



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 384 of the 131st G.A.

Date: December 7, 2016

Status: As Reported by Senate Finance

Sponsor: Reps. Schaffer and Duffey

Local Impact Statement Procedure Required: No

Contents: Authorizes the Auditor of State to conduct performance audits of institutions of higher education, and makes various other appropriation, tax policy, and higher education related changes

The bill makes changes that affect the use of main operating budget appropriations under the budgets of the Department of Public Safety and the Department of Higher Education. The bill also includes adjustments in capital appropriations between the Department of Youth Services, Department of Mental Health and Addiction Services, Department of Natural Resources, and the Facilities Construction Commission. There are several provisions dealing with changes to tax policy and programs overseen by the Department of Higher Education. Finally, the bill allows political subdivisions to participate in the Alternative Fuel Vehicle Conversion program overseen by the Environmental Protection Agency. These changes are summarized in the bullet points below and in more detail under corresponding headings in the body of the analysis.

State Fiscal Highlights

Operating budget appropriation changes

- This bill appropriates \$7.35 million in DPF Fund 5TJ0 line item 763603, Security Grants, in FY 2017 for the Department of Public Safety (DPS) to make competitive grants of up to \$100,000 to 501(c)(3) nonprofit organizations for eligible security improvements.
- The bill modifies the use of GRF line item 235620, Regional Partnership and Training Center, in the Department of Higher Education's budget, to add Shawnee State University, the University of Rio Grande, and Southern State Community College to the list of colleges and universities who have access to the funds.

Capital appropriation changes

- The bill eliminates an existing capital appropriation of \$100,000 for First Step Recovery expansion within the Department of Youth Services. Instead, the bill appropriates the same amount for Summer Entrepreneurial Experience and Knowledge within the Department of Mental Health and Addiction Services.

- The bill redirects an earmark of \$50,000 for the Hamilton County Agricultural Facility Improvements from Fund 7035 capital appropriation item C725E2, Local Parks Projects, under the Department of Natural Resources, to Fund 7034 capital appropriation item C36139, Hamilton County Agricultural Facility Improvements, under Cincinnati State Community College.
- The bill renames an existing earmark of \$300,000 in capital funding under Department of Natural Resources line item C725E2, Local Parks Projects, from the "Stark Parks Wilderness Center Trail System" to the "Wilderness Center's Facility Enhancement Project." The bill does not change any appropriations related to this project.
- The bill eliminates an earmark of \$191,000 in capital funding for the Deerfield Township Simpson Creek Erosion Mitigation and Bank Control under C725E2, Local Parks Projects, and reallocates that same amount in funding as follows: (1) \$75,000 under C725E2, Local parks Projects, for the Hazel Woods Park, and (2) \$116,000 in new money under the capital budget of the Facilities Construction Commission for line item C230EH, Warren County Historical Society.

Tax provisions

- Exempting small business investment companies (SBICs) from the financial institutions tax (FIT) and subjecting them to the commercial activity tax (CAT) would result in a net reduction to GRF tax revenue of unknown magnitude.
- The bill exempts from the sales tax sales of digital audio works used in a machine that accepts direct payments. This provision reduces GRF revenue from the sales and use tax, potentially by a minimal amount.
- The bill clarifies the taxation of certain deferred retirement compensation plans primarily that of nonqualified plans generally offered selectively to high-earning executives to which companies provide a certain amount of supplemental retirement income after separation of service. Such taxable compensation would be exempt from municipal income taxation under the bill.
- The bill authorizes an exemption from property taxation for the Nationwide Arena in Columbus, Franklin County, and the local public library district by a combined revenue amount up to \$1.1 million per year beginning in calendar year 2017.

Higher education provisions

- The bill authorizes the Auditor of State to conduct performance audits of state institutions of higher education. Under the current process, the Auditor of State charges agencies for performance audits. These fees are deposited into the Public Audit Expense – Intrastate Fund (Fund 1090).
- The bill establishes cost limits that the Auditor of State may charge for these performance audits based on the full-time equivalent enrollment of the state institution of higher education. The bill also allows state institutions of higher

education to use loans from the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund under the Auditor of State's budget for these audits.

- The bill authorizes a higher education institution to participate in the Midwest Student Exchange program, if endorsed by the Chancellor of Education, subject to its board of trustees adopting a resolution.
- The bill resolves implementation issues of the Workforce Grant Program by requiring the Chancellor to disburse grant funds to the public or private institutions in which grant recipients are enrolled, which, in turn, will provide the money to qualifying students.
- The bill may reduce costs to state colleges and universities by codifying legal liability limits when participating in a joint self-insurance pool, and eliminating uncertainty regarding possible future regulation and tax liability. The bill also satisfies a statutory recommendation of the Ohio Task Force on Affordability and Efficiency in Higher Education in its report filed October 1, 2015.

Alternative fuel grants

- Under the bill, a political subdivision of the state that purchases one or more new alternative fuel vehicles or converts one or more traditional fuel vehicles into alternative fuel vehicles is eligible to apply for a grant from the Alternative Fuel Transportation Fund (Fund 5CG0) to offset the cost of purchase or conversion.

Local Fiscal Highlights

- A decrease in GRF revenues resulting from certain tax provisions in the bill will diminish revenue sharing distributions to local governments and libraries through the state's Local Government Fund (LGF, or Fund 7069) and Public Library Fund (PLF, or Fund 7065). Under permanent law, the LGF and the PLF each receive monthly distributions of 1.66% of GRF tax revenues.
- Reducing the assessment rate on new water-works property first subject to taxation for tax year 2017 will reduce property tax receipts for local governments. The magnitude of losses will vary by jurisdiction, but the aggregate losses statewide could be millions of dollars for TY 2017. Losses will grow in future years as additional property is placed into service at the reduced assessment rate.

Detailed Fiscal Analysis

Main operating budget appropriation adjustments

Security grants for nonprofit organizations

This bill appropriates \$7.35 million in DPF Fund 5TJ0 line item 763603, Security Grants, in FY 2017 for the Department of Public Safety (DPS) to make competitive grants of up to \$100,000 to 501(c)(3) nonprofit organizations for eligible security improvements that assist the organizations in preventing, preparing for, or responding to acts of terrorism. Grant funds may be used to purchase certain equipment or to attend security-related training courses or programs. Personnel costs and travel associated with training are not eligible expenses of the grant. The bill reappropriates any unused appropriation at the end of FY 2017 to the next fiscal year for the same purpose.

The bill requires the Emergency Management Agency (EMA) within DPS to administer the program and award the grants. EMA may use up to 2.5% of the appropriation (up to \$183,625) to carry out these responsibilities. The bill requires EMA to evaluate grant applications based on a variety of factors, including prior terrorist threats or attacks against the organization, symbolic or strategic value of one or more sites that renders the site a possible target of terrorism, the consequences to the organization of an attack, how the organization's project corresponds to broader state and local preparedness efforts, and a vulnerability assessment conducted by experienced security, law enforcement, or military personnel. The bill exempts any security records included in a grant submission from the Public Records Law.

This grant program replaces the Ohio School Security Grant Program, which reimbursed schools for emergency communication equipment or security entrance systems, up to specified amounts. Specifically, the bill reallocates the unused capital funds currently appropriated for the Ohio School Security Grant Program in Public School Building Fund (Fund 7021) line item C230V9, School Security Grants, within the Facilities Construction Commission, by (1) eliminating the current capital reappropriation of \$7.35 million for item C230V9 in S.B. 260 of the 131st General Assembly and (2) transferring cash in the same amount from Fund 7021 to the Security Grants Fund (Fund 5TJ0), which the bill creates.

Regional Partnership and Training Center appropriation

The bill modifies the use of GRF line item 235620, Regional Partnership and Training Center, in the Department of Higher Education's budget, to add Shawnee State University, the University of Rio Grande, and Southern State Community College to the list of colleges and universities who have access to the funds. The Center is a joint initiative of these institutions and Ohio University Southern in Ironton designed to bring technical degree and training programs in manufacturing, logistics, and health care to Lawrence County and the surrounding region. Current law specifies that the

funds must be used by only Ohio University Southern. Additionally, the bill requires Southern State Community College to act as the fiscal agent for the money.

H.B. 64 appropriated \$500,000 in each fiscal year for this line item. In FY 2016, the money was originally disbursed to Ohio University. However, Ohio University refunded the FY 2016 money to the state. To account for this and allow the \$1 million originally appropriated for the biennium to be spent, the bill increases GRF line item 235620 by \$500,000 in FY 2017. Because the \$500,000 initially disbursed was returned, there is no net effect on the GRF as a result of the bill's appropriation increase.

Capital appropriation changes

Step Recovery Expansion – Summer Entrepreneurial Experience and Knowledge

The bill eliminates an existing appropriation of \$100,000 made to capital appropriation item C47024, First Step Recovery Expansion. The appropriation was under the Department of Youth Services and was made in S.B. 310 of the 131st General Assembly (the capital budget bill). The appropriation provided funding for a community project in Trumbull County. Instead, the bill appropriates \$100,000 to new capital appropriation item C58046, Summer Entrepreneurial Experience and Knowledge, which is under the Department of Mental Health and Addiction Services. The Summer Entrepreneurial Experience and Knowledge (SEEK) organization is a non-profit located in Canfield, Ohio.

Hamilton County Agricultural Facility Improvements

The bill amends Sections 207.60 and 223.10 of S.B. 310 of the 131st General Assembly, the capital appropriations act for the FY 2017-FY 2018 capital biennium, to transfer an earmark of \$50,000 for Hamilton County Agricultural Facility Improvements from Fund 7035 capital appropriation item C725E2, Local Parks Projects, under the Department of Natural Resources, to Fund 7034 capital appropriation item C36139, Hamilton County Agricultural Facility Improvements, under Cincinnati State Community College.

Wilderness Center's Facility Enhancement Project

The bill renames an earmark of \$300,000 in capital appropriations under Department of Natural Resources line item C725E2, Local Parks Projects, from the "Stark Parks Wilderness Center Trail System" to the "Wilderness Center's Facility Enhancement Project." The bill does not change any appropriations related to this project.

Warren County Historical Society

The bill eliminates an earmark of \$191,000 in capital funding under DNR line item C725E2, Local Parks Projects, for the Deerfield Township Simpson Creek Erosion Mitigation and Bank Control project and reallocates that same amount of capital money to two other projects: (1) \$75,000 for the Hazel Woods Park earmarked under capital appropriation item C725E2, and (2) \$116,000 under the capital budget of the Facilities

Construction Commission for capital appropriation item C230EH, Warren County Historical Society.

Tax provisions

SBIC financial institutions tax

The bill exempts small business investment companies (SBICs) from the financial institutions tax (FIT). SBICs are privately owned and managed investment funds licensed under federal law. An SBIC uses its own capital and, in most cases, securities guaranteed by the United States Small Business Administration (SBA) to lend to and make equity investments in qualifying small businesses.

The FIT is a tax on banks and other kinds of financial institutions, including SBICs. Under FIT law, both Ohio-based and non-Ohio-based SBICs are taxable entities. Tax liability is determined on the basis of the portion of a financial institution's equity capital attributable to its Ohio business, as measured by the relative amount of its gross receipts that arise from Ohio operations. The FIT tax rate is tiered according to an institution's Ohio equity capital: the rate is 0.8% on the first \$200 million, 0.4% on the next \$1.1 billion, and 0.25% for equity capital in excess of \$1.3 billion. The minimum tax is \$1,000. All revenue from the tax is credited to the General Revenue Fund.

The exemption in the bill applies both retrospectively back to January 1, 2014, when the FIT was introduced, and prospectively. This implies SBICs that previously paid the FIT would be eligible to receive refunds. Any financial institution that is subject to the FIT is exempted from the commercial activity tax (CAT), which is a general tax on the gross receipts of all businesses not expressly exempted from that tax. Thus, SBICs would become subject to the CAT at a rate of 0.26% of taxable gross receipts. However, SBICs are structured in such a way that the bulk of their income is investment income distributed to partners. Investment income generally is not subject to the CAT. SBICs may also have some income as management fees but, to be taxable under the CAT, fees received would have to be at least \$150,000 per year. No information is publicly available on potential fee revenue to SBICs.

Data from the federal government¹ indicates 8 Ohio SBIC licensees (note that each licensee may create more than one investment fund, and several of the Ohio licensees manage more than one fund). However, the number out-of-state SBICs which have invested in small businesses in Ohio, and thus would be taxable under the FIT, are unknown.

¹ At year-end FY 2014, 294 SBICs of all types operating in 34 states and the District of Columbia held \$22.5 billion in capital resources. Of that total, \$11.4 billion was private capital and \$11.9 billion was SBA-guaranteed capital or commitments. In FY 2014, SBA licensed 30 new SBICs with \$1.3 billion in initial private capital.

Fiscal impact

The exemption from the FIT will reduce revenues to the GRF by an uncertain amount. Assuming SBICs have paid the FIT tax for tax year (TY) 2014, TY 2015, and TY 2016, amounts refunded may be several millions of dollars. The exemption will also result in foregone GRF revenue in future years, depending on the level of equity capital of SBICs. Assuming gross receipts from SBICs are taxable under the CAT, revenue from this tax is likely to be relatively small, as most of the income to SBICs may not be taxable. Thus, on balance, the bill would result in a net reduction of GRF revenues of unknown magnitude.

The decrease in GRF revenues will diminish revenue sharing distributions to local governments and libraries through the state's Local Government Fund (Fund 7069) and Public Library Fund (Fund 7065). The LGF and the PLF will each receive monthly distributions of 1.66% of GRF tax revenues in the previous month beginning in FY 2018 under current law. H.B. 64 of the 131st General Assembly enacted a provision in temporary law, set to expire at the end of FY 2017, under which the PLF receives 1.70% of GRF tax revenue.

Sales tax exemption for sales of certain digital audio work

Under current law, sales of digital products are taxable under the sales and use tax. The bill exempts from the sales tax sales of digital audio works used in a machine that accepts direct payments (cash or through a financial transaction device) and operates primarily for the purpose of providing entertainment or amusement, such as a juke box, music machine, or other similar machine. The exemption takes effect on the first day of the first month following the bill's effective date. This provision reduces GRF revenue from the sales and use tax, potentially by a minimal amount. It may also reduce revenue from local permissive county and transit authorities' sales taxes.

Supplemental employee retirement plans

Current Ohio law exempts pensions from municipal income taxation² starting in 2016 and for future years, under provisions enacted in H.B. 5 of the 130th General Assembly. However, continuing law does not define "pensions" for purposes of the municipal income tax. Various types of pensions and retirement benefits exist; and they are generally described as qualified or nonqualified pensions under differing sections of federal income tax law. Certain municipal income tax laws or ordinances may not provide specified exemptions for pension income, or may provide such exemptions but may not define the term. In other cases, municipal tax ordinances and regulations may exempt pensions (such as those distributed through IRS form 1099-R) from tax, but exclude nonqualified deferred compensation plans from the pension exemption.

² A total of 614 municipalities (240 cities and 374 villages) levied a municipal income tax in calendar year 2014.

The bill defines "pension" for purposes of the municipal income tax as amounts earned under a defined benefit plan, regardless of whether the plan qualifies for federal income tax deferral or exemption from FICA or Medicare taxes and regardless of whether such amounts are paid to the employee in the same taxable year in which the amounts are included in the employee's wages. The bill states that this provision applies to municipal taxable years beginning on and after January 1, 2016. An employer, agent of an employer, taxpayer, or other payer that erroneously paid or remitted municipal income or withholding tax on a pension for any municipal taxable year beginning on or after January 1, 2016, may request a refund of the payment or remission pursuant to section 718.19 of the Revised Code.

The bill clarifies the taxation of certain deferred retirement compensation plans, primarily that of nonqualified plans generally offered selectively to high-earning executives to which companies provide a certain amount of supplemental retirement income after separation of service. Such deferred compensation plans are funded by firms out of cash flows, investment funds or cash value life insurance. Any deferred benefits are not currently taxable to the employee, and, when paid, such benefits would generally be taxable earned income under federal law. Such taxable compensation would be exempt from municipal income taxation under the bill.

Uncodified language in the bill specifies that this provision is intended to clarify the intention of the General Assembly regarding the definition of "pension" for purposes of municipal income taxation. To the extent that this clarifies existing law, this provision would have no fiscal effect. There may be municipalities that revised tax ordinances, though, to incorporate pension revisions required by H.B. 5 and redefined pensions as limited to include only qualified plan arrangements and exclude nonqualified deferred compensations. For such municipalities, the bill could be interpreted as reducing municipal income tax revenues. LSC is uncertain of the number of municipalities under that scenario, thus, the magnitude of a possible revenue loss is indeterminate.

Nationwide Arena property tax exemption

The bill exempts from property taxation an arena owned by the convention facilities authority of a county with a population of more than one million people and leased to a private enterprise. The exemption applies to tax year (TY) 2016 and each tax year thereafter.

The only arena currently meeting these criteria is the Nationwide Arena owned by the Franklin County Convention Facilities Authority (FCCFA). The Columbus Board of Education (CBE) approved a resolution on December 7, 2015 that tentatively agreed to a settlement with FCCFA. In exchange for CBE's formal support for a proposed amendment to state law allowing for the exemption from real property taxation of Nationwide Arena, for TY 2016 and beyond so long as the Arena is owned by FCCFA, the FCCFA will pay to CBE \$586,000 per tax year beginning with the first tax year that the Arena is exempt from taxation.

Whereas the loss in property tax receipts for CBE is permissive based on offsetting revenues and other benefits received by the school district, the other local taxing authorities will incur a revenue loss. Depending on the future valuation of the Arena, Franklin County, the city of Columbus, and the local public library district will lose a combined revenue amount up to \$1.1 million per year beginning in calendar year 2017.

Property tax reduction for new water works properties

The bill reduces the assessment rate on tangible personal property of a water-works company first subject to taxation in this state for tax year (TY) 2017 and each tax year thereafter. Under the bill, new water-works property would be assessed at 25% of true value rather than 88%. All tangible personal property of water-works companies first subject to taxation before TY 2017 would continue to be assessed at 88%.

The reduced assessment rate will reduce property tax receipts for affected local governments. The magnitude of losses will vary by jurisdiction, but the aggregate losses statewide could be millions of dollars for TY 2017. Losses will grow in future years as additional property is placed into service at the reduced assessment rate.

Court jurisdiction over Board of Tax Appeals appeals

The bill specifies that courts shall not dismiss an appeal of a decision by the Board of Tax Appeals because of failure to make the Tax Commissioner an appellee or to serve notice of appeal to the Commission, if the Commissioner is not a party to the appeal or application before the Board. This provision may result in a minimal increase in administrative costs for the Ohio Supreme Court and for courts of appeals.

TIF and New Community Authority exceptions

The bill allows a city designated as an impacted city to use tax increment financing (TIF) payments in lieu of taxes (PILOTs) to fund infrastructure projects unrelated to the parcels in the TIF, if the city not later than June 30, 2017, includes a determination in an ordinance that the public improvement needs of the parcels are met satisfactorily. The impacted city designation applies to many large and mid-size cities in Ohio. This provision in temporary law sets aside a requirement that PILOTs fund public improvements that directly benefit parcels in the TIF.

The bill allows a New Community Authority (NCA) not later than September 30, 2017, to contract with an impacted city or the developer of the NCA to pay for services or improvements including those outside of and unrelated to the new community district. Easton in Columbus is expected to benefit from the temporary change to TIF law, and other areas in the state may also benefit. The temporary change to NCA powers supplements existing powers of these authorities.

Higher education

Performance audits of state institutions of higher education

Current law requires the Auditor of State to conduct performance audits of at least four state agencies each biennium. The bill adds state institutions of higher education to the list of potential agencies that may receive a performance audit during a particular biennium. As is the case for performance audits conducted under current law, a state institution of higher education must accept comments regarding the performance audit from interested parties, and implement the recommendations of the audit within three months after the end of the comment period. The bill specifies that academic performance is not to be included in these performance audits. If the recommendations are not implemented, the institution must file a report with the Governor, Auditor of State, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate explaining why the institution has not commenced with implementing the recommendations. If the recommendations have not been implemented within one year, the institution must file an additional report detailing why the recommendations have not or will not be implemented.

Payment of performance audit costs

Continuing law requires agencies receiving a performance audit to pay the costs associated with those audits. Under the current process, the Auditor of State charges agencies for performance audits. These fees are deposited into the Public Audit Expense – Intrastate Fund (Fund 1090). State institutions of higher education would likewise be responsible for these costs, although the bill allows them to loan money from the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund (Fund 5JZ0), a revolving loan program under the Auditor of State's budget, to cover the cost. Under existing terms of the revolving loan program, repayment of the loans, including interest, is due one year from the completion date of the audit. If any agency or political subdivision does not fully repay the loan and interest amount by that date, the bill requires the Auditor of State to certify the amount owed to the Director of Budget and Management. The Director of Budget and Management must then withhold funds under their control in the amount owed, and submit that amount to the Auditor of State as payment.

Performance audit cost thresholds and audit scope limitations

The bill specifies the maximum amounts that the Auditor of State may charge state institutions of higher education for conducting performance audits. These cost thresholds are based upon the full-time equivalent enrollment of the institutions, and are divided into three categories:

1. If the full-time equivalent enrollment is 5,000 or less, the audit costs cannot exceed \$125,000;

2. If the full-time equivalent enrollment is greater than 5,000 but not more than 30,000, the audit costs cannot exceed \$250,000;
3. If the full-time equivalent enrollment is greater than 30,000, the audit costs cannot exceed \$350,000.

The bill also specifies that the cost of the performance audits under the bill can exceed these thresholds on agreement between the Auditor of State and the state institution of higher education being audited. While it is unclear whether or not performance audit costs would typically exceed these thresholds, it can be assumed that in cases where the performance audit costs would exceed these limits, the Auditor of State's Office would modify the scope of the audit.

The bill specifies that higher education performance audits are not to include a review or evaluation of an institution's academic performance.

Current performance auditing procedures

Under current law, the Performance Auditing Section within the Auditor's Office routinely conducts performance audits for public and quasi-public entities upon request. According to the Auditor, performance audits take approximately 16 to 32 weeks to complete and consist of three distinct stages, including planning, field work, and report preparation. Ultimately, the audits produce recommendations for operational improvements. The Performance Auditing Section consists of about 38 employees, and spends approximately \$3.3 million each fiscal year to conduct performance audits of state agencies and local governments. The current hourly fee charged to state agencies is a flat rate established by the Statewide Cost Allocation Plan (SWCAP), and is revised every year. The hourly rate per assigned Auditor of State employee for FY 2015 was \$65.92. The fees are deposited in the Auditor of State's Public Audit Expense – Intrastate Fund (Fund 1090), or Public Audit Expense – Local Government Fund (Fund 4220). As a result of the audit requirements specified in the bill, state institutions of higher education will incur new expenses for these performance audits, with the cost depending on the scope of the audit.

Midwest Student Exchange Program

The Midwest Student Exchange Program (MSEP), a program of the Midwestern Higher Education Compact (MHEC), is a multistate tuition reciprocity program whereby participating public institutions of higher education charge no more than 150% of the in-state resident tuition rate for specific programs and participating private institutions offer a 10% reduction on their tuition to students residing in MHEC member states. Currently, 12 states belong to MHEC; three (Iowa, Ohio, and South Dakota) of the 12 do not participate in MSEP. The bill authorizes the Chancellor to endorse the MSEP to permit state and private nonprofit institutions of higher education to participate in the program.

If the Chancellor endorses MSEP, the bill authorizes a higher education institution to participate in the program subject to its board of trustees adopting a resolution. Any fiscal effect on a participating state institution will likely depend on the number of out-of-state students that choose to attend the institution under MSEP. Participating institutions will likely incur a revenue loss per student since institutions typically have a substantial surcharge for out-of-state students that will be limited to 150% of the in-state tuition amount under MSEP. Presumably, institutions will only participate in the program if they could attract more out-of-state students from other MHEC member states to offset the revenue loss per student. Finally, participating state institutions of higher education will not receive state share of instruction (SSI) funding for MSEP participants under the bill. This mirrors the current SSI policy for out-of-state, undergraduate students.

Workforce Grants Program

The Workforce Grants Program was created in H.B. 340 of the 131st General Assembly to award grants of up to \$5,000 per year or 75% of the cost of tuition, whichever is less, to eligible students completing a degree, certification, or license that qualifies an individual for an in-demand job. In practice, the Department of Higher Education has not awarded any of the grants due to an issue with the program's implementation language. Current law requires the Chancellor of Higher Education to award grants directly to eligible students. This bill resolves the issue by requiring the Chancellor to disburse grant funds to the public or private institutions in which grant recipients are enrolled, which, in turn, will provide the money to qualifying students. H.B. 64 funds the grant program through an earmark of \$4.5 million each year from DPF Fund 5RA0 line item 235616, Workforce and Higher Education Programs.

Joint self-insurance pools

The bill authorizes state universities and colleges to use joint self-insurance pools to provide coverage for loss or liability that occurs while engaged in university business, and certain types of property and casualty coverage. Under current law, state universities and colleges are able to provide these types of coverage through the purchase of a policy with an insurer, use of a captive insurance company,³ or other type of self-insurance program "in any other manner the board [of trustees of a state college or university] considers prudent." Currently, under that guidance, 13 of the 14 state colleges and universities have organized a group self-insurance pool through the Inter-University Council (IUC) Insurance Consortium.⁴ The IUC Insurance Consortium presently operates loosely and informally as a voluntary nonprofit association. The report filed on October 1 of last year by the Ohio Task Force on Affordability and

³ A captive insurance company is created and owned by a noninsurance company or organization for the purpose of insuring the owner's risks. It is subject to regulation by the Department of Insurance.

⁴ The Ohio State University is a member of the Inter-University Council but does not participate in the Insurance Consortium.

Efficiency in Higher Education recommended that the existing statute governing state college and university insurance coverage be modified to more closely resemble the authority granted to political subdivisions.⁵ H.B. 416 accomplishes this recommendation; the proposed Revised Code section 3345.203 closely resembles the existing section governing political subdivision joint self-insurance pools and risk management.⁶

In practice, much of what the bill explicitly authorizes has already been implemented, therefore the fiscal effect is likely limited. The IUC Insurance Consortium claims to have saved its members more than \$5 million by allowing them to fund their insurance on a group basis. This would not be changed by the bill. The most substantial fiscal effect of the bill would likely be cost savings from the elimination of uncertainty regarding possible future regulatory costs and tax liability. The bill clarifies that the Consortium is not subject to state and local taxes, or to regulation by the state Department of Insurance as an insurance company. The bill also limits the total liability of members to the amounts payable pursuant to the written agreement for participation in the pool.⁷ These are also the key benefits of the legislation identified in the report on Affordability and Efficiency in Higher Education.

Funds for the group self-insurance pool are to be reserved from the members "as are necessary" to cover potential liabilities, loss, and damage. The required funds would be determined by an actuary, to be contracted with by the self-insurance pool. Amounts reserved and disbursements made would be reported annually by the actuary and the pool administrator.⁸ In practice, the Consortium already contracts with accountants, auditors, and actuaries who perform an annual study of the pool, therefore additional costs to the Consortium (and thus the members) necessary to meet the requirements of the bill, if any, will likely be minimal. Deductibles and costs of the pool to the members can be paid from state school funds. Costs to each member of funding the pool may be allocated on the basis of their relative exposure and loss experience.

The pool administrator itself would also need to be selected by the board of trustees establishing a joint self-insurance pool; the bill specifies that the board may award a contract to an administrator without the need for competitive bidding. In practice, Marsh USA currently acts as the "pool administrator."

⁵ https://www.ohiohighered.org/sites/ohiohighered.org/files/uploads/affordability-efficiency/Action-Steps-to-Reduce-College-Costs_100115.pdf, p. 43.

⁶ R.C. 2744.081.

⁷ R.C. 3345.203(E).

⁸ The annual report would be maintained in the office of the pool administrator and made available for inspection upon request by any person. The joint self-insurance pool would be otherwise exempt from public records requests governed by R.C. 149.431.

Finally, the bill authorizes the state colleges and universities to issue bonds or notes to cover their obligations to the joint self-insurance pool. Based on correspondence with officials from the Consortium, the issuing of notes by the members to cover expenses is not expected, however, it will now be explicitly allowed should significant losses cause the need to arise. This bill should not substantially change the likelihood of significant losses within a short period of time, however, the authorization to issue notes may provide additional cost coverage options to the members in such an event.

Alternative Fuel Vehicle Conversion Program

Under continuing law, the Director of Environmental Protection is permitted to make grants to a person that purchases one or more new alternative fuel vehicles or converts one or more traditional fuel vehicles into alternative fuel vehicles. The bill specifies that "person" includes political subdivisions of the state. This means that any subdivision that purchases one or more new alternative fuel vehicles or converts one or more traditional fuel vehicles into alternative fuel vehicles is potentially eligible for a grant through this program to offset the cost of purchase or conversion. The maximum grant awards are \$25,000 for a single vehicle, and \$400,000 to a single person (including a subdivision of the state) for multiple vehicles.

In FY 2017, the Director of Budget and Management, in consultation with the Director of Development Services, is required to make at least \$5 million available for this program from the Alternative Fuel Transportation Fund (Fund 5CG0), used by the Development Services Agency.