Ralph D. Clark and other LSC staff

Legislative Service Commission

H.B. 699*

126th General Assembly
(As Introduced)

Rep. Calvert

BILL SUMMARY

- Continues reimbursement of certain life insurance premiums for active duty members of the Ohio National Guard only if the Adjutant General determines the members are ineligible for that reimbursement under federal law.

- Includes in the definition of "FutureGen Project" in the Air Quality Development Authority Law related projects that support the development and operation of the buildings, equipment, and real property constituting the project, thus making such research projects eligible for funding under that Law.

- For purposes of the Ohio Building Authority's control or management of state capital facilities, removes the requirement that the facilities be those for which OBA is authorized to issue obligations.

- Authorizes OBA to manage, allocate space in, and have general custodial care and supervision of capital facilities it does not own *if* the facilities contain at least 200,000 square feet of space.

- Removes the requirement that, upon repayment of obligations issued by OBA for the acquisition of a capital facility of the Bureau of Workers' Compensation, ownership of the facility be transferred to the Bureau.

- In relation to the transfer to the Director of Budget and Management in Am. Sub. H.B. 530 of the 126th General Assembly of the functions of the

* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note and Capital Bill Analysis for H.B. 699 for an analysis of such provisions.*

Auditor of State related to the drawing of warrants for the payment or transfer of money from the state treasury, makes corrective changes.

- Eliminates from the Revised Code some of the specific requirements for experience, education, and testing for licensure as a real estate appraiser, and enables the Real Estate Appraiser Board to establish requirements in those areas by rule.

- For purposes of the Ohio Cultural Facilities Commission's financing authority, adds tennis facilities with a primary purpose of providing a site or venue for the presentation to the public of professional tennis tournaments as an eligible Ohio sports facility.

- Authorizes the Ohio Cultural Facilities Commission to delegate to its executive director authority regarding the provision of construction and building services for certain Ohio cultural facilities and sports facilities and the expenditure of state funds on those facilities.

- Creates the Third Frontier Research and Development Taxable Bond Fund in the state treasury to receive proceeds of federally taxable obligations issued to fund Third Frontier Commission research and development projects.

- Prohibits the Ohio School Facilities Commission from approving agreements or labor contracts for state-assisted school construction projects that require the payment of the prevailing wage rate.

- Refines the calculation of the "state aid offset" for purposes of paying state reimbursement of school districts for revenue losses due to electric utility deregulation and the phase-out of the tangible personal property tax.

- Codifies and makes permanent the Autism Scholarship Program.

- Specifies that any portion of Ohio's volume of private activity bonds that is allocated for issuance of student loan notes may be awarded only to the Treasurer of State or the single nonprofit secondary market operation designated by the Governor.

- Increases, from 21 years to 25 years, the maximum age to apply for a War Orphans Scholarship.

- Requires the Governor's Residence Advisory Commission to establish the heritage garden at the Governor's residence, defines "heritage garden" as the botanical garden of native plants established at the Governor's residence, and states that the heritage garden must be officially known as "The Heritage Garden at the Ohio Governor's Residence."

- Expands the definition of "caucus" for purposes of the Open Meetings Law.

- Changes from the General Revenue Fund to the Joint Legislative Ethics Committee Fund the fund to which registration fees and late filing fees paid by lobbyists and their employers must be credited.

- Permits the money, interest, and earnings of the Joint Legislative Ethics Committee Fund to be used for the purchase of data storage and computerization facilities for retirement system lobbyist expenditure statements.

- Eliminates the $25 fee to be paid upon the approval of a lottery sales agent license application, and instead requires the Director of the State Lottery Commission to determine the amount of the application fee by rule and with the Controlling Board's approval.

- Establishes a lottery sales agent license renewal fee, and requires the Director to establish its amount by rule and with the Controlling Board's approval.

- Requires a lottery sales agent license to be complete, accurate, and current at all times, and authorizes the Director (1) to establish by rule and with the Controlling Board's approval and (2) to assess an administrative fee not to exceed the actual cost of administering and processing changes to update an original license application or renewal application.

- Eliminates the option for a lottery sales agent license applicant to be required to file a fidelity bond with the State Lottery Commission, and instead generally authorizes an applicant to obtain a surety bond in an amount the Director determines or, with the Director's approval, to deposit the same amount into a dedicated account for the benefit of the State Lottery.

- Authorizes the Director to forward fingerprint cards for an applicant for a lottery sales agent license and for holders of such a license to the Bureau of Criminal Identification and Investigation, or to the Federal Bureau of Investigation, or to both Bureaus for purposes of criminal records checks.

- Delays until June 30, 2007 (from January 1, 2007), the deadline for the Director of Job and Family Services to seek federal approval for the ICF/MR Conversion Pilot Program.

- Expressly includes crisis intervention services as community mental health services for which the Ohio Department of Mental Health must provide assistance to counties.

- Requires that each community mental health plan cover crisis intervention services for individuals in emergency situations.

- Eliminates the prohibition against a board of alcohol, drug addiction, and mental health services (ADAMHS board), and an entity under contract with an ADAMHS board, from discriminating in matters relating to the provision of services, employment, or contracts on the basis of inability to pay.

- Maintains current provisions that permit certain employees in the unclassified service of the Bureau of Workers' Compensation, the Department of Mental Health, the Department of Mental Retardation and Developmental Disabilities, and the Department of Youth Services to exercise their right to resume a previously held position in the classified service, regardless of the number of unclassified positions the employee has held, but provides that those employees (1) may only exercise their right to resume a prior classified position if their employer demotes them to a lower pay range or revokes their appointment to the unclassified position and (2) forfeit their right to resume a prior classified position if they are removed due to any specified type of misconduct or they transfer to a different agency.

- Requires that prior to proposing the conveyance of any canal lands, the Director of Natural Resources consider the local government needs and economic development potential with respect to the canal lands and the recreational, ecological, and historical value of the canal lands, and requires that the conveyance of canal lands be conducted in accordance

with the Director's policies governing the protection and conservation of canal lands established under current law.

- Revises the total principal amount of obligations that may be issued for purposes of the Clean Ohio Conservation Fund, the Clean Ohio Agricultural Easement Fund, and the Clean Ohio Trail Fund by stating that not more than $200 million principal amount of obligations for conservation purposes may be outstanding at any one time rather than that the total principal amount of obligations issued cannot exceed $200 million, as in current law; states that not more than $50 million principal amount of obligations, plus the principal amount of obligations that in any prior fiscal year could have been, but were not issued within the $50 million fiscal year limit, may be issued in any fiscal year for conservation purposes; and makes identical changes in the statute governing the Clean Ohio Revitalization Fund.

- Changes Public Utilities Commission authority to regulate motor carrier safety to reflect programmatic changes at the federal level.

- Eliminates the requirement that the Director of Rehabilitation and Correction obtain the Governor's approval in order to change the purpose for which a state correctional facility is used.

- Requires the Director of Rehabilitation and Correction to contract for the private operation of at least two state correctional facilities.

- Eliminates the Federal Program Purposes Fund and creates a Federal Justice Programs Fund for each federal fiscal year.

- Provides that each judge of a court of record, except for Supreme Court justices, must take the oath of office on or before the first day of the judge's official term; specifies the form of the oath that a judge should substantially take; modifies the requirements for transmitting a certificate of oath; and applies those requirements generally to judges of courts of record.

- Decreases the size of the official seal of the Supreme Court from 1.75 inches in diameter to 1.50 inches in diameter.

- Provides that the judges of the Morrow County Court of Common Pleas also have jurisdiction over the Probate Division of the Court.

- Expands the membership of the Ohio Turnpike Commission to include the Director of Budget and Management and the Director of Development as ex officio, voting members and increases the number of voting members that constitute a quorum from a simple majority (3 of 5) to a majority plus one (5 of 7).

- Requires the Turnpike Commission to notify the Governor and legislative leaders prior to increasing or temporarily decreasing tolls and also prior to acting to expand the sphere of responsibility of the Commission beyond the Ohio Turnpike.

- Requires the Turnpike Commission, upon request of the appropriate chairpersons, to appear before the House and Senate transportation committees prior to adoption of its annual budget and also during the time the General Assembly is considering the biennial transportation budget.

- Allows the chairperson of the Turnpike Oversight Committee to determine the location of Committee meetings, rather than requiring at least three of the required quarterly meetings to be held at sites located along a turnpike project as determined by the Committee chairperson.

- Renames the Turnpike Oversight Committee the Turnpike Legislative Review Committee.

- Requires the Turnpike Commission to submit to the Director of Budget and Management, for the Director's review and approval, trust agreements and other specified information regarding any proposed sale of obligations.

- Extends the limitations period for debt collection efforts by the state and political subdivisions.

- Clarifies that the limitations period relevant to state tax collection applies only to the initial action to collect a tax debt.

- Removes authority for county auditors to charge the state fees for recording state liens and continuations of state liens.

- Incorporates changes in the Internal Revenue Code since March 30, 2006, into Ohio's tax laws.

- Permits taxpayers whose taxable year ends in 2006, and before the effective date of the incorporated changes, to elect to apply the Internal Revenue Code as it existed before that effective date.

- Permits owners of remediated property to decline property tax exemption of improvements made to the property.

- Prescribes in statute a method for determining the true value of oil and natural gas reserves for the purposes of real property taxation.

- Exempts receipts from the Commercial Activity Tax (CAT) if they arise from transactions between members of a consolidated elected taxpayer group even when the member receiving the receipts is not a "qualifying" dealer in intangibles.

- Extends by six months the date by which a board of county commissioners may enter into an agreement with a person that is constructing an impact facility in the county, which returns to the person up to 75% of the county "piggyback" sales and use taxes collected on retail sales made by the facility.

- Removes provisions in current law prohibiting the granting of certain tax exemptions with respect to property located in joint economic development districts.

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CONTENT AND OPERATION

Adjutant General's office: elimination of certain premium reimbursements

(R.C. 5919.31)

Current law requires the Adjutant General to reimburse premiums paid by an active duty member of the Ohio National Guard who chooses to purchase life insurance pursuant to the federal Servicemembers' Group Life Insurance Act.[1] However, certain active duty members of the Ohio National Guard apparently are eligible under federal law to receive the same or a similar reimbursement of premiums *from the federal government*.

The bill consequently provides for Adjutant General reimbursement of the life insurance premiums only for active duty members of the Ohio National Guard who the Adjutant General determines are *ineligible for federal reimbursement* of premiums associated with the described life insurance coverage.

Air Quality Development Authority Law: definition of "FutureGen Project"

(R.C. 3706.01)

Current law defines "FutureGen Project" in the Air Quality Development Authority Law to mean the buildings, equipment, and real property and functionally related buildings, equipment, and real property designated by the

[1] *The reimbursement is in an amount equal to the monthly premium paid for each month or part of a month by the Ohio National Guard member under the Act while he or she is an active duty member.*

United States Department of Energy and the FutureGen Industrial Alliance, Inc., as the coal-fueled, zero-emissions power plant designed to prove the technical and economic feasibility of producing electricity and hydrogen from coal and nearly eliminating carbon dioxide emissions through capture and permanent storage. The bill includes in the definition related projects that support the development and operation of the buildings, equipment, and real property constituting the project, thus making such research projects eligible for funding under that Law.

Powers and duties of the Ohio Building Authority with respect to capital facilities

(R.C. 152.09, 152.18, 152.19, 152.21, 152.24, 152.242, and 152.26)

Background

Under the Ohio Building Authority Law (R.C. Chapter 152.), the Ohio Building Authority (OBA) is authorized to issue obligations of the state to cover the "cost of capital facilities" designated by the General Assembly for housing state agencies. For these purposes:

--"**Capital facilities**" is defined as buildings, structures, equipment, and real estate for housing of branches and agencies of state government for which OBA is authorized by Chapter 152. to issue obligations. The term includes capital facilities used for housing personnel, equipment, or functions, as well as any related storage or parking facilities.

--"**Cost of capital facilities**" means the costs of acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, altering, maintaining, equipping, furnishing, repairing, painting, decorating, managing, or operating capital facilities, and the financing of them. The term includes all expenses necessary or incident to planning or determining the feasibility of capital facilities.

Current law also permits OBA to acquire, construct, rehabilitate, remodel, renovate, maintain, equip, furnish, paint, decorate, manage, and operate capital facilities for the use of state agencies. The Department of Administrative Services (DAS), or the state agency using the capital facility, is generally required to lease the facility. OBA may choose to manage and have general custodial care and supervision of its capital facilities or enter into contracts with DAS or the using state agency or governmental entity for those purposes.

The bill

The bill modifies the definition of "**capital facilities**" by removing the requirement that the facilities be those for which OBA is authorized by Chapter

152. to issue obligations. Consequently, OBA's authority to control or manage capital facilities is expanded to capital facilities it does not own. Such facilities do not, however, include capital facilities for institutions of higher education financed in whole or in part by obligations issued under Chapter 154. (the Public Facilities Commission Law).

The bill permits OBA to "assess" and "plan" capital facilities for the use of state agencies. It also provides that the costs associated with such assessments and plans are to be considered a "**cost of capital facilities**" and, therefore, an expense that can be paid from proceeds of obligations issued by OBA.

While retaining current law with respect to the management and custodial care and supervision of OBA's own capital facilities, the bill permits OBA to manage, allocate space in, and have general custodial care and supervision of capital facilities it does not own *if* the facilities contain at least 200,000 square feet of space. A state agency or governmental entity that receives OBA's services, or DAS, is required to pay OBA for those services. The payment amount must be specified in an agreement entered into by the parties.

The bill also removes the requirement that, upon the repayment of obligations issued by OBA for the acquisition of a capital facility of the Bureau of Workers' Compensation, ownership of the facility be transferred to the Bureau.

Warrant-writing function of the Office of Budget and Management

(R.C. 9.37, 101.83, 169.13, 4503.068, 4728.03, 5107.12, 5115.06, and 5741.101)

Prior to Am. Sub. H.B. 530 of the 126th General Assembly, money could not be paid or transferred out of the state treasury except on the warrant of the Auditor of State. Under H.B. 530, the Director of Budget and Management replaced the Auditor of State--effective December 1, 2006--in all matters relating to the drawing of warrants for the payment or transfer of money from the state treasury.

The bill makes corrective changes relating to the drawing of warrants for the payment or transfer of money from the state treasury to the Director of Budget and Management to ensure consistency throughout Ohio law. The corrections are necessary because H.B. 530 omitted several references in the Revised Code to the Auditor's warrant-writing function.

Real estate appraisal licensing requirements

(R.C. 4763.03, 4763.05, and 4763.06)

Existing law contains specific requirements for the experience, education, and testing for licensure as a real estate appraiser. The bill deletes some of the specifications from the Revised Code, and instead enables the Real Estate Appraiser Board to establish by rule the licensure requirements for experience, education, and testing. The bill specifies that any rule the Board adopts cannot exceed requirements specified in federal law or regulations.

Cultural and sports facilities

(R.C. 3383.01 and 3383.07)

Tennis facility eligibility

Under current law, the Ohio Cultural Facilities Commission oversees construction, renovation, use, and state financing of cultural and sports facilities. Funding for Ohio sports facilities can be provided through direct appropriations from the General Revenue Fund, from appropriations made from moneys derived from the sale of state bonds, and from other specified funding sources.

An "Ohio sports facility" is a facility with a primary purpose of providing a site or venue for the public presentation of motorsports events, or major or minor league professional athletic or sports teams events that are associated with Ohio or with a city or region of Ohio. Current law requires the facility to, in the case of a motorsports complex, be owned by a state or governmental agency, or in all other instances, be owned by or located on real property owned by Ohio or a governmental agency. The bill adds tennis facilities with a primary purpose of providing a site or venue for the presentation to the public of professional tennis tournaments as an Ohio sports facility eligible to receive Commission assistance.

Delegation of authority

The bill authorizes the Commission to delegate to its executive director the authority to approve, but not disapprove, the provision of construction and general building services by a governmental agency or cultural or nonprofit organization for an Ohio cultural facility or Ohio sports facility that receives a state appropriation of $50,000 or less (except that the Ohio Building Authority can continue to elect to provide general building services for cultural facilities financed with proceeds of bonds it issues).

And, for such cultural facilities (but not, under current law and the bill, state historical facilities) receiving $50,000 or less, the bill also allows such

delegation in determining, but only in the affirmative, the regional need for a facility and the adequacy of the local share; and allows such delegation in making those determinations, as well as the determination of the adequacy of the local financial and development plan, for an Ohio sports facility receiving $50,000 or less. These determinations are necessary to allow state funds to be spent on any such facility.

Third Frontier Research and Development Taxable Bond Fund

(R.C. 151.01, 151.10, and 184.191)

Current law requires the Ohio Public Facilities Commission to issue general obligations of the state to pay costs of research and development projects. A "**project**" means a research and development project or facility acquired, constructed, or operated by a person doing business in Ohio or by an educational or scientific institution located in Ohio with all or part of the cost of the project being paid from a grant or loan from the Third Frontier Research and Development Fund, or a loan guaranteed under the law governing the Third Frontier Commission, including all buildings and facilities determined necessary for the operation of the project, together with all property, rights, easements, and interests that may be required for the operation of the project.[2] Net proceeds of the obligations are deposited into the Third Frontier Research and Development Fund created in the state treasury. Moneys in the fund are to be used to finance the Third Frontier Commission's research and development activities and for associated administrative expenses. All investment earnings of the fund are credited to it.

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[2] *"Research and development project" is defined under current law to mean projects or activities in support of Ohio industry, commerce, and business, including (1) research and product innovation, development, and commercialization through efforts by, and may include collaboration among, Ohio business and industry, state and local public entities and agencies, public and private institutions, research organizations, or other in-state entities specifically formed for the sole purpose of both investing in and providing direct management support to any one or combination of any of the foregoing entities or any other in-state entities, and (2) projects and activities supporting any and all matters related to research and development purposes including: (a) attracting researchers and research teams by endowing chairs or otherwise, (b) developing and commercializing products and processes, (c) promoting, developing, and securing intellectual property matters and rights such as copyrights and patents, (d) promoting, developing, and securing property interests, including time sharing arrangements, and (e) promoting, developing, and securing financial rights and matters such as royalties, licensing, and other financial gain or sharing resulting from research and development. (R.C. 184.10, not in bill.)*

The bill creates a new fund in the state treasury called the Third Frontier Research and Development Taxable Bond Fund that will consist of net proceeds of the obligations issued as described under current law that are federally taxable; proceeds from non-federally taxable obligations will continue to be deposited in the existing fund described above. Investment earnings of the new fund must be credited to it and the money in the fund must be used in accordance with the law governing the Third Frontier Commission's fostering and funding of research and development projects, as well as for associated administrative expenses. The bill also amends the definition of "project" to permit the cost of a project to be paid from a grant or loan from the Third Frontier Research and Development Taxable Bond Fund.

Exemption from the prevailing rate requirement for state-assisted school facilities construction projects

(R.C. 3318.101)

The bill prohibits the Ohio School Facilities Commission from entering into any agreement with a school district for a school construction project or a segment of a project that requires laborers engaged for that project be paid the prevailing rate of wages. It also prohibits the Commission from approving any contract for labor under a school district's project or segment that requires the payment of the prevailing rate.

Background

Prevailing rate. State agencies and political subdivisions, when undertaking public improvement projects, generally are required to pay the prevailing wage rate for the locality of the project. The prevailing wage rate is the sum of the basic hourly rate of pay and fringe benefits in the same trade and locality under collective bargaining agreements.[3] Some types of projects are exempted from this law, however. One of those exemptions, enacted in 1997, applies to school districts and educational service centers. That exemption states that the provisions of the Prevailing Wage Rate Law (codified in R.C. 4115.03 to 4115.16) "do not apply to . . . public improvements undertaken by, or under contract for, the board of education of any school district or the governing board of any educational service center."[4] In other words, school districts and service centers are not required to pay prevailing rates for construction labor.

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[3] *R.C. 4115.05, not in the bill. If there is no collective bargaining agreement in that locality for that trade, the required prevailing wage is the wage in effect for that trade in the nearest locality where there is such a collective bargaining agreement in force.*

[4] *R.C. 4115.04(B)(3), not in the bill.*

State-assisted school construction projects. The Ohio School Facilities Commission administers several programs that provide state funds to school districts to construct or renovate classroom facilities. These programs generally are cost-sharing programs where the state and each participating school district each pay a portion of the project cost based on the relative wealth of the district. Although the district board of education solicits bids for and awards the project contracts for labor and materials to the lowest responsible or lowest responsive and responsible bidder,[5] the bidding and contract forms are supplied by the Commission. In addition, all project contracts must be approved by the Commission.[6] Currently, the Commission's bidding and contract forms do not provide for the payment of prevailing rate. The bill goes further and outright prohibits the Commission from approving a contract that requires the payment of prevailing rate. However, even if a state-assisted school facilities construction labor contract does not require prevailing wage rates, it also appears that a successful low bidder that is awarded a contract is not prohibited from paying those rates.

Calculation of school district reimbursement for tax changes

(R.C. 5727.84)

The bill refines the calculation of the state reimbursement provided to school districts for revenue losses resulting from electric utility deregulation and the phase-out of the tangible personal property tax. This reimbursement temporarily holds districts harmless for their net tax revenue losses, after accounting for the "state aid offset," which is the increase in state education subsidies attributable to the districts' lower tax valuations. (That is, the utility deregulation and tangible personal property tax phase-out not only reduced school districts' property tax revenues, they also reduced tax valuations, which in turn should increase state payments under the school funding formulas.)

The bill's refinement pertains to the calculation of this state aid offset. Whereas current law refers simply to state funds paid under the school funding laws, the bill itemizes the specific state subsidies and adjustments that should be accounted for. These consist of the subsidies and adjustments accounted for on the Department of Education's "SF-3" form to school districts, including deductions for school choice programs such as open enrollment, community schools, Educational Choice scholarships, and the Autism Scholarship Program.

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[5] *R.C. 9.312, 3313.46, and 3318.10, none in the bill.*

[6] *R.C. 3318.10.*

Therefore, the bill prescribes that the state aid offset is the state education aid paid to a district, less amounts deducted for school choice programs.

Autism Scholarship Program

(R.C. 3310.41, 3317.013, 3317.022, 3317.029, 3317.0217, and 3317.03)

The bill codifies, renames, and makes permanent the Pilot Project Special Education Scholarship Program. The new name is the Autism Scholarship Program. The bill codifies the statute authorizing the program and amends the school funding laws to codify the funding mechanism.

This program was established as a pilot program through fiscal year 2007 by the budget acts for the 2003-2005 and 2005-2007 biennia. It pays scholarships of up to $20,000 to the parents of autistic children for services at public and nonpublic special education programs in lieu of enrolling them in the programs of their resident school districts. Each child is counted in the enrollments of the child's resident school district (thereby crediting the district with state funding), and the amount of each scholarship is deducted from the district's state aid account. Because the program authorizes scholarships for preschoolers, as well as school-age children, the amendments to the school funding laws that codify the payment mechanism direct that preschoolers receiving scholarships also be counted in school districts' enrollment and figured into the calculation of their state payments.

Volume cap allocation for student loan notes

(R.C. 133.021)

The bill states that any portion of Ohio's volume of private activity bonds that is allocated for issuance of student loan notes may be awarded only to either (1) the Treasurer of State, for the state student loan secondary market program, or (2) the single nonprofit secondary market operation designated by the Governor to operate in Ohio under federal higher education law.

Background

A federal income tax exemption is available to investors who purchase state or local government bonds issued to finance certain nongovernmental activities that are determined to fulfill a public purpose. These bonds are referred to as tax-exempt private activity bonds. The federal government imposes a limit, or cap, on the volume of private activity bonds that can be issued in each state each year.

War Orphans Scholarship eligibility

(R.C. 5910.03)

The bill increases, from 21 years to 25 years, the maximum age to apply for a War Orphans Scholarship. The War Orphans Scholarship Program provides college scholarships to children of (1) deceased or disabled veterans who served during periods of war, (2) veterans who were killed or permanently and totally disabled on active duty, or (3) veterans who were declared prisoners of war or missing in action during armed conflict.

Governor's residence heritage garden

(R.C. 107.40)

Current law requires the Governor's Residence Advisory Commission to be responsible for the care, provision, repair, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's residence and for the care and placement of plants on the grounds. In exercising the responsibility, the Commission must preserve and seek to further establish the authentic ambiance and décor of the historic era during which the Governor's residence was constructed and the grounds as a representation of Ohio's natural ecosystems. The bill adds that the Commission also must preserve and seek to establish the heritage garden for all of the following purposes: (1) to preserve, sustain, and encourage the use of native flora throughout the state, (2) to replicate the state's physiographic regions, plant communities, and natural landscapes, (3) to serve as an educational garden that demonstrates the artistic, industrial, political, horticultural, and geologic history of the state through the use of plants, and (4) to serve as a reservoir of rare species of plants from the physiographic regions of the state. The bill defines "heritage garden" as the botanical garden of native plants established at the Governor's residence. Finally, the bill states that the heritage garden must be officially known as "The Heritage Garden at the Ohio Governor's Residence."

Open Meetings Law: definition of "caucus"

(R.C. 101.15)

Under current law, for the purposes of the Open Meetings Law, "caucus" means all of the members of either house of the General Assembly who are members of the same political party. Meetings of a caucus are not subject to the requirement that all meetings of any General Assembly committee be open to the public at all times or to the related provisions requiring prior notice of committee meetings, invalidating actions of a committee not taken in an open meeting, and

authorizing court actions to enforce the requirement. The bill expands the definition of "caucus" to include members of a committee of the House of Representatives who are members of the same political party.

Joint Legislative Ethics Committee Fund

(R.C. 101.34, 101.72, 101.92, and 121.62)

Within ten days after an employer engages a legislative agent, executive agency lobbyist, or retirement system lobbyist, the lobbyist and the employer are required to file registration statements with the Joint Legislative Ethics Committee. Updated registration statements that confirm the continuing existence of the engagement, and that identify the specific items on which the lobbyist is advocating, must be filed not later than the last day of January, May, and September of each year.

The Joint Legislative Ethics Committee is required to charge a registration fee of $25 for filing the initial registration statement. There is no registration fee required to be paid when filing the updated statements. If, however, a legislative agent, executive agency lobbyist, retirement system lobbyist, or employer fails to file a registration statement or, when required, an amended registration statement, the Committee is required to assess a late filing fee of up to $12.50 per day, up to a maximum of $100, upon that person. The Committee may waive this late fee for good cause shown.

Existing law requires these fees to be deposited into the General Revenue Fund. The bill changes the fund into which these fees must be deposited. Under the bill, lobbyist registration fees and late filing fees must be deposited into the state treasury to the credit of the Joint Legislative Ethics Committee Fund. Under existing law, money credited to the fund, and any interest and earnings from the fund, must be used solely for the operation of the Joint Legislative Ethics Committee and the Office of Legislative Inspector General and for the purchase of data storage and computerization facilities for legislative agent and executive agency lobbyist expenditure statements. The bill also permits the money, interest, and earnings to be used for the purchase of data storage and computerization facilities for retirement system lobbyist expenditure statements.

Changes in Lottery Sales Agent Licensing Law

(R.C. 3770.05 and 3770.073(A)(1))

Application and renewal of license fees

Current law requires each applicant for a lottery sales agent license to pay a $25 fee upon approval of the application. The bill eliminates this $25 fee and

instead requires an *application fee* in an amount that the Director of the State Lottery Commission determines in a rule adopted under the Administrative Procedure Act and that the Controlling Board approves, and mandates that the applicant pay the fee to the Commission *at the time the application is submitted*, rather than when the application is approved.

The bill also provides that before the Commission *renews* a lottery sales agent's license, the agent must submit a *renewal fee* to the Commission in the amount that the Director determines by rule adopted under the Administrative Procedure Act and that the Controlling Board approves. The renewal of the license is effective for up to one year, and the amount of the renewal fee cannot exceed the actual cost of administering the license renewal and processing changes reflected in the renewal application. Current law does not require payment of a license renewal fee.

The bill further requires that a lottery sales agent's license be complete, accurate, and current at all times during the term of the license. Any changes to an original license application or a renewal application may subject the applicant or lottery sales agent, as applicable, to paying an *administrative fee* (1) that must not exceed the actual cost of administering and processing the changes to the application and (2) that is in the amount the Director determines by rule adopted under the Administrative Procedure Act and that the Controlling Board approves.

Bonds and dedicated accounts

Applicants. Current law requires that, before a lottery sales agent license application is approved, the applicant must obtain a surety bond, or, if required, a fidelity bond, in an amount to be determined by the Director. The bond may be with any company that complies with Ohio's bonding and surety laws and the requirements established by Commission rules.

The bill eliminates the option for an applicant to be required to file a fidelity bond with the Commission and instead authorizes an applicant to obtain a *surety bond* in an amount the Director determines by rule adopted under the Administrative Procedure Act or, alternatively, with the Director's approval, to deposit the same amount into a *dedicated account* (see below) for the benefit of the State Lottery. The Director also may approve the submission of a surety bond to cover part of the amount required, together with a dedicated account deposit to cover the remainder of the amount required.

A dedicated account deposit must be conducted in accordance with policies and procedures the Director establishes. And, a dedicated account, a surety bond, or both, as applicable, may be used (1) to pay for a lottery sales agent's failure to make prompt and accurate payments for lottery ticket sales, for missing or stolen

lottery tickets, or for damage to equipment or materials issued to the agent, or (2) to pay for expenses the Commission incurs in connection with the agent's license.

Renewals. Current law requires a licensed lottery sales agent, at the time the agent renews the agent's license, to provide evidence to the Director that *the surety bond* required by law has been renewed, and the Director must certify to the Commission that the agent has the required bond. The bill instead requires the agent to provide evidence to the Director, at the time of license renewal, that the surety bond, dedicated account deposit, or both, required under the bill has been renewed or is active, whichever applies. It also repeals the requirement for Director certification to the Commission.

Criminal records check

Current law (1) requires the Director of the State Lottery Commission to request the Bureau of Criminal Identification and Investigation in the Office of the Attorney General, the Department of Public Safety, or any other state, local, or federal agency to supply the Director with the criminal records of any applicant for a lottery sales agent license and (2) authorizes the Director to periodically request criminal records concerning any person to whom such a license has been issued. Upon or before making a request described in (1) or (2) above, the Director must require an applicant or licensee to obtain fingerprint impressions on fingerprint cards prescribed by the Superintendent of the Bureau of Criminal Identification and Investigation at a qualified law enforcement agency, and the Director must cause those fingerprint cards to be forwarded to the Bureau of Criminal Identification and Investigation *and* the Federal Bureau of Investigation.

The bill instead requires the fingerprint cards to be forwarded to the Bureau of Criminal Identification and Investigation, *or* to the Federal Bureau of Investigation, *or to both Bureaus*.

ICF/MR Conversion Pilot Program

(R.C. 5111.88)

Current law requires the Director of Job and Family Services to seek federal approval for a Medicaid waiver authorizing the operation of the ICF/MR Conversion Pilot Program under which intermediate care facilities for the mentally retarded (ICFs/MR) may volunteer to convert in whole or in part from providing ICF/MR services to providing home and community-based services. Up to 200 individuals with mental retardation or a developmental disability who are eligible for ICF/MR services would be permitted to receive instead home and community-based services. The Director must also seek federal approval to be able, beginning on the first day that the program begins implementation, to refuse to enter into or

amend a Medicaid provider agreement with the operator of an ICF/MR if the provider agreement or amendment would authorize the operator to receive Medicaid payments for more ICF/MR beds than the operator receives on the day before the day the program begins implementation. However, an ICF/MR is permitted to reconvert beds to providing ICF/MR services after the program terminates unless the program is later implemented statewide, the facility no longer meets the requirements for certification as an ICF/MR, or no longer meets the requirements for licensure as a residential facility or nursing home.

Current law requires the Director to seek federal approval for the ICF/MR Conversion Pilot Program and authority to limit the number of ICF/MR beds covered by Medicaid provider agreements by January 1, 2007. The bill delays the deadline to seek the federal approval until June 30, 2007.

Community mental health services

(R.C. 340.03, 340.09, and 340.12)

Background

The state is divided into alcohol, drug addiction, and mental health service districts. Generally, each county or combination of counties having a population of at least 50,000 is to serve as a district, but the Director of Mental Health and Director of Alcohol and Drug Addiction Services may approve a district comprised of a single county or combination of counties with a smaller population.[7]

Most districts have a single board to serve as the planning agency for the district's mental health services and its alcohol and drug addiction services. This type of board is called a board of alcohol, drug addiction, and mental health services (ADAMHS board). However, a district comprised of a county that had a population of 250,000 or more on October 10, 1989, may have two separate boards; one to serve as the planning agency for mental health services (community mental health board) and another to serve as the planning agency for alcohol and drug addiction services (alcohol and drug addiction services board).[8]

One duty of an ADAMHS board or community mental health board is to establish an annual community mental health plan. The plan lists the district's community mental health needs and the institutional and community mental health

[7] *R.C. 340.01.*

[8] *R.C. 340.02 and 340.021.*

services that are or will be in operation in the district to meet those needs. Each board's plan is subject to the Director of Mental Health's approval.[9]

A board is to contract with community mental health agencies for the provision of community mental health services included in the board's approved plan. With the Director of Mental Health's approval and under limited circumstances, a board may itself provide community mental health services for a limited period of time.[10] A board's plan may also provide for the Ohio Department of Mental Health to operate community mental health services for the board.[11]

Crisis intervention services

(R.C. 340.03 and 340.09)

A community mental health plan must state which services listed in statute the ADAMHS board or community mental health board intends to provide or purchase.[12] Currently, the statute expressly includes, among other services, outpatient, inpatient, rehabilitation, and emergency services. The statute also includes "[o]ther services approved by the board and Director of Mental Health."[13] The bill adds crisis intervention to the services in the statute. The Director has adopted rules governing crisis intervention services.[14]

The bill requires that a plan include crisis intervention services for individuals in emergency situations. Each board must explain how the board intends to make the crisis intervention services available.

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[9] *R.C. 340.03(A)(1)(c).*

[10] *R.C. 340.03(A)(8).*

[11] *R.C. 340.03(A)(3)(c).*

[12] *Under the bill, a community mental health plan must state which services the board intends to make available, rather than provide or purchase.*

[13] *The Ohio Department of Mental Health is required to assist counties in the provision of the services listed in the statute. (R.C. 340.09.)*

[14] *Ohio Administrative Code §5122-29-10.*

Discrimination on basis of inability to pay

(R.C. 340.12)

Current law prohibits ADAMHS boards, community mental health boards, alcohol and drug addiction services boards, and entities under contract with a board from discriminating in matters regarding provision of services under its authority, employment, or contracts on the basis of race, color, sex, creed, disability, national origin, or inability to pay. The bill eliminates the prohibition against discrimination on the basis of inability to pay.

Fallback rights for employees who moved from a classified to an unclassified position in the Bureau of Workers' Compensation, Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, or the Department of Youth Services

(R.C. 4121.121, 5119.071, 5123.08, and 5139.02)

The Civil Service Law--in general

Current law generally authorizes an appointing authority whose employees are paid by warrant of the Director of Budget and Management to appoint a person who holds a certified position in the classified service within the appointing authority's agency to a position in the unclassified service in that agency.[15] A person appointed to a position in the unclassified service in this manner retains the qualified right (see next paragraph) to resume the position and status the person held in the classified service immediately before the person's appointment to the position in the unclassified service, regardless of the number of positions the person held in the unclassified service. These provisions of current law as well as the provisions of current law described in the following paragraph *do not apply* to employees in positions in the unclassified service of the Bureau of Workers' Compensation or the Departments of Mental Health, Rehabilitation and Correction, Mental Retardation and Developmental Disabilities, Youth Services, and Transportation who, *under specific statutes* applicable to the Bureau and those departments, have the right to resume positions in the classified service. (R.C. 124.11(D)--not in the bill.)

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[15] *The Civil Service Law (a) requires that employees in the classified service be hired and promoted through competitive and noncompetitive examinations, (b) grants them appeal rights when they are suspended, demoted, removed, reduced in pay or position, or laid off, and (c) limits their participation in partisan political activities. These provisions do not apply to employees in the unclassified service, who serve at the pleasure of their appointing authority.*

Current law provides that an employee's right to resume a position in the classified service may *only be exercised when* an appointing authority demotes the employee to a pay range lower than the employee's current pay range or revokes the employee's appointment to the unclassified service. And, an employee *forfeits* the right to resume a position in the classified service when the employee is removed from the position in the unclassified service due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the Civil Service Law or the rules of the Director of Administrative Services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. An employee also *forfeits* the right to resume a position in the classified service upon transfer to a different agency. (R.C. 124.11(D), not in the bill.)

Changes proposed by the bill

As noted above, current law grants (1) an employee holding a certified position in the classified service in the Bureau of Workers' Compensation, the Department of Mental Health, or the Department of Mental Retardation and Developmental Disabilities who is appointed to an unclassified position in the Bureau or the Department and (2) an employee holding a certified position in the classified service in the Department of Youth Services who is appointed to the position of managing officer in the Department, the right to resume a previously held position in the classified service regardless of the number of unclassified positions the employee has held.[16] The provisions of current law *described* under "***The Civil Service Law--in general***," above, that govern an unclassified employee's right to resume a position in the classified service, however, *do not apply* to these employees of the Bureau and the Departments.

The bill applies to these employees of the Bureau and the Departments the provisions of current law described under "***The Civil Service Law--in general***," above, that govern the right of most unclassified employees to resume a position in the classified service. In addition, these employees would forfeit their right to resume a position in the classified service if they are removed from their position in the unclassified service due to (1) a violation of an applicable Bureau or Department law (thus, in addition to a violation of the Civil Service Law) or (2) a violation of the rules of the Administrator of Workers' Compensation or of the

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[16] *"Managing officer" means the Assistant Director, a Deputy Director, an Assistant Deputy Director, a Superintendent, a Regional Administrator, a Deputy Superintendent, or the Superintendent of Schools of the Department of Youth Services, a member of the Release Authority, the Chief of Staff of the Release Authority, and the Victims Administrator of the Office of Victim Services (R.C. 5139.02(A)(1)).*

Director of the department in question (thus, in addition to a violation of the rules of the Director of Administrative Services).

Sale of canal lands

(R.C. 1520.02)

Under current law, the Director of Natural Resources has the authority to sell, lease, exchange, give, or grant all or part of the state's interest in any canal lands in accordance with state law. The bill requires that prior to proposing the conveyance of any canal lands, the Director consider the local government needs and economic development potential with respect to the canal lands and the recreational, ecological, and historical value of the canal lands. In addition, the bill requires that the conveyance of canal lands be conducted in accordance with the Director's policies governing the protection and conservation of canal lands established under current law.

Total principal amount of obligations issued for Clean Ohio Conservation Fund, Clean Ohio Agricultural Easement Fund, Clean Ohio Trail Fund, and Clean Ohio Revitalization Fund

(R.C. 151.09 and 151.40)

Current law requires the issuing authority to issue general obligations of the state to pay costs of conservation projects pursuant to Section 2o of Article VIII of the Ohio Constitution and specified statutes of the Public Facilities Commission Law.[17] The issuing authority, upon the certification to it by the Ohio Public Works Commission of amounts needed in and for the purposes of the Clean Ohio Conservation Fund, the Clean Ohio Agricultural Easement Fund, and the Clean Ohio Trail Fund, must issue obligations in the amount determined by the issuing authority for those purposes. The total principal amount of obligations issued cannot exceed $200 million. The bill revises the total principal amount of obligations that may be issued for the purposes of the Clean Ohio Conservation Fund, the Clean Ohio Agricultural Easement Fund, and the Clean Ohio Trail Fund by stating that not more than $200 million principal amount of obligations for conservation purposes *may be outstanding at any one time*. In addition, the bill states that not more than $50 million principal amount of obligations, plus the principal amount of obligations that in any prior fiscal year could have been, but were not issued within the $50 million fiscal year limit, may be issued in any fiscal

[17] *"Issuing authority" means the Ohio Public Facilities Commission for obligations issued for conservation purposes, or the Treasurer of State, or the officer who by law performs the functions of that office, for obligations issued for revitalization purposes (R.C. 151.01(A)(7), not in the bill).*

year for conservation purposes. The bill makes identical changes in the statute governing the Clean Ohio Revitalization Fund, which is used to pay costs of revitalization projects.

Motor carrier safety

(R.C. 4919.76)

Under current law, the Public Utilities Commission (PUCO) must adopt rules governing the registration of motor carriers which must be consistent with pertinent federal rules. The current federally prescribed program under which the PUCO registers carriers and enforces state and federal motor safety standards is the Single State Insurance Registration Program. Pursuant to federal law, the Single State program is being replaced with the Uniform Carrier Registration Program as of January 1, 2007 (but there will be a transition period while the new program is being finalized through the Federal Motor Carrier Safety Administration).

The bill removes an express reference to the Single State program but continues the PUCO's authority to adopt rules governing motor carrier registration.

State correctional facilities

Change of purpose

(R.C. 5120.03(A))

Existing law authorizes the Director of Rehabilitation and Correction to change the purpose for which a state correctional facility is used by executive order and with the approval of the Governor. The bill eliminates the requirements that a change be effected by executive order and that the Governor's approval be obtained. The bill also makes a change of purpose subject to the requirement that the Director contract for the private operation of at least two correctional facilities (see below).

Private operation

(R.C. 5120.03(C))

Existing law authorizes but does not require the Director of Rehabilitation and Correction to contract for the private operation of state correctional facilities. The bill requires the Director to contract for the private operation of at least two state correctional facilities unless the contractor managing and operating a facility is not in substantial compliance with the material terms and conditions of its

contract and no other person or entity is willing and able to satisfy the obligations of the contract.

Justice programs funds

(R.C. 5502.62)

Under existing law, the Division of Criminal Justice Services of the Department of Public Safety must deposit money from certain federal grants into the Federal Program Purposes Fund unless the grants are intended to provide funding for local criminal justice programs. Money from grants meant to fund local criminal justice programs are deposited into the Federal Justice Programs Fund. The bill eliminates the Federal Program Purposes Fund, strikes the word "local" as it applies to the Federal Justice Programs Fund, and requires that money from grants intended to fund criminal justice programs be deposited into a Federal Justice Program Fund. The bill requires that a Federal Justice Program Fund be established for each federal fiscal year.

Oath of office of a judge; certificate of oath

Existing law

Current law provides that a person may be sworn in any form that the person deems binding on the person's conscience (R.C. 3.21).

The oath of office of each judge of a court of record is to support the United States Constitution and the Ohio Constitution, to administer justice without respect to persons, and faithfully and impartially to discharge and perform all the duties incumbent on the person as such judge, according to the best of the person's ability and understanding (R.C. 3.23).

The Secretary of State must transmit each commission issued by the Governor to a judge of the court of appeals or a judge of the court of common pleas to the clerk of the court of common pleas of the county in which that judge resides. The clerk must receive the commission and forthwith transmit it to the person entitled to it. *Within 20 days after the person has received the commission*, the person must take the oath required by Section 7 of Article XV, Ohio Constitution and R.C. 3.22 and 3.23, *and transmit a certificate of the oath to the clerk, signed by the officer administering the oath. If such certificate is not transmitted to the clerk within 20 days, the person entitled to receive the commission is deemed to have refused to accept the office, and that office is considered vacant. The clerk forthwith must certify the fact to the Governor who must fill the vacancy*. (R.C. 2701.06.)

Operation of the bill

(R.C. 3.21 and 3.23)

The bill provides that *subject to any section of the Revised Code that prescribes the form of an oath* (added by the bill), a person may be sworn in any form the person deems binding on the person's conscience.

The bill retains the above provision in existing law pertaining to the transmission to the Secretary of State of each commission issued by the Governor to a judge of the court of appeals or a judge of the court of common pleas. It modifies the requirements for the transmission of a certificate of oath (italicized language under "***Existing law***," above) and applies these modified requirements generally to judges of courts of record. The bill provides that, except for justices of the Supreme Court as provided in R.C. 2701.05 (commission issued by the Governor to a justice of the Supreme Court), each judge of a court of record must take the oath of office (see 2nd paragraph under "***Existing law***," above) on or before the first day of the judge's official term. The judge must transmit a certificate of oath, signed by the person administering the oath, to the clerk of the respective court and must transmit a copy of the certificate of oath to the Supreme Court. The certificate of oath must state the term of office for that judge, including the beginning and ending dates of that term. If the certificate of oath is not transmitted to the clerk of the court within 20 days from the first day of the judge's official term, the judge is deemed to have refused to accept the office, and that office is considered vacant. The clerk of the court forthwith must certify that fact to the Governor and the Governor must fill that vacancy.

The oath of office of a judge must be taken in a form that is substantially similar to the following:

> "I, (name), do solemnly swear that I will support the Constitution of the United States and the Constitution of Ohio, will administer justice without respect to persons, and will faithfully and impartially discharge and perform all of the duties incumbent upon me as (name of office) according to the best of my ability and understanding. [This I do as I shall answer unto God.]"

Size of the official seal of the Supreme Court

(R.C. 5.10)

Under current law the official seal of the Supreme Court consists of the Ohio coat of arms within a circle that is 1.75 inches in diameter and that is surrounded by the words "THE SUPREME COURT OF THE STATE OF OHIO." The bill decreases the size of the circle from 1.75 inches in diameter to 1.50 inches in diameter. The bill makes no other changes to the composition of the seal.

Morrow County Court of Common Pleas

(R.C. 2301.02)

Under current law, generally judges of the Probate Division of the Court of Common Pleas are judges of the Court of Common Pleas but are elected pursuant to R.C. 2101.02 and 2101.021. In Morrow County, the successors to the judge of the Morrow County Court of Common Pleas elected in 1956 also serve as judge of the Probate Division. Current law, as amended by Sub. H.B. 336 of the 126th General Assembly, provides that there are two judges in the Morrow County Court of Common Pleas, one to be elected in 1956, term to begin January 1, 1957, and one to be elected in 2006, term to begin January 1, 2007. The bill provides that both judges of the Morrow County Court of Common Pleas also perform the duties and functions of the judge of the Probate Division.

Ohio Turnpike Commission

Membership

(R.C. 5537.02)

Under current law the Ohio Turnpike Commission consists of seven members: four members appointed by the Governor, the Director of Transportation as an ex officio member, and two nonvoting legislative members. The bill expands the membership of the Ohio Turnpike Commission to include the Director of Budget and Management and the Director of Development as ex officio, voting members, bringing the total number of members to nine. The bill also increases the number of voting members that constitute a quorum from a simple majority (3 of 5) to a majority plus one (5 of 7).

Notice of proposed activities

(R.C. 5537.26)

Current law requires the Ohio Turnpike Commission to give notice and hold at least three public hearings prior to voting to increase any part of the toll rate structure that is applicable to vehicles operating on a turnpike project and prior to voting to take any "action that expands, has the effect of expanding, or will to any degree at any time in the future have the effect of expanding the sphere of responsibility of the commission" beyond the existing Ohio Turnpike. No increase in the toll rate structure or action to expand the sphere of responsibility of the Commission may become effective unless the Commission complies with the prescribed notice and hearing requirements.

In addition to the current public notice and hearing provisions, the bill requires the Turnpike Commission to send notice to the Governor and the presiding officers and minority leaders of the Senate and House of Representatives that details the proposed increase to the toll rate structure or the expansion of the sphere of responsibility of the Commission beyond the Ohio Turnpike, including a description of and a justification for the increase or expansion.

Current law authorizes the Commission to implement a temporary decrease in the toll rate structure only if it does not exceed 18 months. Prior to instituting any decrease to the toll rate structure, current law requires the Commission to hold a public meeting to explain to members of the traveling public the reasons for the upcoming decrease, to inform them of any benefits and any negative consequences, and to give them the opportunity to express their opinions as to the relative merits or drawbacks of each toll decrease. Under the bill, the Commission must send notice to the Governor and the presiding officers and minority leaders of the Senate and House of Representatives that details the proposed decrease to the toll rate structure; the notice must be sent not less than five days prior to any public meeting on the toll decrease. The Commission is not required by current law to hold any public hearing or meeting upon the expiration of any temporary decrease in the toll rate structure, so long as it implements the same toll rate structure that was in effect immediately prior to the temporary decrease.

Budget

(R.C. 5537.17)

Current law requires the Ohio Turnpike Commission to submit a copy of its annual audit by the Auditor of State and its proposed annual budget for each calendar or fiscal year to the Governor, the presiding officers of each house of the General Assembly, the Director of Budget and Management, and the Legislative

Service Commission no later than the first day of that calendar or fiscal year. The bill specifies that the Commission submit a copy of its proposed annual budget to the Governor, the presiding officers of each house of the General Assembly, the Director of Budget and Management, and the Legislative Service Commission not more than 60 nor less than 30 days before adopting its annual budget. The Office of Budget and Management must review the proposed budget and may provide recommendations to the Turnpike Commission for its consideration.

The bill also requires the Turnpike Commission, upon request of the chairperson of the appropriate standing committee or subcommittee of the Senate and House of Representatives that is primarily responsible for considering transportation budget matters, to appear at least one time before each committee or subcommittee during the period when that committee or subcommittee is considering the biennial appropriations for the Department of Transportation. At such an appearance, the Commission must provide testimony outlining its budgetary results for the last two calendar years, including a comparison of budget and actual revenue and expenditure amounts. The Commission also must address its current budget and long-term capital plan.

Turnpike Oversight Committee

The Turnpike Oversight Committee consists of three members of the Senate and three members of the House of Representatives. The Ohio Turnpike Commission reports Commission matters to the Committee at the Committee's meetings.

Meeting locations of the Turnpike Oversight Committee

(R.C. 5537.24)

Current law requires the Turnpike Oversight Committee to meet at least quarterly, and it may meet at the call of its chairperson or upon the written request to the chairperson of at least four Committee members. At least three of the quarterly meetings must be held at sites located along the Ohio Turnpike, as determined by the chairperson. The bill requires the chairperson solely to determine the location of all Committee meetings and removes the requirement that at least three of the quarterly meetings be held at sites along the Turnpike.

Renaming of the Turnpike Oversight Committee as the Turnpike Legislative Review Committee

(R.C. 5537.01, 5537.03, 5537.24, 5537.27, and 5537.28)

The bill changes the name of the Turnpike Oversight Committee to the Turnpike Legislative Review Committee.

Approval of Turnpike Commission bond issuances; disclosure of state issuers' trust agreements

(R.C. 126.11 and 5537.10)

Under current law, the Director of Budget and Management is responsible for coordinating and approving the scheduling of initial sales of publicly offered securities of the state. For these purposes state issuers are required to submit certain information to the Director. The extent of that information, and the Director's duties with respect to it, vary, however, depending on the issuer. For example, information submitted by some issuers is subject to the approval of the Director. For other issuers the information must be mutually agreed upon. And for others, the information is submitted merely for the Director's review.

Under this provision, the only requirement currently applicable to the Turnpike Commission is the submittal of their preliminary and final offering documents, upon the documents' availability. The bill instead requires the Commission to do all of the following:

--Submit, for the Director's "review and approval," information that includes the projected sale date, amount, and type of obligations proposed to be sold; their purpose, security, and source of payment; the proposed structure and maturity schedule; and the trust agreement and any supplemental agreements for the obligations.

--Submit, for the Director's "review and comment," information that includes the authorizing order or resolution; preliminary and final offering documents; method of sale; and any reports or recommendations of financial advisors or consultants relating to the obligations.

--Submit, "promptly after each sale," the final terms; names of the original purchasers or underwriters; the final offering document; and any other pertinent information requested by the Director.

The bill also requires the Ohio Public Facilities Commission, the Ohio Building Authority, and the Treasurer of State to submit, for the Director's approval or mutual agreement, "the trust agreement and any supplemental agreements" for certain obligations proposed to be sold.

Limitation periods for state collection actions

(R.C. 131.02(F)(3), 2305.26, and 2329.07; Section 505.10)

The bill extends limitations periods for three different government collection efforts: actions by the state to collect a tax debt; actions by the state or

a political subdivision to enforce a lien; and state actions to execute on a judgment or certify a judgment.

Under current law, an action by the state to collect a tax debt must be filed within seven years after an assessment is issued. If the assessment is disputed by the taxpayer and the proceedings to determine the assessment's validity continue beyond the seven-year period (because of appeals, for example), the state has four years after the assessment becomes final to file an action to collect the debt. The bill clarifies that the four- and seven-year time limits apply only to the state's "initial" action to collect the tax debt. If the initial action to collect a tax debt is timely filed, the state may file subsequent actions to collect the tax debt for as long as the tax debt exists.

Under current law, if the state or a political subdivision obtains a lien on real or personal property, the state or political subdivision must file an action to enforce the lien within 12 years after the date of the lien. Alternatively, the state or political subdivision may file with the county recorder a notice of continuation of lien, in which case the limitations period is extended to 12 years from the date the notice of continuation is recorded. These 12-year limitations periods are extended by the bill to 15 years. The new 15-year periods apply to liens obtained and continuations recorded before, on, or after the effective date of the bill.

Under current law, if the state obtains a judgment it must execute on or certify the judgment within ten years after the date of the judgment. The ten-year period continues to apply if the state neither executes on nor certifies a judgment. If, however, the state executes on or certifies a judgment, the ten-year period is extended by the bill to 15 years. The new 15-year period applies to judgments issued and certifications issued and filed before, on, or after the effective date of the bill.

Under current law, county recorders are authorized to charge the state recording fees for services provided in recording state liens and continuations of state liens. The bill removes this authorization. The removal applies with regard to state liens and continuations of state liens regardless of when they were recorded, whether before, on, or after the effective date of the bill.

Incorporation of changes to Internal Revenue Code

(R.C. 5701.11)

Under current law, a reference in the tax title of the Revised Code to the Internal Revenue Code (IRC) or other laws of the United States means those laws as they existed on March 30, 2006, unless the Revised Code section containing the reference has been amended since that date.

Under the bill, all changes to the IRC or other laws of the United States since March 30, 2006, will be incorporated into all references to them in the tax title of the Revised Code, except references to the IRC or federal laws as of a date certain specifying the day, month, and year.

The bill also authorizes taxpayers whose taxable year ends in 2006, and before the effective date of the incorporated changes, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax law provisions that applied before that effective date. The bill also specifies that similar elections made under previous versions of the tax laws remain effective for the taxable years to which they apply.

Remediated Property Tax Exemption Opt-Out

(R.C. 5709.87; Section 515.10)

Under current law, to encourage the remediation and development of contaminated property, the director of environmental protection issues a covenant not to sue, after certain conditions have been met, to an owner of remediated property. When the director issues a covenant, the director certifies to the tax commissioner that a covenant has been issued. The tax commissioner then issues an order granting the property owner an exemption from real property taxation equal to the increase in the assessed value of the property and of any improvements, buildings, fixtures, and structures on the property. The tax exemption lasts for ten years.

Under the bill, owners of remediated property for which an order granting an exemption has been issued may decline the tax exemption. The owner has 60 days after the order is issued to inform the commissioner in writing that the owner does not want the exemption. The commissioner must then issue a subsequent order rescinding the previous order granting the exemption.

The bill permits owners of remediated property that is currently subject to an order granting a tax exemption to decline the exemption. The property owner has 90 days after the effective date of the bill to notify the commissioner in writing that the owner elects to discontinue the exemption for the remainder of its term. Upon receiving such a notice, the commissioner is required to issue an order restoring the property to the tax list beginning with the year in which the notice is received.

Real property tax: determining value of oil and gas reserves

(R.C. 5713.051)

The bill prescribes the method to be used to determine the value of crude oil and natural gas reserves for real property tax purposes. The valuation method applies to oil or gas produced from developed and producing wells. It does not apply to oil or gas produced from wells that have recently been sold in an arm's-length transaction; presumably, the recent sale price would serve as the best evidence of true value. The valuation method applies to valuations for tax lien dates beginning January 1, 2007, and thereafter.

The proposed valuation method is a form of net income capitalization valuation. Generally, the gross value of production is computed on the basis of the five-year average price of oil or gas from Ohio wells, and this gross production value is discounted over a ten-year period to determine the net present value of oil or gas. Production volume is adjusted to account for early "flush" production and production forced by using various secondary recovery methods, and an annual rate of decline in production is stipulated. Gross value is adjusted by netting out royalty expenses, capital recovery expenses, and operating expenses. The unit of production for oil is a barrel; the unit for natural gas is 1,000 cubic feet (MCF). If multiple wells share the same meter, a per-well average of production is employed.

More specifically, total annualized production from an oil or gas well is adjusted by flush production or production through secondary recovery methods if either of the adjustments applies to the well. (Both adjustments may not be made for the same well for the same period of time.) Flush production is production during the first 12 months after a well first produces oil or gas; for each unit of flush production, 42.5% is subtracted from total production. Production through secondary recovery methods is production stimulated or maintained by applying mechanically induced pressure (e.g., air, nitrogen, water, or carbon dioxide); for each unit of production through secondary recovery methods, per-unit production is reduced by 50%. The result of the adjustments to total production is "stabilized production," which equals total annual production minus 42.5% of flush production, or total annual production minus 50% of production by secondary recovery methods. Stabilized production is converted to an average daily production amount by dividing it by 365, or the number of days during the year since the well began producing oil or gas.

The gross revenue from a well's stabilized production amount is determined by multiplying the production amount by the unweighted five-year average unit price of oil or gas produced and sold from Ohio wells during the most recent five-year period leading up to the tax lien date (January 1), as reported by the Ohio

Department of Natural Resources. Gross revenue per unit of production reflects a stipulated rate of decline in production of 13% per year cumulatively for a ten-year discount period, so that gross revenue per unit in the second year after flush production ends is stipulated to be 87% of gross revenue per unit for the first year after flush production ended, and so on until the tenth year after flush production ended, when it is stipulated to be 28.6% of gross revenue per unit for the first year after flush production ended. Gross revenue per unit is computed for each year of the ten-year discount period.

Once the per-unit gross revenue from a well's oil or gas is computed for each year of the ten-year period, it is adjusted by subtracting the annual royalty expense (stipulated to be 15% of per-unit annual gross revenue), annual operating expense (stipulated to be 40% of annual per-unit gross revenue), and annual capital recovery expense (stipulated to be 30% of annual per-unit gross revenue), amounting to total expense deductions of 85% of annual gross revenue. The resulting amount for each year (i.e., 15% of that year's gross revenue per unit) is the per-unit "net income" for that year, which is then discounted at a rate of 13% per year plus the annual rate of interest owed on unpaid state taxes (8% for 2007). The discounted net income per unit for each year is totaled for the ten-year period. If a well produces an average of at least one unit of production per day in the year preceding the tax lien date (i.e., one barrel of oil or eight MCF of natural gas), the net present value per unit equals the total discounted net income per unit multiplied by 365. If a well produces less than an average of one unit per day, the net present value per unit of oil (i.e., one barrel) equals 60% of the net present value per unit of a well producing at least one unit per day; the net present value per unit of natural gas (i.e., eight MCF) equals 50% of the net present value per unit of a well producing at least one unit per day.

Under current law, all real property (including oil and gas reserves) must be assessed and taxed at its "true value in money." The method employed to assess true value can vary. For oil and gas reserves, the statutes do not specify the method, but administrative rules (Ohio Admin. Code 5703-25-11(I)) state that when oil and gas rights are separate from ownership in the fee of the soil, the rights are to be valued "in accordance with the annual entry of the tax commissioner in the matter of adopting a uniform formula in regard to the valuation of oil and gas deposits in the eighty-eight counties of the state." The tax return form (DTE 6) indicates that the value computation for oil and gas reserves subtracts either 42.5% of flush production or 50% of production by secondary recovery methods from gross production (as in the proposed valuation method), and converts this into a daily average production which is equal to the bill's average daily production amount. Average daily production is then multiplied by a "decimal working interest" and by the per-unit taxable value fixed annually by the Tax Commissioner. The result is the assessed value of the oil or gas reserve,

which is then multiplied by the royalty interest owner's share to determine the owner's apportioned assessed value.

CAT exclusion for intra-group receipts: add non-qualifying dealers in intangibles

(R.C. 5751.011(C))

Under the Commercial Activity Tax (CAT) law, a consolidated elected taxpayer is a group of commonly owned or controlled companies that elect to report the tax as a single taxpayer. Companies that elect consolidated treatment are not required to pay the tax for gross receipts received from transactions between group members. These intra-group receipts are exempted from the tax, but receipts that any group member receives from transactions with persons outside the group are taxable unless the receipts qualify for exemption under one of the 27 specific exemptions. The consolidation election also means that any group member's out-of-group receipts are potentially taxable even if the member does not satisfy the CAT law's nexus standards. The nexus standards establish whether an entity is subject to the CAT based on indicia of its business presence in Ohio (see R.C. 5751.01(H) and (I)).

Under this existing exemption for intra-group receipts, a consolidated taxpayer group may exclude receipts received not only by taxable members of the group, but also receipts received by most CAT-exempt entities within the group. (There are 11 classes of "excluded persons" that are exempted from the CAT; the intra-group exemption applies to 10 of these 11 classes.) One of these classes of excluded persons is dealers in intangibles. But under current law, intra-group receipts received by a dealer in intangibles that is part of the group are tax-exempt only if the dealer satisfies two requirements: (1) the dealer is subject to the special "DIT" tax on dealers in intangibles, and (2) the dealer is a "qualifying dealer"--*i.e.*, the dealer is part of a commonly owned or controlled company group that also includes an insurance company or a financial institution.[18] Currently, therefore, the consolidated group must pay tax on intra-group receipts received by a non-qualifying dealer even if the non-qualifying dealer is a member of the group.

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[18] *The dealers in intangibles tax, or "DIT," is an annual tax levied on the capital of dealers in intangibles (e.g., stockbrokers, finance and loan companies, mortgage companies). The rate of tax is eight mills per dollar (0.8%). If a dealer is not a "qualifying dealer," five-eighths of the revenue is distributed to the county where the dealer has offices, and three-eighths is retained in the state GRF. If the dealer is a qualifying dealer, all revenue is retained by the GRF.*

The bill exempts receipts received by any dealer in intangibles that is a member of a consolidated taxpayer group if the dealer is subject to the DIT tax, regardless of whether the dealer is a qualifying dealer. However, the exemption does not apply if the receipts are received by another group member in exchange for transferring property to a non-qualifying dealer in the group if the non-qualifying dealer then delivers the same property to an entity that is not a member of the same group.

Extension of time period for entering into agreements to return county "piggyback" sales taxes to an impact facility

(R.C. 333.02 and 333.04)

Existing law authorizes a board of county commissioners to enter into an agreement before December 1, 2006, with a person that proposes to construct an "impact facility" in the county, to return to that person up to 75% of the county "piggyback" sales and use taxes collected on retail sales made by that person at the facility.[19] The sales and use taxes that are returned are only those "piggyback" taxes that are levied by a county for the purpose of providing additional general revenues for the county or supporting criminal and administrative justice services in the county.

The bill extends from December 1, 2006, to June 1, 2007, the time by which a board of county commissioners may enter into an agreement with the person that proposes to construct an impact facility in the county.

Joint economic development districts: prohibition on tax exemptions repealed

(R.C. 715.70 and 715.81)

Continuing law authorizes one or more municipalities and one or more townships to enter into an agreement to create a joint economic development district (JEDD) for the purpose of facilitating the district's economic development. An income tax may be levied within the JEDD to create a revenue stream to fund that development. Current law identifies three existing tax exemptions that political subdivisions are generally prohibited from extending to property located within a JEDD: (1) tax exemptions for property located in community

[19] *In general, an "impact facility" is a permanent structure that meets five criteria, including at least $50 million must be invested in the land, building, infrastructure, and equipment at the facility over a two-year period and an average of at least 150 new positions will be maintained at the facility (R.C. 333.01).*

reinvestment areas, (2) tax exemptions for property located in enterprise zones,[20] and (3) tax exemptions for improvements to property located in blighted areas that are being developed by community urban redevelopment corporations. The bill removes the prohibition against extending any of those three tax exemptions to property located in a JEDD.

HISTORY

ACTION	DATE
Introduced	12-05-06

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[20] *Current law authorizes a political subdivision that is a party to a JEDD agreement to grant enterprise zone tax exemptions with the consent of the other political subdivisions that are party to the JEDD agreement.*