



**H.B. 100**

125th General Assembly  
(As Introduced)

**Reps. Faber, Willamowski, Kearns, Core, Carmichael, Schneider, Taylor**

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**BILL SUMMARY**

- Establishes procedures involving the creation of a State Facilities Closure Commission when the Governor proposes to close a state institutional facility for the purpose of expenditure reductions or budget cuts.
- Requires a Facilities Closure Commission to consist of 11 members and to make recommendations regarding the closure of institutional facilities based upon specified criteria.
- Prohibits the Governor from ordering the closure of an institutional facility except in accordance with the bill's procedures and requires the Governor to close facilities only in accordance with the recommendation of a Facilities Closure Commission.
- Authorizes the Governor to disregard the recommendations of a Facilities Closure Commission if there is a significant change in circumstances rendering a recommendation of a Facilities Closure Commission unworkable.
- Authorizes the Governor to terminate a contract for the private operation and management of a correctional facility if the closure of the facility is authorized by a Facilities Closure Commission.

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**CONTENT AND OPERATION**

**Closing of state institutional facilities**

(R.C. 107.31)

The bill prohibits the Governor from ordering the closure of any state institutional facility, for the purpose of expenditure reductions or budget cuts,

other than under new procedures it creates. **"State institutional facility"** means any institution or other facility for the housing of any person that is under the control of the Department of Rehabilitation and Correction, the Department of Youth Services, the Department of Mental Retardation and Developmental Disabilities, the Department of Mental Health, or any other agency or department of state government.

If the Governor determines that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, the Governor must determine which state agency's institutional facility or facilities should be closed (i.e., the **"target state agency"**), notify the General Assembly and that agency of the determination, and specify the number of facilities of the agency that the Governor believes should be closed and the anticipated savings to be obtained through the closure.

Upon the Governor's provision of the required notice, a State Facilities Closure Commission must be created. The Commission is to consist of the following 11 members:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, none of whom have a state institutional facility of the target state agency in the member's district. (Two of the appointees must be members of the majority political party in the House of Representatives and one must not be a member of that political party.)

(2) Three members of the Senate, appointed by the President of the Senate, none of whom have a state institutional facility of the target state agency in the member's district. (Two of the appointees must be members of the majority political party in the Senate and one must not be a member of that political party.)

(3) The Director of Budget and Management;

(4) The director, or other agency head, of the target state agency;

(5) Two private executives with expertise in facility utilization, one appointed by the Speaker of the House of Representatives and one appointed by the President of the Senate, neither of whom have a state institutional facility of the target state agency in the county in which the appointee resides;

(6) One representative of the Ohio Civil Service Employees' Association or other representative association of the employees of the target state agency, appointed by the Speaker of the House of Representatives.

Members of the Commission must be appointed within seven days after the Governor provides the required notice, and must meet as soon as possible after the

appointments. At the first meeting, the members are to appoint a chairperson and vice-chairperson. The members are required to serve without compensation. If more than one state agency or department is a target state agency, a separate state facilities closure commission must be appointed for each target state agency.

The bill requires the Commission to determine which state institutional facility or facilities under the control of the target state agency for which the Commission was created should be closed. (See **COMMENT 1**.) In making this determination, the Commission must, at a minimum, consider the following factors:

- (1) Whether there is a need to reduce the number of facilities;
- (2) The availability of alternate facilities;
- (3) The cost effectiveness of the facilities;
- (4) The geographic factors associated with each facility and its proximity to other similar facilities;
- (5) The impact of collective bargaining on facility operations;
- (6) The utilization and maximization of resources;
- (7) Continuity of the staff and ability to serve the facility population;
- (8) Continuing costs following closure of the facility;
- (9) The impact of the closure on the local economy;
- (10) Alternatives and opportunities for consolidation with other facilities.

The Commission is to meet as often as necessary to make its determination and may take testimony and consider all relevant information. Within 30 days after the Governor provides the required notice, the Commission must prepare a report containing its recommendations as to the facility or facilities the Governor may close and submit that report to the General Assembly, the Governor, and the target state agency. The anticipated savings to be obtained by the Commission's recommendation must be approximately the same as the anticipated savings the Governor specified in the notice to the General Assembly, and, if the recommendation identifies more than one facility, they must be listed in order of the Commission's preference for closure. The Commission's report can address only the target state agency for which it was created and not any other state agency or department. Upon providing the report, the Commission ceases to exist.

Upon receipt of the Commission's report, if the Governor still believes that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, the Governor may close state institutional facilities of the target state agency that are identified in the Commission's recommendation contained in the report. The Governor cannot close any state institutional facility of the target state agency that is not listed in the Commission's recommendation, and cannot close multiple institutions in any order other than the order of the Commission's preference as specified in the recommendation. However, the Governor is not required to follow the recommendation of the Commission in closing an institutional facility if the Governor determines that a significant change in circumstances make the recommendation unworkable.

**Application to institutions in operation on January 1, 2003**

(Section 2)

The bill provides that the facility closure procedures it establishes apply to all state institutional facilities that were in operation on or after January 1, 2003.

**Privately operated correctional facilities**

(R.C. 107.32)

If the closure of the particular facility is authorized by a state facilities closure commission, the Governor may terminate any contract entered into for the private operation and management of any correctional facility under the control of the Department of Rehabilitation and Correction, including, but not limited to, the initial intensive program prison established for felony OMVI offenders, and terminate the operation of and close that facility. If the Governor terminates a contract for the private operation and management of a facility, and terminates the operation of and closes the facility, inmates in the facility are to be transferred to another correctional facility under the control of the Department. The bill states that, if the initial intensive program prison is closed, the continuing law provisions requiring the placement of such offenders in the prison have no effect while the facility is closed. (See **COMMENT 2**.)

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**COMMENT**

1. The bill requires members of the General Assembly to be appointed to State Facilities Closure Commissions. Such a Commission is authorized by the bill to determine the propriety of the closing of a state facility and to make recommendations to the Governor that must be implemented if a facility is closed. The appointment of members of the General Assembly to a State Facilities Closure Commission with voting authority could possibly raise a question

regarding Article II, § 4 of the Ohio Constitution, which prohibits such members from holding more than one public office. Article II, § 4 provides, in part:

No member of the general assembly shall, during the term for which he was elected, unless during such term he resigns therefrom, hold any public office under the United States, or this state, or a political subdivision thereof; but this provision does not extend to officers of a political party, notaries public, or officers of the militia or of the United States armed forces.

The Ohio Supreme Court held that a "public office" is a position created by law, with independent and continuing duties involving in their performance the exercise of some portion of sovereign power. *State ex. rel. Herbert v. Ferguson* (1944), 142 Ohio St. 496, 501. Further, the court has indicated that the "exercise of sovereign power" of the state can be determined as follows:

If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or state, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the state. *State ex. rel. Landis v. Bd. Of County Commrs.* (1917), 95 Ohio St. 157.

2. R.C. 107.32 of the bill could raise a question regarding Article II, § 28 of the Ohio Constitution. That provision, in part, states that the General Assembly has no power to impair the obligations of contracts. R.C. 107.32 may potentially violate this provision by expressly authorizing the Governor to terminate contracts entered into under R.C. 9.06 relating to the private operation and management of prisons. If the Governor terminates such a contract, the other party to the contract could bring a lawsuit against the state to recover damages for breach of the contract. It is unclear if the other party could use this provision to force the state to continue to perform its contractual obligations.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-03	p. 205

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