 50% of the cost of the project and that meets the following other conditions:

(1) Except as provided in (2) or (3), the school has received a grade of "A," "B," or "C" for the performance index score or has increased its performance index score in each of the previous three years of operation, and the school has received a grade of "A" or "B" for the value-added progress dimension on its most recent report card rating.

(2) If the school serves only grades kindergarten through three, the school received a grade of "A" or "B" for making progress in improving literacy in grades kindergarten through three on its most recent report card.

(3) If the school primarily serves students enrolled in a dropout prevention and recovery program, the school received a rating of "exceeds standards" on its most recent report card.

The act appropriates \$25 million for the grants.

