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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 101\*  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 101's Fiscal Note](#)

**Version:** As Reported by House Infrastructure and Rural Development

**Primary Sponsors:** Reps. Stephens and Edwards

S. Ben Fogle, Attorney

### SUMMARY

- Creates a financing system for the state to aid counties in constructing or renovating county jail facilities, subject to the approval of the Ohio Facilities Construction Commission (OFCC) and the Controlling Board.

### Project process and approval

- Creates a funding formula by which the neediest counties may receive state assistance in constructing or renovating jail facilities.
- Requires the Department of Taxation to biannually conduct a financial ranking of all counties, using a specified formula, which ranks counties based on their property tax values, and an estimate of the gross amount of taxable retail sales sourced to the county for the current fiscal year, and then report the results to the OFCC.
- Requires the OFCC to then invite to apply for assistance a certain number of counties from among the lowest ranking counties, the number being based off of the estimated moneys available for that year.
- Requires the OFCC to shortlist the applying counties and have conducted an on-site assessment of existing jail facilities to determine need, using the Department of Rehabilitation and Correction's (DRC's) existing standards to evaluate construction and design, and using newly developed standards to evaluate condition of the facilities.
- Permits the OFCC to waive the on-site assessment if the county already has conducted an on-site assessment, and the OFCC determines the county's assessment is sufficient.

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\* This analysis was prepared before the report of the House Infrastructure and Rural Development Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Requires the OFCC, in conjunction with the DRC, to develop standards to evaluate the condition of existing jail facilities, with input from organizations representing sheriffs and boards of county commissioners.
- Requires the OFCC to approve a project only if the project conforms to OFCC and DRC standards, and the project keeps with the needs of the county as determined by the assessment; exceptions to be made where topography, sparsity of population, and other factors make larger jail facilities impracticable.
- Allows renovations rather than new facility construction if the renovations equal or are less than the cost of the new facility, the facilities will be operationally efficient and adequate for the county's future needs, and it complies with DRC and OFCC standards.
- Requires the OFCC to approve a project only if the county can prove that the county can generate adequate revenue to fund the basic project cost, and the operations and maintenance of the proposed jail facilities.
- Requires the county auditor to report and certify to the OFCC the estimated annual, monthly, or daily cost of operating a proposed facility once it is operational.

## **County funding**

- Allows a county to generate revenue for the project by the following means: unencumbered county funds, bonds, local donated contributions, bond issue or tax levy, and the proceeds of other tax levies that lawfully may be used for building or maintaining jail facilities.
- Prohibits counties from submitting, as evidence to the OFCC that the county can adequately fund its jail facilities, any proposal to rent any portion of the jail facility or facilities to other political subdivisions.
- Specifies that a county's portion of the basic project cost is to be 1% of the basic project cost times the percentile in which the county ranks according to the OFCC's funding formula.
- Prohibits a county's share of the basic project cost from being above 75%.
- Prescribes a formula for projects in counties that previously had an approved project under the bill's provisions.
- Gives counties or multi-county jail facilities commissions (MCJFCs) 120 days to accept the OFCC's conditional approval.
- Requires, if necessary, that the electors of the county or counties approve the bond issue or levy not later than 13 months after the date the county received the OFCC's conditional approval, or else the conditional approval lapses.
- Specifies that, if the conditional approval lapses, the amount reserved and encumbered for the project is released, but also specifies that that county or those counties have first priority as additional funds become available.

- Specifies the requirements for local donated contributions, including that they may offset the required amount of bonds to be issued.

### **Controlling Board approval**

- Specifies that if the OFCC approves a project, the project is conditionally approved and then goes before the Controlling Board.
- Requires the Controlling Board to then approve or reject the OFCC's determination, the amount of the state's portion of the basic project cost, and the amount of the state's portion to be encumbered in the current fiscal year.
- Prohibits the Controlling Board from approving a project for a county that has had a project approved in the last 20 years, unless the board of county commissioners demonstrates that an exceptional increase in need has occurred.

### **Written agreement – OFCC and board of county commissioners**

- Requires, if the county has met its share of the basic project cost through election or otherwise, the OFCC to enter into an agreement with the board of county commissioners or the MCJFC, and specifies the terms of the agreement.
- Requires the board of county commissioners or the MCJFC, after entering into the agreement, and if applicable, to issue bonds or notes in anticipation of the agreement and deposit the proceeds into the county's construction fund.
- Requires that the board of county commissioners or the MCJFC then employ a qualified professional to prepare preliminary plans, working drawings, specifications, estimates of cost, and such data as the board or MCJFC, and OFCC, consider necessary for the project.
- Provides that, once the board or MCJFC has approved the preliminary plans, the plans are submitted to the OFCC for approval, modification, or rejection.
- Requires the OFCC to approve the plans once the plans conform to the standards adopted by the OFCC and DRC, and subsequently cause the qualified professional to prepare the drawings, specifications, and estimates of cost.
- Requires that, if the proposed facility is located within one mile of a state route or highway, the plans also be approved by the Director of Transportation.

### **Construction bids**

- Requires the board or MCJFC to advertise for construction bids, using competitive bidding procedures, once the specifications, drawings, and estimates of cost have been approved by the board or MCJFC and the OFCC.
- Requires the award to go to the lowest responsible and responsive bidder within 60 days of advertising, and requires the winning bidder to accept the contract within 10 days of the award.

- Allows the board or MCJFC to reject all bids and readvertise, with the permission of the OFCC.

## **Appropriations**

- Requires the OFCC to determine the amount of appropriations to be encumbered for any project undertaken under the bill's provisions, based on the project's estimated construction schedule for that year.
- Requires the OFCC, in subsequent fiscal years, to grant ongoing projects priority for state funds over projects for which initial state funding is sought.
- Requires the OFCC to request that the Controlling Board transfer to the county's project construction fund the amount appropriated by the General Assembly and set aside for that purpose.

## **County construction funds**

- Requires the county auditor to disburse county project construction funds upon the approval of the OFCC, which then must issue vouchers against the fund as required.
- Provides that all investment earnings of the fund are credited to the fund.
- Allows the board of county commissioners, by resolution, to use all or part of the fund's investment earnings that are attributable to the county's contribution to pay the cost of jail facilities, or portions or components thereof, which are not part of the basic project cost.
- Requires, after a certificate of completion has been issued for the project, any remaining investment earnings to be retained in the county construction fund or transferred to a project maintenance fund, the county's permanent improvement fund, or the OFCC, as appropriate.

## **Multi-county jail facilities**

- Permits two or more counties to form a MCJFC pursuant to an agreement approved by the OFCC, and build a multi-county jail facility.
- Sets forth the required terms of MCJFC agreements.
- Provides that if the electors of one of the counties fail to approve the funds necessary to fund the county's portion of the cost, the other contracting counties are not obliged to pay any portion of the cost of the county in which the levy or issuance was not approved.

## **Jail Facility Building Fund**

- Creates the Jail Facility Building Fund in the state treasury.

## **OFCC interest in real property**

- States that the OFCC has an interest in real property purchased with moneys in the county's project construction fund.
- Once obligations issued to finance a project are no longer outstanding, transfers any interest held by the OFCC to the county.

## **Project completion**

- Requires the OFCC to issue a certificate of completion to the board or the MCJFC upon completion of the project, and certification that the project conforms to DRC's and OFCC's minimum standards.
- States a project is considered complete when construction is complete, the board or MCJFC has received a permanent certificate of occupancy, the OFCC has completed a final accounting, litigation has been resolved, and construction management services have been delivered and the OFCC has canceled any remaining related encumbrance.
- Provides that a certificate of completion may be issued without the immediately above conditions being met if the circumstances preventing the conditions from being satisfied are minor.
- Permits the OFCC to issue a certificate of completion to an unwilling board, if the construction manager for the project verifies the project is complete, and the OFCC determines the facilities have been occupied for a year.
- Requires any project funds, upon such issuance of a certificate of completion, to be returned to their proper place within 30 days and, if not returned within 60 days, requires the Auditor of State to recover the money from the county.
- Provides that the OFCC's ownership interest in the project ceases upon the issuance of the certificate of completion.

## **Corrective action program**

- Establishes the corrective action program to provide funding for the correction of defective or omitted work found on any project under the bill's provisions.
- Provides that the county must notify the OFCC Director of the defect or omission within five years of the project completion date to receive funding from the corrective action program.
- Requires the OFCC to establish rules providing for application and granting of assistance under this program, with the requirement that remediation efforts first focus on engaging the contractors who originally worked on the project.
- Requires the county or counties to contribute a portion of the cost of corrective action, to be determined in the same manner as the basic project cost.

- Requires the state to seek recovery from the responsible party, if any, and requires any recovery to first be applied to the county’s portion, and then the state portion.

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## DETAILED ANALYSIS

This bill creates a system in which the state helps needy counties finance the cost of building or renovating jail facilities. It is loosely modeled after the school facility construction financing system found in Chapter 3318 of the Revised Code. The bill creates a funding formula that ranks counties according to their property tax values and gross amount of taxable retail sales sourced to the county for the current fiscal year. The formula is used to determine which counties have the highest priority, and for how much assistance an applying county is entitled. (See “**Flowchart summary**,” below.)

## Project process and approval

### Funding formula – Department of Taxation calculation

The process begins when the Department of Taxation, every other year on even-numbered years, conducts its financial ranking of all 88 counties.<sup>1</sup>

The formula the Department of Taxation uses to rank counties is as follows:

- First, the counties are ranked by the total value of all property in the county listed and assessed for taxation on the tax list as reported by the Department in the current fiscal year, in order of total value, ascending, so that the county with the lowest value is number one on the list.
- Then the Department ranks each county based on the estimate of the gross amount of taxable retail sales sourced to the county as reported by the Department for the preceding fiscal year, computed by dividing the total amount of tax revenue received by the county during that period from sales taxes and use taxes by the aggregate sales tax rate currently levied by the county.<sup>2</sup> The Department lists each county in order of total value, ascending, so that the county with the lowest value is number one on the list. Any county that does not currently levy sales taxes is automatically ranked at number 88 on the list.
- Then, for each county, the Department adds the numbered rank for property values to the numbered rank for sales tax, and orders the counties according the sum of the two ranks, the county with the lowest sum being number one on the list. The percentile ranking is determined by taking the county's ranking on this final list, dividing it by 88, and multiplying it by 100. This percentile ranking not only is used to help determine which counties to invite to apply for assistance, but also is used to determine the county's basic share of the project cost (see "**County funding – county's portion of the basic project cost,**" below).

If two or more counties are tied, the county with the lowest population receives the lowest final ranking. The final ranking for the counties should be numbers one through 88. The Department must then report the ranking to the Ohio Facilities Construction Commission (OFCC).<sup>3</sup>

### Application Process

Once the OFCC receives the Department of Taxation's financial rankings, the OFCC must select a number of counties from among the lowest ranking counties. The number of counties selected depends on the OFCC's projections of the moneys available and necessary to

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<sup>1</sup> R.C. 342.02, with conforming changes in 307.01, 307.021, 307.93, 341.12, and 2301.51.

<sup>2</sup> See R.C. 5739.021, 5739.026, 5741.021, and 5741.023, not in the bill, for sales and use taxes.

<sup>3</sup> R.C. 342.02(A).

undertake jail facility projects for that year. OFCC then invites the selected counties to apply for assistance. Two or more counties may jointly apply for assistance as a multicounty jail facility construction commission (MCJFC) as long as at least one of the counties was invited to apply. The application is on a form and in a manner prescribed by the OFCC.

Upon the counties' application, the OFCC may shortlist applicants, and then must proceed with a needs assessment of the shortlisted counties, in order to determine the jail facility needs of the applicant county. The needs assessment must include an on-site assessment of applicable jail facilities identified as having jail facility needs.<sup>4</sup>

### **Needs assessment**

The OFCC, as part of its needs assessment, must conduct or cause to be conducted (meaning the OFCC may hire a third party) an on-site assessment of the applicable jail facilities, assessing the county's need to construct or acquire new jail facilities, or the county's need to add to, reconstruct, or renovate existing facilities. If the board of county commissioners so requests, the OFCC also must examine any needs assessment the county has already conducted, and any master plans the board has developed to meet its needs. If the OFCC determines that the county's needs assessment or master plan is sufficient for its purposes, and that any additional needs assessment is not necessary, the OFCC may waive the on-site assessment.

The OFCC must assess the following factors: the county's need for additional jail facilities, or renovations or improvements to existing jail facilities, based on whether and to what extent existing facilities comply with the OFCC's and Department of Rehabilitation and Correction's (DRC's) standards; the number of jail facilities needed and the basic project cost of constructing, acquiring, reconstructing, or making additions to each facility; the amount of the basic project cost that the county can supply (see "**County funding – county's portion of the basic project cost**" below); the amount to be supplied by the state and the amount of the state's portion to be encumbered; and the annual, monthly, or daily cost of operating the facility once it is operational. The annual, monthly, or daily operating cost must be reported and certified by the county auditor. The OFCC may determine ranking cost for each county involved in a multi-county jail facility project.<sup>5</sup>

### **Jail facility standards**

The OFCC, in conjunction with the DRC, must develop a set of minimum standards to assess the condition of existing jail facilities to determine need. Standards that already exist under Ohio law must be used to assess the construction and design of the existing jail facilities. In developing these standards, the OFCC and DRC must solicit input from sheriffs and boards of

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<sup>4</sup> R.C. 342.02(B).

<sup>5</sup> R.C. 342.02(B)(3).



county commissioners, or from organizations representing sheriffs or boards of county commissioners in Ohio.<sup>6</sup>

### **Project approval**

The OFCC, once it has conducted its needs assessment, must then choose from among the applicant counties which receive state funding, based on the financial ranking and the results of the needs assessment.<sup>7</sup>

The OFCC may approve a project only if it determines, based upon evidence submitted, that the project conforms to the DRC's and OFCC's jail facilities standards, and that the project keeps with the needs of the county pursuant to the needs assessment. The OFCC may make an exception where sparsity of population, topography, or other factors make larger facilities impracticable. If the board or OFCC is in favor of renovation rather than a new construction, the renovation's cost must be less than or equal to what the cost of a new construction would be. The renovation may only be approved if the OFCC finds that it meets the requirements as stated in this paragraph, and that it will be operationally efficient.<sup>8</sup>

Additionally, the OFCC may approve a project only upon submission of evidence to the OFCC by the board of county commissioners or, in the case of a multicounty jail facility, by a MCJFC, that the county or counties involved in the project will generate adequate revenue to fund the county portion of the basic project cost and the operations and maintenance of the proposed jail facility or facilities.<sup>9</sup>

If a chosen project subsequently is denied approval by the Controlling Board, or canceled for some other reason, the OFCC may choose another applicant county that applied for assistance but was not selected. If no counties meet that description, the commission may invite additional counties to apply for assistance.<sup>10</sup>

## **County funding**

### **The basic project cost**

The "basic project cost" is determined by the OFCC, according to OFCC rules, and must take into consideration the square footage and cost per square foot necessary for the jail facilities, the variation across the state in construction and related costs, the cost of the installation of site utilities and site preparation, the cost of demolition of all or part of any existing jail facilities that are abandoned under the project, the cost of insuring the project until it is completed, any contingency reserve amount prescribed by the OFCC, and the professional planning, administration, and design fees that a county may have to pay to undertake a jail

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<sup>6</sup> R.C. 342.02(C) and 5120.10.

<sup>7</sup> R.C. 342.02(D).

<sup>8</sup> R.C. 342.03.

<sup>9</sup> R.C. 342.04(A)(1).

<sup>10</sup> R.C. 342.02(D).

facilities project. “Site utilities” include the domestic water system, site fire protection system, site gas distribution system, site sanitary system, site storm drainage system, site electrical service, site generator system, and site telephone and data system.<sup>11</sup>

### **County’s portion of the basic project cost**

The county’s portion of the basic project cost is equal to 1% times the percentile in which the county ranks according to the Department of Taxation’s ranking, for the fiscal year preceding the fiscal year in which the Controlling Board approved the project. The share is calculated as of the date of the Controlling Board’s approval. But the county’s portion may not be greater than 75% of the total basic project cost. A county’s share is calculated differently, however, if the county previously had a project approved.<sup>12</sup>

The county may use the following means to generate the revenue necessary to pay the basic project cost, as well as operation and maintenance of the proposed facilities: unencumbered funds, bonds, local donated contributions (see below), bond issues or property taxes levied specifically to cover the county’s portion of the basic project cost, or the proceeds of any other tax levy that may be lawfully used for that purpose, i.e., general criminal justice service and jail facility levies that counties are authorized to levy under continuing law.<sup>13</sup> The county auditor must certify any evidence of this nature before it may be accepted by the OFCC. The county may not submit as evidence any plan to rent out a portion of the jail facility to other political subdivisions.<sup>14</sup>

### **The county’s portion – previously approved project**

If the county previously had a project approved within the last 20 years (as of the date of the Controlling Board’s approval), the county’s portion of the basic project cost is the lesser of following: the project cost calculated normally (in accordance with “**The county’s portion of the basic project cost**” above), or the greater of: the required percentage of the basic project costs for the new project (or if the project is a multicounty jail facility, the county’s required percentage of the basic project costs pursuant to an MCJFC agreement), or the percentage of the basic project cost paid by the county for the previous project.<sup>15</sup>

### **Jail facility property taxes and bonds**

The bill permits a county to levy a property tax in excess of the ten-mill limitation to fund maintenance and operating expenses of a jail facility (“operating levy”), to pay debt charges on bonds issued for the county’s share of the basic project cost (“bond levy”), or a combined question that includes both (“combined levy”). A county may only levy such a tax

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<sup>11</sup> R.C. 342.01.

<sup>12</sup> R.C. 342.04(B) and (C).

<sup>13</sup> R.C. 5705.19(LL) and 5705.233, not in the bill.

<sup>14</sup> R.C. 342.04(A)(2) to (4).

<sup>15</sup> R.C. 342.04(D).

after it has received conditional approval from OFCC for the construction, acquisition, reconstruction, or expansion of a jail facility, and must obtain voter approval within 13 months after receiving OFCC's conditional approval.<sup>16</sup>

An operating levy proposed under the bill may be for any number of years or a continuing period of time.<sup>17</sup> In contrast, a bond levy may only extend for the maximum number of years over which the principal of the issued bonds may be paid.<sup>18</sup>

To levy any of these taxes, the board of county commissioners must adopt a resolution specifying not only the purpose, rate, and duration of the tax, but also the percentage of the basic project cost to be supplied by the county and by the state, and, if a multicounty jail facility is the subject of the tax, the name and the percentage of the basic project cost to be supplied by each contracting county.<sup>19</sup> The procedure for submitting the tax to voters is the same as for other voted levies, i.e., levy information is certified to the board of elections, and the board prepares an election notice and ballot language.<sup>20</sup> A combined levy will appear on the ballot as a single question, so voters must either approve or disapprove both the operating and the bond levy.

The county may proceed with the collection of any tax and the issuance of any bonds approved by voters.<sup>21</sup> Similar to many other property tax levies, the county may anticipate a fraction of its proceeds and issue anticipation notes.<sup>22</sup>

An operating levy may be renewed, increased, decreased, or replaced using the processes required under continuing law for other voted levies. If the operating levy is for a continuing period, voters may submit a petition to reduce the levy's rate, similar to most other continuous levies.<sup>23</sup>

### **Local donated contributions**

The bill allows a county to fund all or part of the basic project cost of constructing a jail facility, or operating or maintenance costs, with local donated contributions. Local donated contributions include: money donated to a board of county commissioners from an entity other than the state, which the board has the authority to spend on, and has pledged to spend on, jail facilities; an irrevocable letter of credit issued on behalf of a county that has been approved by the OFCC; any cash a county has on hand that the board has encumbered for payment of the

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<sup>16</sup> R.C. 342.05(C) and 5705.234(B).

<sup>17</sup> R.C. 5705.234(C)(1).

<sup>18</sup> R.C. 5705.234(C)(2).

<sup>19</sup> R.C. 5705.234(C)(3) to (5).

<sup>20</sup> R.C. 5705.234(D) to (F).

<sup>21</sup> R.C. 5705.234(G).

<sup>22</sup> R.C. 5705.234(H).

<sup>23</sup> R.C. 5705.261, not in the bill.

county's share, if approved by the OFCC; and any moneys spent by an outside source for the purpose, provided that the board, the OFCC, and the entity have entered into a written agreement requiring audits and having other provisions regarding credit.

Any local donated contribution must first be deposited into the county's project construction fund before state moneys may be released. If the OFCC has approved any local donated contribution from an outside entity towards the basic project cost, the state moneys may be released even if the entity providing the contribution has not spent the moneys so dedicated as long as the agreement between the entity, county, and OFCC has been executed.

The contributions may be used to offset any of the amount of bonds required to be issued or taxes required to be levied, with OFCC approval.<sup>24</sup>

## **Controlling Board approval**

If the OFCC has determined that the project conforms to OFCC and DRC standards, and that the project keeps with the needs of the county as determined by the needs assessment, and that the county can generate adequate revenue to fund the basic project cost, operations, and maintenance, the OFCC may make a determination in favor of constructing, acquiring, reconstructing, or making additions to a jail facility. When the OFCC makes this determination, the project is conditionally approved. The project then must go to the Controlling Board.

The Controlling Board then must approve or reject the OFCC's determination, the amount of the state's portion of the basic project cost, and the amount of the state's portion to be encumbered in the current fiscal year. If approved, the OFCC must certify the approval to the board of county commissioners or the MCJFC, and then encumber the funds from the appropriations for that year. The basic cost may not exceed the cost as determined by the OFCC in its specifications for plans and materials for jail facilities.<sup>25</sup>

The Controlling Board may not approve a project for a county that previously has had a facility built or renovated under this process, and that has levied a tax<sup>26</sup> for the purpose of qualifying for that previous assistance, within the last 20 years, unless the county demonstrates to the OFCC that the county has experienced, since approval of its prior project, an exceptional increase in need beyond the county's design capacity under that prior project. If the OFCC determines that current facilities are adequate to fit the county's needs, the OFCC may reject the county's application.<sup>27</sup>

Once the Controlling Board's approval has been granted, the board of county commissioners has 120 days to accept the approval. Additionally, if the county must issue bonds or a levy to generate its required revenue, the voters must approve the bond issue or

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<sup>24</sup> R.C. 342.07.

<sup>25</sup> R.C. 342.05(A).

<sup>26</sup> R.C. 5705.234.

<sup>27</sup> R.C. 342.05(B).

levy within 13 months of the Controlling Board's approval. If the approval lapses (the bond issue or levy fails, or the board fails to accept the approval), the amount reserved and encumbered for the project is released. If this happens, the county has first priority for project funding as the funds become available.<sup>28</sup>

### **Written agreement – OFCC and board of county commissioners**

When the county has raised adequate funds, the OFCC and the board of county commissioners, or the MCJFC if applicable, must enter into a written agreement regarding the project. The agreement must have the following provisions:

- The county's sale and issuance of bonds or notes, as soon as practicable after the execution of the agreement, in an amount equal to the county's portion of the basic project cost;
- Transferring the funds to the county's project construction fund, and disposal of any balance left in the fund upon project completion;
- Dividing ownership of the project during the period of construction between the OFCC and the county in proportion to their respective contributions;
- Maintenance of the state's interest in the project until any obligations issued for the project are no longer outstanding;
- The insurance of the project by the county, provided it is part of the basic project cost;
- Certification by the Director of Budget and Management that the funds are available and have been set aside;
- Authorization of the board to advertise for and receive construction bids, and award contracts in the name of the state, subject to approval by the OFCC;
- Disbursement of moneys from the county's project account upon the issuance of OFCC vouchers for work done, to be certified by the county auditor to the OFCC;
- Termination of the contract if the board does not deposit bond proceeds into the county's project construction fund, or if no bids have been taken within a period determined by the OFCC;
- Requiring the county to maintain the project in accordance with a plan approved by the OFCC;
- Requiring that the state and county spend their portion of the funds simultaneously in proportion to the county and state's respective shares (with a provision allowing the county to spend more to maintain a federal tax status, if desired);

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<sup>28</sup> R.C. 342.05(C).

- Stipulation that the OFCC may prohibit the board from proceeding with any project if it determines that the site is not suitable for construction purposes; and
- Stipulation that, unless otherwise authorized by the OFCC, any contingency reserve portion of the construction budget must be used only to pay costs resulting from unforeseen job conditions, to comply with rulings regarding building and other codes, to pay costs related to design clarifications or corrections to contract documents, and to pay the costs of settlements or judgments related to the project.<sup>29</sup>

After entering into an agreement, the county must then issue its bonds or notes in anticipation of the agreement, and deposit the proceeds in the county's project construction fund.

Then, with OFCC approval, the county must employ qualified professionals to prepare preliminary plans, working drawings, specifications, estimates of cost, and other data the county or OFCC considers necessary. Once the plans are prepared and approved by the board, the board must submit the plans to OFCC for approval, modification, or rejection. The OFCC may only approve the plans if the plans and materials proposed for use in the project comply with specifications and standards established by the OFCC and DRC. Upon approval, the board must have the qualified professionals prepare the working drawings, specifications, and estimates of cost.

If the plans propose to locate a facility within one mile of a highway or state route, the plans must also be submitted to, and approved by, the Department of Transportation.<sup>30</sup>

## **Construction bids**

Once the working drawings, specifications, and estimates of cost have been approved by the board and the OFCC, the county must advertise for construction bids in accordance with competitive bidding requirements. The OFCC must supply the form for bidders to use.

Once the bids are received, the OFCC must prepare a revised estimate of the basic project cost based upon the lowest responsible bids received. If the revised estimate exceeds the estimated basic project cost previously approved by the Controlling Board, the project may not go forward until the Controlling Board and the OFCC approves the revised project cost. The project must then be awarded to the lowest responsive and responsible bidder, subject to the approval of the OFCC, not later than 60 days after the date on which the bids are opened. The successful bidder must enter into a contract not later than ten days after the successful bidder is notified of the award of the contract.

Subject to OFCC approval, the board may reject all bids and readvertise. These contracts must be executed by the board and county auditor in the name of the state.

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<sup>29</sup> R.C. 342.06.

<sup>30</sup> R.C. 342.08.

Subcontractors, materials suppliers, laborers, mechanics, or persons furnishing material or machinery for the project are afforded the same remedies under the bill, as they are in the Uniform Commercial Code (UCC). Under the UCC in Ohio, the persons in this paragraph may make a claim for unpaid funds by filing an affidavit with the contracting public authority. Any affidavits so filed must be filed with the board or the MCJFC, if applicable.

Notwithstanding any other bidding requirements, a county may utilize any otherwise lawful alternative construction delivery method for the construction of the project.<sup>31</sup>

## Appropriations

For each jail facilities project undertaken, the OFCC each year must determine the amount of state appropriations to be encumbered based on the project's estimated construction schedule for that year. The OFCC must grant priority to continuing projects rather than projects for which initial funding is sought.<sup>32</sup>

The OFCC is in charge of requesting that the Controlling Board transfer the necessary amounts, as appropriated by the General Assembly, to the county's project construction fund, from time to time as necessary. Any investment earnings of the fund is credited to the fund. The funds may also be used to pay the costs of administering the jail facilities construction program.<sup>33</sup>

## County construction funds

The county auditor may disburse funds from the county's project construction fund, including investment revenue, only upon OFCC approval. The OFCC may issue vouchers against the fund as necessary for payment of the project.

The board of county commissioners may, by resolution, use the investment earnings of the fund which are attributable to the county's contribution, to pay for costs related to, but not included in, the basic project cost. But if the county takes this option, and then subsequently the project cost unexpectedly exceeds the amount that is in the project construction fund, the board must restore any investment earnings so used back to the fund. The county may not receive any additional state funds until the board does so.<sup>34</sup>

Once a certificate of completion has been issued (see "**Certificates of Completion**" below), and at the board's discretion, the investment earnings may be retained in the project construction fund for future project use, transferred to a special treasury fund for use in maintaining the jail facilities, or transferred to the county's project improvement fund. Any investment earnings remaining attributable to the state's contribution to the fund goes

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<sup>31</sup> R.C. 342.09; R.C. 307.86 and 1311.26, neither in the bill.

<sup>32</sup> R.C. 342.10.

<sup>33</sup> R.C. 342.11(A).

<sup>34</sup> R.C. 342.11(B).

back to the OFCC for expenditures on jail facilities. Any other remaining surplus goes back to the county and OFCC, proportionate to their contributions. The OFCC must likewise spend this money on jail facilities.<sup>35</sup>

## **Multi-county jail facilities**

The bill also allows two or more counties to build a multi-county jail facility and, at their discretion, create a MCJFC. The counties may create an MCJFC by adding terms to the agreement between the county and the OFCC, described above, or with a supplemental agreement. The agreement is subject to the approval of the OFCC, and must do all of the following:

- Prescribe the structure, management, and responsibilities of the MCJFC;
- Provide a process to establish the MCJFC's annual budget, including that each board of each county must approve the budget;
- Apportion the annual operating costs of the MCJFC to each member county;
- Designate the expenditure of funds from the county jail facilities construction fund of each member county;
- Provide for the timing of necessary elections in each county;
- Provide that each contracting board fulfill its obligations regarding jail facilities once an agreement is reached;
- Allocate interest in real property purchased with moneys in each county's project construction fund; and
- Address amendments to the contract.

The contracting counties may apportion the costs according to their need as ranked by the OFCC, and each county must fund its portion of the cost as described in previous sections. If any necessary tax levies or bond issuances fail, or fail to materialize within 90 days of the most recent election in which a different county approved a tax levy or issuance of bonds, the other contracting counties are not obliged to pay any portion of the cost of the county in which the levy or issuance failed.<sup>36</sup>

## **Jail Facility Building Fund**

The bill also creates in the state treasury the Jail Facility Building Fund, which consists of any moneys appropriated to the fund by the General Assembly, as well as any grants, gifts, or contributions received by the OFCC for the purpose. All investment earnings of the fund are

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<sup>35</sup> R.C. 342.11(C).

<sup>36</sup> R.C. 342.12.



credited to the fund. These moneys may only be used for the purposes of the bill's provisions as the General Assembly prescribes.<sup>37</sup>

## **OFCC interest in real property**

The bill also provides that the OFCC has an interest in real property purchased with moneys in the county's project construction fund as long as obligations under the fund are outstanding. Once the obligations issued to finance a jail facilities project are no longer outstanding, the OFCC's interest is transferred to the county.<sup>38</sup>

## **Project completion**

Once the project is completed, the OFCC must issue a certificate of completion to the board or MCJFC. A project is not considered complete until all facilities are completed and the board has received a permanent certificate of occupancy for each building, the OFCC has completed a final accounting of the county's project construction fund and has determined that all payments were made properly, any litigation concerning the project has been finally resolved with no chance of appeal, and the OFCC has delivered all construction management services and canceled any remaining encumbrance of funds for those services.<sup>39</sup>

However, the OFCC may forgo these conditions and issue a certificate of completion if it determines that the circumstances preventing the conditions from being satisfied are so minor in nature that the project should be considered complete. For example, the OFCC could issue a certificate if it determines that a frivolous lawsuit is minor, or if there is an existing debate about a small amount of funds.

The certificate may specify terms and conditions for the resolution of any pending lawsuits, as well as any remaining responsibilities for the construction manager, or for the board regarding any construction or work yet to be complete. Regarding the last item, the OFCC must oversee remaining construction, and may require the board to report its progress and account for expenditures.<sup>40</sup>

The bill also allows the OFCC to issue a certificate of completion to an unwilling board or MCJFC, and close out the project. The OFCC may only do this if two conditions are met: the construction manager for the project verifies that all facilities to be constructed under the project have been completed, and the OFCC determines that those facilities have been occupied for at least one year. If this happens, the board must return all funds due to the OFCC within 30 days after receiving the certificate. If the funds are not returned within 60 days, the

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<sup>37</sup> R.C. 342.13.

<sup>38</sup> R.C. 342.14.

<sup>39</sup> R.C. 342.15(A).

<sup>40</sup> R.C. 342.15(B).

Auditor of State must issue a finding for recovery against the county and request that the Attorney General commence a collection action.<sup>41</sup>

Once the certificate of completion has been issued, the OFCC's ownership of and interest in the project ceases, unless otherwise specified in the terms of the agreement between the board and the OFCC.<sup>42</sup>

### **Corrective action program**

The bill also establishes the corrective action program, which provides funding for the correction of work undertaken under the bill to correct any deficiencies or omissions discovered after occupancy of the facilities. In order to receive any funding, the county must notify the OFCC Director of any deficiencies or omissions within five years of the date of occupancy, which is likely the date of the certificate of occupancy.

The OFCC must develop application procedures and deadlines for counties to apply for program assistance, as well as definitions for "defective" and "omitted." The OFCC guidelines must require that remediation efforts focus first on engaging the respective contractors that designed and constructed the areas that have design or construction-related issues. The OFCC must assess the deficient work and determine who is responsible for the deficient work and, if applicable, seek cost recovery from the responsible parties, such as contractors.

The county must contribute a portion of the cost of corrective action, commensurate with county's contribution to the project as a whole. If the county cannot contribute this much, the board may apply to the OFCC for additional assistance. Any remediation expenses must first be applied to the county's portion of the cost of the corrective action, then the state portion.

If the work needing correction or remediation is part of a project not yet completed, the OFCC may increase the project budget and use corrective action funding to provide the state portion. If the project is completed and funds have already been retained or transferred, the OFCC may enter into a new agreement to address the corrective action.<sup>43</sup>

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<sup>41</sup> R.C. 342.15(C); R.C. 117.42, not in the bill.

<sup>42</sup> R.C. 342.15(D).

<sup>43</sup> R.C. 342.16.

## Flowchart summary



## HISTORY

Action	Date
Introduced	02-10-21
Reported, H. Infrastructure & Rural Development	---