



Ohio Legislative Service Commission

Bill Analysis

Carla Napolitano

Sub. H.B. 435

131st General Assembly

(As Reported by H. Financial Institutions, Housing and Urban Development)

Reps. McClain, Blessing, Ruhl, Grossman, Hambley, Reineke, Sheehy, K. Smith

BILL SUMMARY

- Establishes procedures in which the Treasurer of State can issue and purchase obligations for the purpose of providing loans to qualifying public entities.
- Creates a State Bond Bank.
- Creates the State Bond Bank Trust Fund.
- Permits the Treasurer to adopt rules with respect to secure payment of bond service charges on obligations.
- Establishes bond proceedings for obligations issued under the bill.
- Establishes procedures regarding pooled obligations.
- Requires a qualified entity to waive defenses regarding nonpayment of obligations.
- Authorizes the Treasurer to issue bond anticipation notes to further the purpose of the bill.
- Establishes methods for the refunding of obligations.
- Permits owners of obligations or a provider of a credit enhancement facility to protect and enforce their rights.
- Provides a list of persons and entities permitted to invest in the obligations under the bill.

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CONTENT AND OPERATION

Overview

The bill authorizes the Treasurer of State to issue revenue obligations of the state, then purchase public obligations from certain qualifying entities and use this revenue to provide loans to the qualifying entities (in which the obligations were purchased) for their acquisition of permanent improvements (see "**Definitions**," below). To facilitate this process, the bill establishes the State Bond Bank and the State Bond Bank Trust Fund. In addition to the bill's provisions stated below, existing law governing bond transactions apply to the obligations issued under the bill.¹

¹ R.C. 158.11 and R.C. 9.98 to 9.983, not in the bill.



State Bond Bank

The bill establishes the State Bond Bank, which consists of the State Bond Bank Trust Fund, including all funds, accounts, and subaccounts within the Fund. The State Bond Bank will be administered by the Treasurer and used for the purposes described in the bill.²

State Bond Bank Trust Fund

Structure

The bill creates the State Bond Bank Trust Fund, which will be in the custody of the Treasurer, but must be separate and apart from and not a part of the state treasury.³

Governance

Under the bill, all moneys received by Ohio and required by the applicable bond proceedings must be deposited, transferred, or credited to the Fund, and all other moneys transferred or allocated to or received for the purposes of the Fund, must be deposited with the Treasurer and credited to the Fund, subject to applicable provisions of the bond proceedings, but without necessity of any act of appropriation. Any portion of the revenues that are, by the bond proceedings, directed to be used to pay for administrative expenses of the Treasurer must be deposited into the Treasurer's Administrative Fund.⁴

Improvements Account

The bill creates the Improvements Account within the State Bond Bank Trust Fund. Unless the bond proceeding provides otherwise, the net proceeds of obligations issued under the bill, must be deposited into the Improvements Account and disbursed for the purpose of making loans to qualifying entities for the acquisition of permanent improvements and the payment of financing costs. These loans must be made through the Treasurer's purchase of public obligations of such qualifying entities without necessity for any act of appropriation.⁵

² R.C. 158.02(A).

³ R.C. 158.02(B).

⁴ R.C. 158.02(B) and R.C. 113.20, not in the bill.

⁵ R.C. 158.02(C).



Reserve Account

The bill creates the Reserve Account within the State Bond Bank Trust Fund. All moneys appropriated by Ohio for the purpose of the account must be deposited into the Reserve Account. All proceeds of obligations required to be deposited into the Account by terms of the bond proceedings or any order of the Treasurer, and any other moneys or funds that the Treasurer determines to deposit into the Account must be deposited into the Account.

Moneys in the Reserve Account must be held and applied only for the payment of the interest and principal of presently outstanding obligations payable from the Fund and any obligations issued to refund the obligations, all as they become due and payable and for the retirement of obligations. With limited exceptions, moneys cannot be withdrawn from the Reserve Account if the withdrawal reduces the amount in the Reserve Account to an amount less than the required debt service reserve. However, withdrawal is permitted for (1) the payment of interest then due and payable on obligations and the principal of obligations then maturing and payable and (2) the retirement of obligations in accordance with the terms of the bond proceedings and for which payments of other moneys of the State Bond Bank Trust Fund are not then available.⁶

Bond service account

The bill creates the bond service account within the State Bond Bank Trust Fund. The bond service account is to be used for the payment of bond service charges on the obligations issued under the bill to the extent provided in the applicable bond proceedings. Payments of bond service charges must be made or provided for by the Treasurer in accordance with the bond proceedings without necessity for any act of appropriation.⁷

Treasurer rules for bond service charges

Under the bill, the Treasurer may adopt reasonable rules to the extent permitted by law and enter into agreements to secure payment of bond service charges on obligations, including the (1) withholding of any amounts payable by Ohio and allocated to a qualified entity and payment of those amounts as described in the bond proceedings, and (2) directing of a department, agency, or instrumentality of Ohio, or

⁶ R.C. 158.02(D).

⁷ R.C. 158.08(E).



an Ohio political subdivision, that is a custodian of money payable to a qualified entity to withhold the money and pay it over as described in the bond proceedings.⁸

Treasurer's sale and issue of obligations

Purpose

Under the bill, the Treasurer is authorized to issue and sell revenue obligations of Ohio for the purpose of paying costs of acquisition of public obligations of qualifying entities and financing costs in connection with the issuance of those revenue obligations.⁹

Bond proceeding

Each issue of obligations must be authorized by an order of the Treasurer. The bond proceedings must provide for or authorize the manner for determining (1) the principal amount or maximum principal amount of obligations of an issue, (2) the principal maturity or maturities, not to exceed 35 years, (3) the interest rate or rates, or in the case of variable rate obligations, the method for determination of such interest rate or rates and any maximum interest rate or rates, (4) the date of and the dates of payment of interest on the obligation, (5) the denominations of the obligations, (6) the place or places of payment of bond service charges, which may be within or outside Ohio, (7) the method of sale of the obligations, and (8) the authority to retain the necessary professionals to complete a revenue obligation sale or issuance.¹⁰

Payments

Under the bill, each issue of obligations must be payable solely from the revenues and special funds pledged to that purpose pursuant to the bond proceedings, and the holders of the obligations do not have the right to levy or impose any tax or excise by the state of Ohio or any political subdivision of Ohio for the payment of bond service charges on the obligations. A statement to that effect must appear on the face of each obligation. The bond service charges and all other payments required to be made by the bond proceedings must be payable solely from the revenues received by the State Bond Bank Trust Fund and pledged to the Fund as provided in the bond proceedings.

⁸ R.C. 158.02(F).

⁹ R.C. 158.03(A).

¹⁰ R.C. 158.03(B).



Security

Under the bill, the revenues pledged and received by the State Bond Bank Trust Fund are immediately subject to the lien of the pledge without any physical delivery or further act. The lien of a pledge is valid and binding against all parties having claims of any kind against the revenues pledged, regardless of whether those parties have notice of the lien, and creates a perfected security interest for all purposes under Ohio's Uniform Commercial Code. The bill specifies that it is not necessary for the separation or delivery of funds or for the filing or recording of any bond proceedings, trust agreement, indenture, or other agreement by which a pledge is created or any certificate, statement, or other related document. The pledge of such revenue is effective and the money may be applied to the purposes for which it was pledged.

Every pledge, and every covenant and agreement made with respect to the pledge, may be extended to the benefit of the owners and holders of obligations and to any trustee, for the further securing of the payment of the bond service charges and any financing costs related to credit enhancement facilities. All or any rights under any agreement made under the bill may be assigned for that purpose.¹¹

Financing costs

Financing costs are payable, as may be provided in the bond proceedings, from the proceeds of the obligations, from special funds, or from other moneys available for the purpose.¹²

Pooling requirements

The bill requires the Treasurer to create groups for the pooled issuances, so that the public obligations of qualifying entities that are purchased with the proceeds of particular revenue obligation issuance of the State Bond Bank are of similar quality. The Treasurer is required to determine the quality of the obligation, however, regardless of the Treasurer's determination, an obligation of a qualified entity may be included in a group of a different quality with the consent of all of the qualifying entities participating in that group.¹³

¹¹ R.C. 158.03(C).

¹² R.C. 158.03(D).

¹³ R.C. 158.03(E).



Qualified entity – waiver of defenses for nonpayment

The bill establishes that once a qualified entity sells and delivers a public obligation to the State Bond Bank, the qualified entity is considered to have agreed to waive all defenses regarding nonpayment of interest or principle due on the public obligation owned or held by or arising from an agreement with the State Bond Bank.¹⁴

Additional provisions permitted for bond proceedings

The bond proceedings may contain additional provisions customary or appropriate to the financing or to the obligations or to particular obligations, including provisions for any of the following:

(1) The redemption of obligations prior to maturity upon the occurrence of certain conditions, and at particular price or prices and under particular terms and conditions;

(2) The form of and other terms of the obligations;

(3) The establishment, deposit, investment, and application of special funds, and the safeguarding of moneys on hand or on deposit. Any financial institution that acts as a depository of any moneys in special funds or other funds under the bond proceedings may furnish indemnifying bonds or pledge securities as required by the Treasurer of State.

(4) Any or every provision of the bond proceedings being binding upon the Treasurer of State and upon such qualifying entity or other person or body as may from time to time be authorized to take actions as may be necessary to perform specified duties;

(5) The maintenance of each pledge or instrument comprising part of the bond proceedings until the obligations have been fully paid or payment provided for or other stated conditions;

(6) In the event of default in any payments required to be made by the bond proceedings, or by any other agreement the Treasurer made as part of a contract in which the obligations were issued or secured, the enforcement of those payments by a lawsuit;

¹⁴ R.C. 158.03(F).



(7) The rights and remedies of the holders or owners of obligations or of book-entry interests in them, and of third parties under any credit enhancement facility, and provisions for protecting and enforcing those rights and remedies;

(8) The replacement of mutilated, destroyed, lost, or stolen obligations;

(9) The funding, refunding, or advance refunding, or other provision for payment, of obligations that will then no longer be outstanding for purposes of the bill or of the applicable bond proceedings;

(10) Amendment of the bond proceedings;

(11) The form of any trust agreement, indenture, escrow agreement, paying agency agreement, registrar agreement to provide for the security, payment, terms, and conditions of obligations, and the proper administration of the pledges and security interests granted for the benefit of holders of the bonds;

(12) The form of any credit enhancement facility;

(13) Any other or additional agreements with the owners of obligations, and such other provisions as the Treasurer determines, relating to any of the foregoing.¹⁵

Signing

The obligations requiring execution by or for the Treasurer must be signed as provided in the bond proceedings. Any obligations may be signed by the individual who on the date of execution is the authorized signer although on the date of these obligations that individual is not an authorized signer. In case the individual whose signature or facsimile signature appears on any obligation ceases to be an authorized signer before delivery of the obligation, that signature or facsimile is considered valid and sufficient for all purposes as if that individual had remained the authorized signer until delivery.¹⁶

Place and price of sale

Obligations may be sold at public sale or at private sale, and at a price at, above, or below par, all as determined by and provided by the Treasurer in the bond proceedings.¹⁷

¹⁵ R.C. 158.04.

¹⁶ R.C. 158.05(A).

¹⁷ R.C. 158.05(B).



Bond anticipation notes for improvements

In order to further the efficient financing of costs of local permanent improvements, the bill permits the Treasurer to authorize and provide for the issuance of obligations in the form of bond anticipation notes. The Treasurer also may provide for the renewal of those notes from time to time by the issuance of new notes. The holders of notes have the right to have bond service charges on those obligations paid solely from the moneys and special funds that are or may be pledged to that payment, including the proceeds of obligations or renewal notes or both, as the Treasurer provides in the bond proceedings authorizing the notes.¹⁸

Anticipation notes – security

Under the bill, bond anticipation notes can be additionally secured by covenants of the Treasurer requiring the Treasurer to do all things necessary for the issuance of obligations or renewal notes in such principal amount and upon such terms as necessary to provide moneys to pay when due the debt service on the notes, and apply their proceeds to the extent necessary, to make full and timely payment of bond service charges on the notes as provided in the applicable bond proceedings.¹⁹

Anticipation notes – bond proceedings

In the bond proceedings authorizing the issuance of bond anticipation notes, the Treasurer must set forth for the obligations anticipated an estimated schedule of annual principal payments the latest of which must not be later than stated in "**Bond proceedings**," above. All provisions and conditions relating to the issuance of obligations under the bill, except where expressly provided otherwise, apply to the issuance of note and renewal notes.²⁰

Refunding

The Treasurer is permitted to authorize and provide for the issuance of obligations for the refunding, including funding and retirement, and advance refunding with or without payment or redemption prior to maturity, of any obligations previously issued. Refunding obligations can be issued in amounts that are sufficient to pay or to provide for repayment of the principal amount, including principal amounts maturing prior to the redemption of the remaining prior obligations, any redemption premium, financing costs and interest accrued or to accrue to the maturity or redemption date or

¹⁸ R.C. 158.08(A).

¹⁹ R.C. 158.08(A).

²⁰ R.C. 158.08(A).



dates, payable on the prior obligations, and related financing costs and any expenses incurred or to be incurred in connection with that issuance and refunding.

Subject to the applicable bond proceedings, the portion of the proceeds of the sale of refunding obligations to be applied to bond service charges on the prior obligations must be credited to an appropriate separate subaccount in the bond service account and held in trust for the purpose by the Treasurer or by a corporate trustee. Obligations authorized for purposes of refunding are considered to be issued for those purposes for which the prior obligations were issued.²¹

Special funds – procedures for credit, disbursement, investment of funds

Unless otherwise provided under the bill, the moneys to the credit of or in a special fund must be disbursed on the direction of the Treasurer. The Treasurer's authorization is not required for the payment of bond service charges when due from the bond service account or other special fund. Unless otherwise provided in the applicable bond proceedings, payments received with respect to interest rate hedges entered into as credit enhancement facilities under the bill must be deposited to the credit of the bond service account for the obligations to which those credit enhancement facilities relate.

Each bond service account is a trust fund and is pledged to the payment of bond service charges on the applicable obligations. Payment of bond service charges must be made or provided for by the Treasurer in accordance with the bond proceedings without necessity for any act of appropriation. The bond proceedings may provide for the establishment of separate subaccounts in the bond service account and for the application of those subaccounts only to bond service charges on specific obligations, and for other subaccounts in the bond service account, so long as it remains within the general purposes of that account.

Unless otherwise provided in any applicable bond proceedings, moneys to the credit of special funds may be invested *only* in one or more of the following:

(1) Notes, bonds, or other direct obligations of the United States or of any agency or instrumentality of the United States, or in no-front-end-load money market mutual funds consisting exclusively of those obligations, or in repurchase agreements, including those issued by any fiduciary, secured by those obligations, or in collective investment funds consisting exclusively of those obligations;

(2) Obligations of Ohio or any political subdivision of Ohio;

²¹ R.C. 158.08(B).



(3) Certificates of deposit of any national bank located in Ohio and any bank subject to inspection by the Superintendent of Financial Institutions;

(4) The Treasurer's pooled investment program under Ohio's Uniform Depository Law.

The income from these investments must be credited to special funds or otherwise as the Treasurer determines in the bond proceedings. Those investments may be sold or exchanged at times as the Treasurer determines, provides for, or authorizes.²²

Miscellaneous

Form of issuance

The bill provides that obligations are investment securities under Ohio's Investment Securities Law.²³ Obligations can be issued in either of the following forms:

(1) In bearer or in registered form, registrable as to principal alone or as to both principal and interest, or both;

(2) In certificated or uncertificated form.

Provision may be made for the exchange, conversion, or transfer of obligations and for reasonable charges for registration, exchange, conversion, and transfer. While the preparation of final obligations are pending, the Treasurer is permitted to issue interim instruments to be exchanged for the final obligations.²⁴

Owner's rights

The bill provides that except to the extent that rights are restricted by the bond proceedings, any owner of obligations or provider of a credit enhancement facility is permitted by any suitable form of legal proceedings, to protect and enforce any rights relating to obligations or that facility under Ohio law or granted by the bond proceedings.²⁵

²² R.C. 158.10.

²³ R.C. 158.06 and R.C. Chapter 1308., not in the bill.

²⁴ R.C. 158.06.

²⁵ R.C. 158.07.



Mandamus

The bill states that each duty of the Treasurer undertaken pursuant to the bond proceedings is also a duty of the entity or individual having authority to perform that duty, specifically enjoined by law and resulting from an office, trust, or station provided by a writ of mandamus. The individuals, who are from time to time the Treasurer, or the staff or employees of the Treasurer, are not liable in their personal capacities on any obligations or otherwise under the bond proceedings.²⁶

General legality and tax exemption

The bill provides that obligations are lawful investments for the following persons and entities: (1) banks, (2) savings and loan associations, (3) credit union share guaranty corporations, (4) trust companies, (5) trustees, (6) fiduciaries, (7) insurance companies, including domestic for life and domestic not for life, (8) trustees or other officers having charge of sinking and bond retirement or other special funds of Ohio and political subdivisions and taxing districts of Ohio, (9) the Sinking Fund, (10) the Administrator of Workers' Compensation subject to the approval of the Workers' Compensation Board, (11) the State Teachers Retirement System, (12) the Public Employees Retirement System, (13) the School Employees Retirement System, and (14) the Ohio Police and Fire Pension Fund.

The exemptions from taxation under continuing law, including under the Ohio Constitution, apply to the obligations.²⁷

Definitions

The bill adopts the following definitions:

"Acquisition," means as applied to real or personal property includes, among other forms of acquisition, acquisition by exercise of a purchase option, and acquisition of interests in property.²⁸

"Bond proceedings" means the orders, agreements, loan agreements, trust agreements, indentures, certificates of award, credit enhancement facilities, and amendments and supplements to any of them, or any one or more or combination of them, authorizing, awarding, or providing for the terms and conditions applicable to, or

²⁶ R.C. 158.07 and R.C. 2731.01, not in the bill.

²⁷ R.C. 158.09 and R.C. 5709.76, not in the bill.

²⁸ R.C. 158.01 and R.C. 133.01, not in the bill.



providing for the security or liquidity of, an issue of obligations, and the provisions contained in those obligations.

"Bond service charges" means principal, including any mandatory sinking fund requirements for retirement of obligations, and interest, and redemption premium, if any, required to be paid on obligations. If not prohibited by the applicable bond proceedings, bond service charges may include costs relating to credit enhancement facilities that are related to and represent, or are intended to provide a source of payment of or limitation on, other bond service charges.²⁹

"Credit enhancement facilities" means letters of credit, lines of credit, stand-by, contingent, or firm securities purchase agreements, insurance, or surety arrangements, guarantees, and other arrangements that provide for direct or contingent payment of debt charges, for security or additional security in the event of nonpayment or default in respect of securities, or for making payment of debt charges to and at the option and on demand of securities holders or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of the securities, and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements.³⁰

"Financing costs" means all costs and expenses relating to the authorization of financing.³¹

"Interest" means those payments or portions of payments, however denominated, that constitute or represent consideration for forbearing the collection of money, or for deferring the receipt of payment of money to a future time.³²

"Interest rate hedge" means any arrangement where both of the following apply:

(1) Either:

(a) The different interest costs or receipts at, between, or among fixed or floating interest rates, including at different floating interest rates, are exchanged on stated amounts of bonds or investments, or on notional amounts;

²⁹ R.C. 158.01.

³⁰ R.C. 158.01 and R.C. 133.01, not in the bill.

³¹ R.C. 158.01.

³² R.C. 158.01 and R.C. 133.01, not in the bill.



(b) A party will pay interest costs in excess of an agreed limitation; and

(2) Which also may include a requirement for the issuer to issue bonds at a future date. This requirement must be deemed to be part of the bond proceedings at the time the interest rate hedge is entered into. Issuance of bonds at a future date must not require further legislative action, but must be a ministerial act.³³

"**Mandamus**" means a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.³⁴

"**Obligations**" means bonds, notes, or other evidences of obligation or indebtedness, including any appertaining interest amounts due, issued under the bill.³⁵

"**Permanent improvement**" means any property, asset, or improvement certified by the fiscal officer, which certification is conclusive, as having an estimated life or period of usefulness of five years or more. The acquisition of all the stock ownership of a corporation is the acquisition of a permanent improvement to the extent that the value of that stock is represented by permanent improvements. A permanent improvement for parking, highway, road, and street purposes includes resurfacing, but does not include ordinary repair.³⁶

"**Public obligations**" means both (1) securities and (2) obligations of a public issuer to make payments under installment sale, lease, lease purchase, or similar agreements, which obligations may bear interest or interest equivalent.³⁷

"**Qualifying entity**" means a "**public issuer**," which means any of the following that is authorized by law to issue securities or enter into public obligations:

(1) The state, including an agency, commission, officer, institution, board, authority, or other instrumentality of the state;

(2) A taxing authority, subdivision, district, or other local public or governmental entity, and any combination or consortium, or public division, district, commission, authority, department, board, officer, or institution, thereof;

³³ R.C. 158.01 and R.C. 9.98, not in the bill.

³⁴ R.C. 2731.01, not in the bill.

³⁵ R.C. 158.01.

³⁶ R.C. 158.01 and R.C. 133.01, not in the bill.

³⁷ R.C. 158.01 and R.C. 133.01, not in the bill.



(3) Any other body corporate and politic, or other public entity.³⁸

"**Revenues**" means all fees, charges, grants, subsidies, income from the investment of moneys, and all other revenues or receipts received by or on behalf of the State Bond Bank available for the payment of bond service charges on the obligations.³⁹

"**Required debt service reserve**" means, as of any date of computation, the amount or amounts required to be on deposit in the Reserve Account as provided by order of the Treasurer of State.⁴⁰

"**Special funds**" or "**funds**," unless the context indicates otherwise, means the State Bond Bank Trust Fund, the bond service account, the Reserve Account, the Improvements Account, and any other funds and accounts created under bond proceedings and stated to be special funds or accounts in those proceedings, including moneys and investments, and earnings from investments, credited and to be credited to a particular fund or account.⁴¹

"**State Bond Bank**" means the State Bond Bank established under the bill.⁴²

HISTORY

ACTION	DATE
Introduced	01-26-16
Reported, H. Financial Institutions, Housing & Urban Development	04-27-16

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³⁸ R.C. 158.01 and R.C. 133.01, not in the bill.

³⁹ R.C. 158.01.

⁴⁰ R.C. 158.01.

⁴¹ R.C. 158.01.

⁴² R.C. 158.01 and R.C. 133.01, not in the bill.

