



# Ohio Legislative Service Commission

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## Final Analysis

Daniel M. DeSantis

### **Sub. H.B. 318**

128th General Assembly  
(As Passed by the General Assembly)

**Reps.** Sykes, Bolon, Chandler, DeBose, Foley, Hagan, Harris, Koziura, Letson, Luckie, Stewart, Szollosi, Ujvagi, B. Williams, Winburn, Yates, Yuko

**Effective date:** March 23, 2010; Sections 6, 7, 10, 11, and 12 and certain other provisions effective December 22, 2009

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## **ACT SUMMARY**

- Postpones for two years the last of five previously scheduled reductions in state income tax rates.
- Exempts a school district from the requirement to provide all-day kindergarten to all kindergarten students in the 2010-2011 school year, if the board of education submits to the Superintendent of Public Instruction (1) a resolution requesting a delay and specifying justifications for the delay and (2) a plan for fully implementing all-day kindergarten in 2012.
- Requires the Chancellor of the Ohio Board of Regents, in consultation with representatives of state institutions of higher education and with Controlling Board approval, to designate one construction project at each of three different institutions as a Construction Reform Demonstration Project that is to utilize alternative methods of construction delivery in accordance with the act.
- Makes changes to education appropriations for fiscal years 2010 and 2011.
- Makes changes to State Employment Relations Board appropriations for fiscal years 2010 and 2011.
- Makes changes to Department of Mental Health appropriations for fiscal years 2010 and 2011.

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## CONTENT AND OPERATION

### Delay in income tax rate reduction

(R.C. 5747.02(A)(5) and (6) and 5747.056; Sections 5 and 11)

Am. Sub. H.B. 66 of the 126th General Assembly was enacted to reduce the state income tax rates by 4.2% per year beginning in 2005 according to a statutory schedule, with the fifth and final reduction to be applied to taxable years beginning in 2009. The total rate reduction over the five years was to be 21%. The reductions applied to all of the nine income brackets. The income tax applies to individuals, estates, and some trusts.

The act postpones the fifth of the five scheduled reductions for two years. The rates for 2008 are extended to taxable years beginning in 2009 and 2010. The final 4.2% reduction previously scheduled to take effect in 2009 takes effect in 2011. The provision is not subject to the referendum and takes effect immediately, pursuant to Article II, Section 1d, Ohio Constitution. (Section 11.)

### **\$10,000 exemption**

Ongoing law grants lower-income individuals a credit that effectively exempts them from liability for state income tax if their taxable income is \$10,000 or less. As the income tax rates have been reduced since 2005, the credit amount has decreased accordingly. The credit for 2008 was \$93. The credit for taxable years beginning in 2009, under former law, was scheduled to be \$88.

In conformance with the delay in the rate reduction, the lower-income credit reduction for 2009 is postponed by two years: the credit will remain at \$93 for taxable years beginning in 2009 and 2010, and will decline to \$88 in 2011. The credit continues to effectively exempt individuals whose taxable income is no greater than \$10,000.

### **Estimated tax payment "safe harbor"**

The act precludes the imposition of any interest penalty for an underpayment of quarterly estimated taxes resulting from the postponement of the income tax rate reduction. The postponement could have the effect of causing some taxpayers to have paid estimated taxes throughout 2009 in lesser amounts than are required under ongoing law. Ongoing law requires taxpayers whose estimated annual net liability exceeds \$500 (after accounting for withholding and credits) to pay estimated taxes quarterly.<sup>1</sup> (R.C. 5747.09, not in the act.) The Department of Taxation publishes the

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<sup>1</sup> Includes liability for state income tax and any applicable school district income tax.

income tax rates for each year to assist taxpayers in calculating their estimated tax payments; the rates published for 2009 reflect the final 4.2% rate decrease prescribed by former law. To avoid any interest charge, a taxpayer must pay at least 22.5% of the current year's liability each quarter. Any deficiency in a quarterly payment carries an "interest penalty" until the deficiency is paid. The rate of interest is the same rate charged for other unpaid income taxes, and is set each year; for 2009, the rate is 5% (0.42% per month). The interest penalty does not apply, however, if a taxpayer pays an amount at least equal to 90% of the current year's liability or 100% of the preceding year's liability.

The act states that the interest penalty will not be charged for underpayments of estimated taxes for taxable years ending in 2009 if the payments would have satisfied the 90% of current year liability or 100% of preceding liability thresholds computed on the basis of the lower tax rates that would have gone into effect for 2009 as previously scheduled. The waiver of the interest penalty applies to estimated payments made before the effective date of the provision (i.e., before the effective date of Section 5).

### **Indexing**

The act does not affect ongoing law's requirement that the income brackets be adjusted to correspond with any percentage increase in the Gross Domestic Product deflator index, beginning in 2010. (The effect of the indexing adjustment is to cause a general reduction in tax liability, as greater portions of every taxpayer's taxable income is subject to lower marginal rates.)

### **All-day kindergarten**

(Section 9)

The act enables a school district to obtain from the Superintendent of Public Instruction a one-year delay of the continuing law requirement to provide all-day kindergarten for all kindergarten students, without having to apply for a waiver as otherwise required in that law. The delay would exempt the district from the requirement for the 2010-2011 school year only. The district may seek the delay for all of its kindergarten students or just a portion of them. The Superintendent must grant the delay if the district board of education submits to the Superintendent (1) a resolution formally requesting the delay and providing justification for seeking it and (2) a plan for fully implementing the all-day kindergarten requirement in 2012.<sup>2</sup>

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<sup>2</sup> The reference to "2012" with respect to full implementation probably means fiscal year 2012 (the 2011-2012 school year), rather than calendar year 2012, but that is not clear.

Presumably, though, the district could receive subsequent exemptions from the requirement under the waiver provision of continuing law.

## **Construction Reform Demonstration Projects**

(Section 8)

During fiscal year 2010, the Chancellor of the Ohio Board of Regents, in consultation with representatives of state institutions of higher education and with Controlling Board approval, is required by the act to designate one construction project at each of three different institutions as a Construction Reform Demonstration Project that is permitted to utilize alternative methods of construction delivery in accordance with the act.

### **Selection of the projects**

In selecting projects to be designated Construction Reform Demonstration Projects, the Chancellor is to consider the following:

(1) The geographic distribution of the projects throughout the state;

(2) The extent to which the projects, when considered together, represent different types of public construction projects, such as new construction, building renovation, and infrastructure replacement; will have different uses; are of different sizes; and will utilize different methods of construction delivery.

To be eligible for designation by the Chancellor, the state institution of higher education proposing the project must demonstrate all of the following to the Chancellor:

(1) The project is amenable to the use of, and would make use of, any of the alternative methods of construction delivery described below.

(2) The institution has a comprehensive, credible funding plan that does not rely on any subsequent state capital money.

(3) The institution has satisfied all internal requirements of the institution that are necessary to allow bidding on the project to begin before the end of fiscal year 2010.

(4) The institution has a reasonable plan for meeting or exceeding the EDGE Contracting Goal for the project, as determined in accordance with the act, through the expected provision of contracts to qualified EDGE business enterprises.

(5) The project will qualify for LEED certification.

## **Authorized alternative methods of construction delivery**

Each state institution of higher education undertaking a Construction Reform Demonstration Project must, notwithstanding any law to the contrary, utilize one or more of the following alternative methods of construction delivery to develop the project:

(1) **Construction manager at risk.** "Construction manager at risk" means a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the institution a guaranteed maximum price utilizing an open book pricing method, wherein the construction manager at risk provides the institution all books, records, documents, and other data in its possession related to itself, its subcontractors, and material suppliers pertaining to the bidding, pricing, or performance of a construction management contract. The construction manager at risk is to be selected using a qualifications based selection process, including best value criteria. "**Best value criteria**" includes technical design, technical approach, quality of proposed personnel, management plan, or other factors that are determined to derive or offer the greatest value to the institution.

(2) **Design build.** "Design build" means services that form an integrated delivery system for which a person is responsible to an institution for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement. The design-builder is to be selected using a qualifications based selection process, including best value criteria, and using a bridging design delivery in which the institution utilizes a criteria or concept architect to develop the program of requirements and the preliminary project scope, and to validate that the institution's design intent is implemented.

(3) **General contracting.** "General contracting" means contracting that is exempt from the requirement of Chapter 153. of the Revised Code to award multiple prime contracts for a project up to \$600,000 in total project value.

(4) **Design assist.** "Design assist" means the procurement method by which, prior to completion of design, a construction contract may be awarded on a best value basis pursuant to which a contractor provides design assistance to the architect or engineer of record through a design professional separately retained by the contractor. A design assist method also may be used in conjunction with any of the other construction delivery methods described above.

The act specifies, however, that in developing their Construction Demonstration Reform Projects, the institutions are *not* exempt from the applicable provisions of law concerning prevailing wage, bonding, EDGE, retainage, prompt pay, equal employment opportunity and affirmative action construction compliance, domestic steel, and public notice and advertising.

### **EDGE contracting goals and requirements**

Each institution undertaking a Construction Reform Demonstration Project is required to use best efforts to seek to maximize EDGE business enterprise contracting on the project, based upon percentage goals determined as follows:

--For each project, the Equal Opportunity Division of the Department of Administrative Services must determine the Demonstration EDGE Percentage by taking into consideration the percentage goal stated in the Technical Assistance Guide for Federal Construction Contracts for the county in which the project will be located and any other factors deemed relevant by the Division.

--For each project, the Division is to apply the Demonstration EDGE Percentage to the total project cost to establish the project's EDGE Contracting Goal.

All business enterprises certified as minority business enterprises under the laws of this state as of the effective date of this provision of the act are to be considered EDGE business enterprises for purposes of contracting on any of the Construction Reform Demonstration Projects.

The act requires that Division to assist institutions in maximizing the utilization of EDGE contractors on Construction Reform Demonstration Projects, as follows:

--At each of the following EDGE compliance check points, the Division must certify that the project is in reasonable attainment of the EDGE contracting goal for the project:

(a) Prior to each contract being awarded, based on the submission of a reasonable, credible plan for meeting the goal;

(b) Once monthly for each contract awarded for work on the project.

In determining whether certification is warranted, the Division may undertake onsite inspections and may review any contractor records related to the project that it deems necessary. No payment to a contractor can be made in the absence of a certification.

The Division also must establish a stakeholder advisory panel consisting of two representatives of the Ohio Legislative Black Caucus, two minority contractors, and the Chancellor. The panel is to consult with and advise the Division regarding its preparation of regular reports to the Governor, the House of Representatives, and the Senate regarding the satisfaction of EDGE contracting goals on the Construction Reform Demonstration Projects. The panel is also to advise the Division on strategies for maximizing participation of EDGE contractors and ways that the Division could provide problem-solving assistance to the institutions undertaking a Construction Reform Demonstration Project and the contractors on the projects to advance the achievement of EDGE contracting goals on those projects.

The act requires the institutions undertaking a Construction Reform Demonstration Project to pay to the Department of Administrative Services, for staff and other expenses associated with these responsibilities of the Division, an aggregate amount equal to \$150,000 per year in each year in which any of the projects remains uncompleted. The portion of the \$150,000 to be paid by any one of the institutions with projects underway during that year is to be based on the expenditures of each project in that year compared with the other projects, all as determined by the Division.

### **Reporting requirements**

The institutions that are undertaking a Construction Reform Demonstration Project are required to cooperate with and provide the Chancellor with all requested information in order to facilitate the Chancellor's study of the cost effectiveness and efficiencies associated with the use of the alternative construction delivery methods. The Chancellor must prepare semi-annual reports of the Chancellor's findings and a final report. A copy of each report is to be submitted to the Governor, the House of Representatives, and the Senate.

The institutions may, at their discretion and in consultation with the Chancellor, transfer funds to the Board of Regents to assist in covering the costs associated with the Chancellor's study and the preparation of the reports.

### **Expiration**

The act states that these provisions expire on the date that all of the Construction Reform Demonstration Projects have been completed or on January 1, 2014, whichever is later.

## **Education appropriation changes**

(Sections 3, 4, 6, 7, and 12)

The act decreases appropriation item 200612, Foundation Funding, by \$285,236,905 in fiscal year 2010 and by \$566,271,428 in fiscal year 2011 and increases appropriation item 200550, Foundation Funding, by the same amount. These appropriations have the same purpose--to pay state formula aid obligations for school districts, community schools, and joint vocational school districts. The appropriations, however, have different revenue sources. Item 200612 is paid from the Lottery Profits Education Fund (Fund 7017), which receives revenue from the profits of the state lottery. Item 200550 is paid from the General Revenue Fund (GRF). The two largest sources of revenue for the GRF are the sales and use tax and the personal income tax.

The act also provides that if the unobligated balance of the GRF at the end of fiscal year 2010 exceeds \$190.0 million, the act reappropriates in fiscal year 2011 up to \$20,761,069 to GRF appropriation item 200511, Auxiliary Services, and up to \$8,971,578 to GRF appropriation item 200532, Nonpublic Administrative Cost Reimbursement. The act also provides that if the unobligated balance of the GRF at the end of fiscal year 2011 exceeds \$30.0 million, the Director of Budget and Management must transfer up to \$29,732,647, but not to exceed the amount of unexpended, unencumbered GRF appropriations for the Department remaining at the end of fiscal year 2011, from the GRF to the Auxiliary Services Stabilization Fund, which is created by the act. The act then requires the Superintendent of Public Instruction to seek Controlling Board approval to expend the cash in the new Fund for Auxiliary Services and Nonpublic Administrative Cost Reimbursement.

Because these provisions relate to appropriations for current expenses, they are not subject to the referendum as provided in Article II, Section 1d, Ohio Constitution. Therefore, the appropriation change takes immediate effect.

## **State Employment Relations Board appropriation change**

(Sections 3, 4, 10, and 12)

The act increases appropriations in the State Employment Relations Board budget to GRF appropriation item 125321, Operating Expenses, by \$1 million in FY 2010 and in FY 2011. These same amounts are to be transferred from the Unemployment Compensation Special Administrative Fund (Fund 4A90) used by the Ohio Department of Job and Family Services to the GRF. Because this provision relates to an appropriation for current expenses, it is not subject to the referendum as provided in Article II, Section 1d, Ohio Constitution. Therefore, the appropriation change takes immediate effect.

## Department of Mental Health appropriation change

(Sections 3, 4, and 12)

The act increases appropriations in the Department of Mental Health budget to GRF appropriation item 334408, Community and Hospital Mental Health Services, by \$7.35 million in FY 2010 and in FY 2011. Because this provision relates to an appropriation for current expenses, it is not subject to the referendum as provided in Article II, Section 1d, Ohio Constitution. Therefore, the appropriation change takes immediate effect.

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### HISTORY

ACTION	DATE
Introduced	10-16-09
Reported, H. Finance & Appropriations	10-20-09
Passed House (55-44)	10-21-09
Reported, S. Finance & Financial Institutions	12-17-09
Passed Senate (17-15)	12-17-09
House concurred in Senate amendments (54-42)	12-17-09

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