



# OHIO LEGISLATIVE SERVICE COMMISSION

Tom Wert and other LSC staff

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 51 of the 132nd G.A.

**Status:** As Passed by the House

**Sponsor:** Sens. Skindell and Eklund

**Local Impact Statement Procedure Required:** No

**Subject:** Adjusts various operating and capital appropriations, modifies tax law, and makes other programmatic changes

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### Introduction

The bill makes various changes affecting the operation and funding of state agencies and programs. It provides funding for new capital projects and makes adjustments to others, resulting in an overall increase of approximately \$52.3 million in capital appropriations and a decrease of \$250,000 in capital reappropriations for the FY 2019-FY 2020 capital biennium. The bill also adds \$2.0 million in total GRF funding in FY 2019, including \$1 million under the Legislative Service Commission's budget and \$1 million under the Department of Mental Health and Addiction Services' budget for specific purposes discussed in the detailed analysis.

The bill contains various tax provisions, including a change to the sales and use tax which may reduce receipts of the GRF, as well as the Local Government Fund and Public Library Fund. There are also property tax changes that affect specific political subdivisions, and a change to the lodging tax affecting Clermont County.

Finally, the bill requires the Director of Budget and Management to transfer \$535,032 from the GRF to the Local Government Fund for distribution to certain political subdivisions in which nuclear power plants are located.

Except for capital and operating appropriations, tax, and local government provisions, the fiscal analysis of the bill is organized by state agency. Specifically, this fiscal analysis includes the following eight major headings: (1) capital appropriation adjustments, (2) operating appropriation adjustments, (3) tax provisions, (4) Department of Administrative Services, (5) Department of Agriculture, (6) Attorney General, (7) Department of Education, and (8) local government provisions.

## Detailed Fiscal Analysis

### Capital appropriation adjustments

The bill makes adjustments to various capital appropriations and reappropriations in H.B. 529 of the 132nd General Assembly, as shown in the table below. Specifically, the bill adds five new capital appropriations, totaling approximately \$52.3 million. The new appropriations include: (1) \$20.0 million under the Capital Square Review and Advisory Board's (CSR) budget for repairs and improvements to the Statehouse garage, (2) \$2.0 million under the Department of Administrative Services' (DAS) budget for the Governor's residence, (3) \$15.0 million under the Department of Natural Resources' (DNR) budget to support the Eagle Creek Watershed Flood Mitigation Project in Hancock County, (4) \$250,000 under the Facilities Construction Commission's (FCC) budget for improvements at the Armstrong Air and Space Museum, and (5) \$15.0 million under FCC's budget for the Columbus Crew SC Stadium.

The bill also makes several changes to capital appropriations for certain projects. The bill redirects \$175,000 of the \$250,000 in capital funding appropriated to FCC for the Clinton County Police and Fire Memorial to the Department of Public Safety (DPS) for the Clinton/Fayette County MARCS tower. The bill also redirects funding for the following two projects earmarked in DNR's budget under appropriation item C725E2, Local Parks, Recreation, and Conservation Projects: (1) Sandy Valley Park Trails to Magnolia Flouring Mills Restoration and (2) Green Township Great Miami Watershed Improvements to Filview Bike/Hike Trail-Green Township. Lastly, the bill renames the Clark Gable Elevator Installation project under appropriation item C230FM, Cultural and Sports Facilities Projects, to Clark Gable Facility Improvements.

In addition to these changes, the bill shifts the oversight of two capital projects from one state agency or state institution of higher education to another. The changes include: (1) the Bay Village Emergency Boat Shelter project from Cleveland State University (CLS) to Cuyahoga Community College (CCC) and (2) the James E. Carnes Convention Center project from Ohio University (OHU) to DNR.

FY 2019-FY 2020 Capital Appropriation and Reappropriation Line Item (ALI) Adjustments Summary						
Agency	Fund	ALI	ALI Name	Current Amount	Proposed Amount	\$ Change
<b>Capital Appropriations</b>						
CSR	7026	C87417	Statehouse Garage Repair/Improvements	\$0	\$20,000,000	\$20,000,000
DNR	7035	C725U7	Eagle Creek Watershed Flood Mitigation	\$0	\$15,000,000	\$15,000,000
DNR	7035	C725E2	Local Parks, Recreation, and Conservation Projects	\$31,151,000	\$31,351,000	\$200,000
FCC	7030	C230FM	Cultural and Sports Facilities	\$54,908,500	\$69,733,500	\$14,825,000
			<i>Columbus Crew SC Stadium</i>	\$0	\$15,000,000	\$15,000,000
			<i>Clinton County Police and Fire Memorial</i>	\$250,000	\$75,000	-\$175,000

FY 2019-FY 2020 Capital Appropriation and Reappropriation Line Item (ALI) Adjustments Summary						
Agency	Fund	ALI	ALI Name	Current Amount	Proposed Amount	\$ Change
FCC	7030	C230E8	OHS – Armstrong Air and Space Museum Improvements	\$0	\$250,000	\$250,000
DAS	7026	C10000	Governor's Residence	\$0	\$2,000,000	\$2,000,000
DPS	7026	C76066	Clinton/Fayette County MARCS Tower	\$0	\$175,000	\$175,000
OHU	7034	C30172	James E. Carnes Convention Center	\$200,000	\$0	-\$200,000
CCC	7034	C37859	Bay Village Emergency Boat Shelter	\$0	\$32,500	\$32,500
CLS	7034	C26081	Bay Village Emergency Boat Shelter	\$32,500	\$0	-\$32,500
<b>Capital Appropriations Total</b>				<b>\$86,292,000</b>	<b>\$138,542,000</b>	<b>\$52,250,000</b>
Capital Reappropriations						
FCC	7030	C230F4	The Gordon, Hauss, Folk Company Mill	\$250,000	\$0	-\$250,000
<b>Capital Reappropriations Total</b>				<b>\$250,000</b>	<b>\$0</b>	<b>-\$250,000</b>

### Operating appropriation adjustments

The bill provides an additional \$2.0 million in total GRF funding for FY 2019 under the budgets of the Legislative Service Commission (LSC) and the Department of Mental Health and Addiction Services. Specifically, the bill appropriates \$1.0 million in FY 2019 to GRF line item 035501, Litigation, under LSC's budget. This line item pays General Assembly litigation expenses associated with any lawsuit in which the General Assembly is a party because a legal or constitutional challenge is made against the Ohio Constitution or an act of the General Assembly. The \$1.0 million appropriation in the bill is in addition to line item 035501's current FY 2019 appropriation of \$1.0 million, which resulted from rollovers of unused appropriations in prior fiscal years. Therefore, a total of \$2.0 million will be appropriated for General Assembly litigation expenses in FY 2019.

Additionally, the bill increases the appropriation to GRF line item 336421, Continuum of Care Services, under the Department of Mental Health and Addiction Services' budget by \$1.0 million in FY 2019 and requires this funding to be used to support youth resiliency.

### Tax provisions

#### Sales tax exemption for foreign-destined goods

The bill exempts from the sales tax sales of tangible personal property that is not required to be registered or licensed under Ohio law to a citizen of a foreign nation that is not a citizen of the United States, provided the property is delivered to a person in

this state that is not a "related member"<sup>1</sup> of the purchaser, is physically present in this state for the sole purpose of temporary storage and package consolidation for a period of not more than 60 days, and is subsequently delivered to the purchaser at a delivery address in a foreign nation. This provision applies to transactions that occurred on or after October 1, 2017.

Package forwarding is generally a shipping service offered to international online shoppers engaged in cross-country shopping when an online retailer does not customarily ship overseas. When an international customer places an online order for purchase of tangible property from such a firm in the U.S., the seller may ship the goods to an intermediary or a package forwarding company with warehouses in the U.S. The package forwarder may engage in activities such as repacking or consolidation of various orders from the buyer. Then, the buyer pays that intermediary for the overseas shipment. However, it is possible the package forwarding companies located in Ohio may also be handling tangible goods for persons residing in Ohio or who otherwise have activities in the state making those persons liable for use tax.

LSC has been unable to find publicly available business statistics on parcel forwarding companies used by buyers located in foreign countries. The bill may result in loss of sales and use tax revenue to the extent tax is collected on transactions described in the bill. Also, because the provision is retroactive, an unknown amount of refunds may be due to taxpayers that have remitted sales and use tax since October 1, 2017. Due to a lack of data, LSC cannot estimate the magnitude of the revenue loss.

Under codified law, the GRF would receive 96.68% of the revenue from the state sales and use tax, while 1.66% of the receipts are transferred to the Local Government Fund (LGF, Fund 7069) and an identical share to the Public Library Fund (PLF, Fund 7065); funds in the LGF and PLF are for distribution to counties, municipalities, townships, and public libraries. The bill would also reduce the tax base for permissive county and transit authority sales taxes. Those local permissive taxes share the state sales and use tax base.

## **Property tax**

### **Tax abatement for a former school building**

The bill would enable a property owned by the village of New Holland to avoid charges for unpaid property taxes, penalties, and associated interest assessed by the Pickaway County auditor. LSC is unaware of any other properties that would qualify for the exemption; though the language employed is narrow, there could be others. The village purchased a parcel (I2300080002000) from the Miami Trace Board of Education on November 19, 2008. The county auditor's records continued to regard this defunct school building as exempt because it was erroneously regarded as owned by the board of education. According to a local newspaper account, the building's gymnasium was

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<sup>1</sup> Generally, a person is regarded as "related" to a business if one holds a certain substantial level of ownership stake in the other.

subsequently rented to the public and therefore generated income for the village. The county auditor would bill the village for property taxes going back to 2012 under current law per R.C. 319.40; any potential amounts owed in prior years do not require legislation to be forgiven.

LSC estimates that the village would owe roughly \$11,300 in tax on the property for tax year (TY) 2018, and tens of thousands in unpaid back property taxes under current law. However, this provision would eliminate these charges. In order to receive this exemption, the village must apply to the Tax Commissioner prior to July 1, 2019. For the purposes of this section, the village making any part of the property available for use by the public for athletics, whether or not for consideration, does not constitute use in the operation of a business. LSC anticipates that the village of New Holland property will qualify for this exemption and the local taxing jurisdictions will not collect revenue that they would otherwise receive.

#### **Retrospective tax exemption for TIF property**

The bill authorizes a property tax exemption retrospectively for property improvements otherwise qualified for exemption under a tax increment financing (TIF) arrangement that are not now exempt because of failure to comply with statutory procedures. The authorization would apply to a TIF established by a municipal corporation, within which certain property improvements are not exempt from tax because of failure to comply with requirements of R.C. 5715.27 or 5713.08, and for which application for exemption was dismissed in TY 2005 or TY 2006.

Property owners in a TIF generally make service payments in lieu of taxes, equal in amount to taxes that would be due except for the TIF. These service payments are used to pay for public infrastructure serving either the parcels included in the TIF or the TIF district. A TIF results in loss of the tax revenue to some units of local government that they would otherwise receive based on the increase in value of the property improvements.

This provision of the bill will result in an increase in TIF service payments and a decrease in taxes paid to units of local government. The language regarding eligibility appears to be sufficiently narrowly drawn to apply to a single property.

#### **Municipal income tax**

##### **Definition of taxable year**

For purposes of the municipal income tax, the bill harmonizes the definition of "taxable year" for businesses electing to have the Department of Taxation administer their municipal net profits tax (R.C. 718.81(E)) with the definition that applies to businesses not making that election (R.C. 718.01(T)). This provision has no fiscal impact.

## **Lodging tax**

### **Extension of time for Clermont County to levy additional lodging tax**

The bill extends the time for Clermont County to levy an additional 1% lodging tax, from January 1, 2019, to December 31, 2019. The additional lodging tax is to be used for construction, improvement, or maintenance of a professional sports facility located on property acquired, in whole or in part, with revenue from the increased tax. The bill allows additional time for the county's convention and visitors' bureau to enter into contract for the facility, which is a requirement for the higher tax rate to go into effect, but does not otherwise alter codified law pertaining to the facility or the tax.

In 2016, a 3% Clermont County lodging tax raised \$684,815. Based on this, an additional 1% lodging tax would raise about \$228,300. The 2016 data are the most recent published on the Department of Taxation website.

## **Department of Administrative Services**

### **Land conveyance**

The bill authorizes the Governor to execute a deed conveying the Oliver R. Ocasek Government Office Building, a five-story structure of approximately 245,000 square feet, and the 1.3 acres of land on which it is situated in Akron (Summit County) to the city of Akron. The bill requires the Director of Administrative Services to offer the real estate to the city of Akron through a real estate purchase agreement. Under the bill, consideration for the conveyance is at a price acceptable to the Director. The bill requires the grantee to pay all costs associated with the purchase, closing, and the conveyance including surveys, title evidence, title insurance, transfer costs and fees, recording costs and fees, taxes, and any other fees, assessments, and costs that may be imposed. The bill requires net proceeds of the conveyance to be deposited to the credit of the GRF.

## **Department of Agriculture**

### **Soil and Water Phosphorus Program**

The bill alters the way the Department of Agriculture is to distribute \$20 million in funding in FY 2019 to programs that are designed to control and monitor phosphorus runoff around the Lake Erie area under GRF appropriation item 700417, Soil and Water Phosphorus Program. Specifically, the bill removes the requirement that the Department of Agriculture (1) establish rules outlining programs that comply with the Office of Budget and Management rules under the program and (2) consult with the Lake Erie Commission and the Ohio Soil and Water Conservation Commission on such rules outlining programs that assist in reducing total phosphorus and dissolved reactive phosphorus in the Western Lake Erie Basin.

## **Attorney General**

### **Background checks for public employees who use tax data**

The bill requires the head of a state or county agency, department, board, or commission that employs or contracts with an individual who will have access to or the use of federal tax information to request state and Federal Bureau of Investigation (FBI) criminal records checks on such an individual from the Ohio Attorney General's Bureau of Criminal Identification and Investigation (BCII).

The additional work and related costs for BCII will be offset by the collection of criminal records check fees. The fees charged for the state and FBI criminal records checks are \$22 and \$24, respectively. The entirety of the \$22 state criminal records check and \$2 of the \$24 FBI criminal records check fee are credited to the Attorney General's General Reimbursement Fund (Fund 1060), which is used to support the Attorney General's operating expenses. The remaining \$22 of the FBI criminal records check is sent to the FBI. These fees would presumably be paid by the state or county entity making the request. Although the number of such requests that will be submitted is uncertain, the costs for any given state or county entity is likely to be minimal at most annually.

## **Department of Education**

### **State foundation aid adjustment correcting mistaken nonprofit hospital assessed valuation**

The bill authorizes the recalculation of state foundation aid for school districts in which a nonprofit hospital was mistakenly subject to property tax for TY 2016. Specifically, the bill requires the county auditor of any county in which such a hospital is located to recalculate property values for TY 2016 to remove the assessed value of the nonprofit hospital from the tax list and certify the recalculated values to the Tax Commissioner. The Tax Commissioner must then certify the recalculated values to the Ohio Department of Education (ODE), which will use those values to recompute state foundation aid and provide a single adjustment payment for FY 2018 and FY 2019 by August 31, 2019. The bill prohibits the recalculation of values from affecting the FY 2018 or FY 2019 state foundation aid of a school district other than the affected districts. For FY 2020 and each year thereafter in which TY 2016 valuation is used, ODE will use the recalculated value to calculate state foundation aid as part of the routine payment process.

This provision responds to a situation in which an addition to a nonprofit hospital located in the territory of Deer Park Community City School District (CSD) in Hamilton County was mistakenly placed on the TY 2016 tax list, making TY 2016 property values higher than they should have been for Deer Park Community CSD and Great Oaks Career Campuses, the joint vocational school district with which Deer Park Community CSD is affiliated. Since TY 2016 values are used in the foundation formula for FY 2018 and FY 2019, the higher values may have resulted in less state foundation

aid for both districts. According to information available to LSC, Deer Park Community CSD may gain approximately \$100,000 in state aid from the adjustment payment. Also, Great Oaks Career Campuses may gain a small amount of state foundation aid. Both districts may receive higher state foundation aid in FY 2020 and FY 2021 as well, depending on the specifics of the state foundation formula in place those years.

## **Local government provisions**

### **GRF transfer and Local Government Fund payments**

The bill provides additional funding from the GRF to townships, township fire districts, or joint fire districts in which the taxable value of a nuclear power plant fell 30% or more between TY 2016 and TY 2017. Three such districts have been identified: Perry Township and Perry Joint Fire District in Lake County, and Carroll Township in Ottawa County. S.B. 299 of the 132nd General Assembly provided for monthly payments to the township and district in Lake County that are estimated to total \$204,968 in FY 2019, \$276,706 in FY 2020, and decreasing amounts in subsequent years through FY 2028. The current bill provides for additional lump sum payments estimated to total \$535,032 in FY 2019, consisting of \$160,650 to Perry Township, \$249,285 to Perry Joint Fire District, and \$125,097 to Carroll Township. The bill requires the Director of Budget and Management to transfer money from the GRF to the LGF as soon as possible to make these payments, and the Tax Commissioner is to pay the money to the treasuries of Lake and Ottawa counties, to be distributed to the three units of local government.

### **Shoreline improvement districts**

The bill allows for the creation of a special improvement district to develop and implement shoreline improvement projects to abate erosion along Lake Erie. As with other types of special improvement districts, participating political subdivisions could pay for shoreline erosion abatement projects by levying a special assessment upon property owners in one of three ways or a combination thereof: (1) by a percentage of the tax value of the property assessed, (2) in proportion to the benefits that may result from the improvement, or (3) by the front foot of the property bounding and abutting upon the improvement. The levy can be for up to 30 years. Note that the bill allows special improvement districts created for a shoreline improvement project to include property held by the state in trust. Unlike other property owners located in the district, this will have no fiscal effect on the state since state property is exempt from taxation.

Political subdivisions along the Lake Erie shoreline could incur some costs to review the development plans for shoreline improvement projects and oversee the special improvement districts. These costs could include the review and approval of special improvement district boundaries, articles of incorporation, plan of services, and the petition to create the district. Additionally, the municipal corporation is responsible for the disbursement of funds to the special improvement district. Assessment funds are collected by the county auditor's office and are forwarded to the municipal corporation,



which in turn disburses those funds to the district. The costs that a political subdivision incurs could at least be partially offset by development review fees, construction permit fees, or inspection fees that would result from development occurring in these districts.