



**H.B. 524\***

124th General Assembly  
(As Introduced)\*\*

Rep. Carey

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**BILL SUMMARY**

- Prescribes a manner in which a school district board may obtain specific voter approval to issue bonds for a state-assisted school facilities project in more than one series.
- Authorizes a school district board to issue bonds for a state-assisted school facilities project for a term of up to the number of years permitted under the Uniform Public Securities Law (generally up to 30 years) instead of a maximum of 23 years as under current school facilities assistance law.
- Authorizes a school district board to combine a ballot measure under a state-assisted school facilities project with other bond issue and tax levy measures for permanent improvements and certain operating expenses.
- Provides that for school facilities projects of any size, the entire amount of the state's portion does not have to be encumbered during the first biennium of the project.
- Requires that the respective state and school district shares of the cost of a project under the Accelerated Urban School Building Assistance Program (for the six large urban school districts) be spent simultaneously in proportion to the percentage of each share.

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\* *This analysis does not cover appropriations, fund transfers, and similar provisions. Please see the Legislative Service Commission's Fiscal Note for H.B. 524 for analysis of those provisions.*

\*\* *This analysis was prepared before the introduction of the bill appeared in the House Journal. Note that the list of cosponsors and the legislative history may be incomplete.*

- Specifies that part of the school district share of a school facilities construction project may be spent before the state share if necessary to comply with certain federal laws.
- Specifies that a school district board that dedicates local donated contributions toward the requirement to generate money for facilities maintenance under a state-assisted school facilities project must agree to deposit all such dedicated money only by the anticipated *completion* of the district's project rather than at the beginning of the project, as under current law.
- Requires the Ohio School Facilities Commission to use an adjusted valuation per pupil based on a school district's most recent single-year tax valuation to determine the district's share of a project cost under the School Building Assistance Expedited Local Partnership Program if the district has experienced a 10% or greater decrease in tax valuation due to changes in the law on tax assessments of electric utility property.
- Specifies that titles to certain university and college investments made with non-state money do not vest in the state but are held in trust by the board of trustees of the university or college.
- Requires that state university and college investments made with non-state money be made according to an investment policy adopted by the board of trustees of the university or college and provides specific requirements for that investment policy.
- Allows two additional members to be added to the Capitol Square Review and Advisory Board: a former President of the Senate appointed by the current President of the Senate and a former Speaker of the House of Representatives appointed by the current Speaker.
- Makes several miscellaneous clarifications to the Capital Facilities Bonds and Obligations Law.

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## CONTENT AND OPERATION

### *Background: School Facilities Commission programs*

State law authorizes several programs to help school districts construct, repair, or renovate school buildings. The main program is the Classroom Facilities

Assistance Program (CFAP), which is intended to eventually permit all districts to receive state money to address all of their facilities needs in a single project.<sup>1</sup> It is a graduated, cost-sharing program where a school district's priority for funding and its portion of the cost of its project are based on the relative wealth of the district. Lower-wealth districts are served first and receive a larger percentage of their total needs than wealthier districts will receive when it is their turn to be served.

There are other programs designed to meet the special needs of certain districts. The Exceptional Needs School Facilities Assistance Program provides money to districts in the 50 lowest-wealth percentiles to construct a new facility needed to protect the health and safety of students on the same cost-sharing basis as under CFAP.<sup>2</sup> Under the Accelerated Urban School Building Assistance Program, the six remaining "Big-Eight" districts that have not yet received assistance under CFAP may begin applying for assistance in July 2002.<sup>3</sup> This program essentially permits those districts to begin their projects earlier than they otherwise would be able to under CFAP. Finally, under the School Building Assistance Expedited Local Partnership Program, most districts that have not already been served under CFAP may enter into agreements with SFC permitting them to apply the expenditure of school district money on approved parts of the respective districts' needs prior to their eligibility under CFAP toward their respective portions of their CFAP projects when they finally become eligible for that program.<sup>4</sup>

Generally, to participate in these programs, a district board, with voter approval, must issue bonds backed by a property tax to pay its portion of the cost of the project and must levy an additional property tax of one-half mill for 23 years to generate money to pay for maintenance of the newly acquired facilities. Recent legislation provides other options that the district may use to generate money to meet its obligations under the programs, including (among others) the use of donated money, credit for certain previously issued bonds to construct facilities, and the dedication of certain existing taxes to leverage new bonds.

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<sup>1</sup> *The Classroom Facilities Assistance Program is generally codified in R.C. 3318.01-3318.20 (not all sections in the bill).*

<sup>2</sup> *R.C. 3318.37 (not in the bill).*

<sup>3</sup> *R.C. 3318.38 (not in the bill). The six districts to which this program applies are Akron, Cincinnati, Columbus, Cleveland, Dayton, and Toledo.*

<sup>4</sup> *R.C. 3318.021, 3318.36, 3318.361 (the preceding sections are not in the bill), and 3318.362.*

### **Terms of bonds**

(R.C. 3318.06(B) and 3318.362)

Under current law, the terms of any bonds issued for a state-assisted school facilities project may not extend beyond 23 years (except for a project under the Expedited Local Partnership Program). On the other hand, under the more general Uniform Public Securities Law (Chapter 133.), subdivisions (including school districts) may issue bonds for the acquisition of real property for terms of up to 30 years in each issue.<sup>5</sup>

The bill provides that school districts undertaking a state-assisted project may issue bonds for the project for terms up to 30 years, as permitted under the Uniform Public Securities Law.

### **Combination of ballot questions**

(R.C. 3318.056, 3318.06(D), and 3318.062(C))

To participate in a state-assisted school facilities program (except for the Expedited Local Partnership Program), a district board must adopt a resolution proposing to issue bonds to pay for the district's portion of the project cost and to levy a 23-year, one-half mill property tax to pay for maintenance of the facilities.<sup>6</sup> The law prescribes the form of the ballot that must be presented to the voters.<sup>7</sup> Currently, a district board may not combine the questions specified in that ballot form with any other ballot questions not directly associated with the district's state-assisted project.<sup>8</sup>

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<sup>5</sup> *R.C. 133.20 (not in the bill). The Expedited Local Partnership Program already permits the issuance of bonds for up to the 30-year limit specified in R.C. 133.20 (R.C. 3318.362).*

<sup>6</sup> *A district participating in the Expedited Local Partnership Program may raise its local resources to acquire facilities in districts participating in the Classroom Facilities Assistance Program and other lawful ways, such as bonds or notes issued under the Public Securities Law or school district property tax levies. R.C. 3318.05 (not in the bill).*

<sup>7</sup> *R.C. 3318.06(C).*

<sup>8</sup> *The law does permit combining the question of acquiring a site for a state-assisted classroom project with the question of issuing bonds or levying a tax to pay for acquisition of the site (R.C. 3318.06(D)).*

The bill permits a district to combine those ballot questions with the following ballot questions:

- (1) A general obligation bond issue question under the Uniform Public Securities Law (R.C. 133.18);
- (2) A property tax levy question (R.C. 5705.21);
- (3) A combined bond issue and tax levy question (R.C. 5705.218);
- (4) A school district income tax question (R.C. 5748.08).<sup>9</sup>

The combined ballot proposals must be for the purpose of either permanent improvements in general, operating revenue for the facilities that are acquired under the district's state-assisted project, or both.

**Specifying that bonds will be issued in more than one series**

(R.C. 3318.04, 3318.06, 3318.061, and 3318.062)

When any subdivision of the state proposes the issuance of bonds to the voters, the ballot question presumes that the bonds will be issued in only one series (that is, all at one time). That presumption is used by the county auditor in estimating the average tax rate needed to pay the debt service on the bonds over the life of the debt. In practice, however, bonds generally may be issued in more than one series. The tax rate needed to retire each series and to retire the total issue generally will be less than the rate estimated by the auditor and shown on the ballot, because a subdivision's taxable property valuation tends to increase over time; the later series, therefore, require lower rates to raise the amount needed to cover the debt service.

The bill permits, but does not require, a school board, when proposing the issuance of bonds for a state-assisted school facilities project, to propose the actual number of series of bonds that will be issued (up to five), the amount to be issued in each series, and the approximate date each series will be issued. The county auditor, then, is required to estimate the tax rate needed to retire each series of

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<sup>9</sup> None of the referenced sections are in the bill. Under R.C. 133.01(CC), a "permanent improvement" is any property, asset, or improvement having an estimated life or period of usefulness of five or more years, and includes, but is not limited to, real estate, buildings, and personal property, equipment, furnishings, and site improvements, and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements having an estimated life or period of usefulness of five or more years.

bonds issued.<sup>10</sup> If a school board elects to propose a bond issuance through such a ballot measure, and the measure is approved by the voters, the district board may not issue the bonds any sooner than the schedule specified on the ballot.

**Encumbrance of state share**

(R.C. 3318.03, 3318.04, 3318.11, and 3318.38(B)(3)(b))

Under current law, for any project for which the state's portion exceeds \$25 million, the Commission is required to determine the amount to be encumbered in each biennium based on the project's estimated construction schedule for that biennium. If the Commission determines that the entire amount does not need to be encumbered, then in each biennium subsequent to the first biennium in which state appropriations were encumbered for the project, the project has priority for state funds over projects for which initial state funding is sought.

The bill applies this phased encumbrance to projects of any size.

**Spending of respective state and school district shares under the Accelerated Urban School Building Assistance Program**

(R.C. 3318.08(Q)(2) and 3318.38(B)(4))

Current law requires that the state's share of a state-assisted school facilities project, except for a project under the Expedited Local Partnership Program, be spent before any money in the school district's portion is spent. In the meantime, the district is required to deposit the amount of its portion into the district's project construction fund where it earns interest. The bill requires that for any project under the Accelerated Urban School Building Assistance Program, state and school district money be spent simultaneously in proportion to their respective shares.

**Local share arbitrage language**

(R.C. 3318.08(Q))

The bonds issued by a school district to raise its portion of the cost of a school facilities project are tax exempt under federal law. As noted above, state law generally requires that the state's share of the project be spent before any money in the school district's portion is spent. However, current state law also permits the expenditure of at least some of the school district money in order to

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<sup>10</sup> The substantive changes to make this provision effective are in R.C. 3318.06(B) and (C) and 3318.062.

protect the tax exempt status of the bonds. Federal law requires that the money generated from the sale of these exempt bonds be spent for project needs and not be invested for longer than a specified short period of time. Also, if the money is not spent in compliance with a schedule in federal regulations, the school district may have to rebate some money from the bond proceeds to the federal government. The bill adds language specifying that the district's share may be spent in order to comply with these rules on temporary investment periods and avoidance of rebating.

**Deposit of local donated contribution dedicated toward a district's obligation to generate facilities maintenance money**

(R.C. 3318.08(E) and 3318.084(D)(2))

Under continuing law, a school district board may apply a "local donated contribution" toward both its portion of the cost of its state-assisted school facilities project and its obligation to raise money for the maintenance of the new facilities. Such "local donated contribution" is defined as any money irrevocably donated or granted to the district by a source other than the state, a letter of credit, or any cash the district has on hand (the latter of which may include year-end operating fund balances).<sup>11</sup> Currently, before any state money may be released for the district's project, the district board must deposit all of the local donated contribution it has dedicated toward an offset of its maintenance obligation into the district's capital and maintenance fund. The bill provides instead that the state money may be released if the district board and School Facilities Commission include in their project agreement a stipulation that the board will have deposited into an account approved by the Commission the full amount of that dedicated money by the anticipated completion date of the project. The bill does not affect the continuing requirement that any local donated contributions dedicated toward the district's portion of the *project cost* must be deposited into the district's project construction fund before any state funds may be released.

**Calculation and recalculation of a school district's project under the Expedited Local Partnership Program in the event of a decrease in a district's tax valuation due to decreased electric company property assessments**

(R.C. 3318.363)

Under the Expedited Local Partnership Program, a school district's share is determined based on either its "required level of indebtedness" or its "required percentage," whichever amount is greater. The latter formula is determined from the district's percentile ranking among all other districts according to adjusted

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<sup>11</sup> R.C. 3318.084(C).



valuation per pupil that is averaged over three years. The law provides an exception for districts that have experienced a 10% or greater decrease in tax valuation due to reductions in assessments on electric utility property in the districts caused by recent changes in tax law relative to electric utility industry deregulation.<sup>12</sup> In the case of such a district, the law specifies that a district's "required percentage" is to be calculated, or recalculated if it has already been calculated by the School Facilities Commission, using a non-averaged "current year" adjusted valuation per pupil. That latter formula, nonetheless, includes a three-year averaged tax valuation on which to base its calculation of per pupil valuation for the current year.

The bill amends the law to require that the calculation or recalculation for those districts that have experienced the required 10% or greater decrease in valuation be made using the most recent single-year tax valuation for the district without averaging any prior years' valuations.<sup>13</sup> That single-year tax valuation divided by the number of students attending school in the district is then adjusted for the income potential of the district in the same manner as that adjustment is made for all other districts under the school facilities programs.

#### **State university and college investments**

(R.C. 3345.05(C) to (D))

The bill provides that the titles to investments made by the board of trustees of a state university or college of revenue that does not originate with a state appropriation do not vest in the state but instead are held in trust by the board of trustees. It also specifies that a board may make these investments only in accordance with an investment policy that the board has adopted in a public session. The policy must specify that investments will be made using the "prudent person" standard for investments.<sup>14</sup> Further, the policy must provide for the establishment of a reserve fund made up of money other than money originating from state funds (and possibly including accumulated investment gains) in an amount equal to at least 25% of the value of the original investment. It must also require investment only in publicly traded securities and the establishment of an

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<sup>12</sup> Those tax law changes are in R.C. 5727.111, as amended by Am. Sub. S.B. 3 of the 123rd General Assembly, not in the bill.

<sup>13</sup> The district's "second preceding tax year" is the most recent tax data available for the district.

<sup>14</sup> That standard specifies that all fiduciaries will exercise their duties "with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use . . . ."



investment committee. The committee, which must meet at least quarterly, is required to review and recommend revisions to the board's investment policy and to advise the board on its investments.

Finally, the bill permits the investment committee to retain the services of an investment advisor who must be either licensed by the state Division of Securities or registered with the U.S. Securities and Exchange Commission and have experience in the management of investments of public funds (especially of state government investment portfolios). In lieu of the specified investment experience, the advisor may be a national or state bank, a domestic association, or a savings bank authorized to receive the deposit of public money.

### **Capitol Square Review and Advisory Board membership**

(R.C. 105.41)

The Capitol Square Review and Advisory Board, which oversees the State House, Senate Building, and surrounding grounds, consists of nine members. Five of the members are appointed by the Governor and two each by the President of the Senate and Speaker of the House of Representatives. The President's and Speaker's appointees must be legislators from their respective chambers. Terms of office are for three years, except that the legislators on the board can serve only so long as they remain members of the General Assembly.

The bill allows two additional members to be added to the board. The President of the Senate is to appoint a former President of the Senate, and the Speaker of the House of Representatives is to appoint a former Speaker. However, if the President or Speaker decides for any reason not to make the appointment, or if no person is eligible or available to serve, the seat must remain vacant.

Currently, the board can take no action unless it is approved by at least five of the nine members. The bill provides that if persons are appointed to either or both of the new seats, the approval of six members is necessary to take any action.

### **Bond law clarifications**

(R.C. 151.01, 151.09, and 151.40)

The bill makes several miscellaneous clarifications to the Capital Facilities Bonds and Obligations Law, as follows:

(1) Section 6 of Article XV of the Ohio Constitution requires that the net proceeds of the state lottery be used solely for the support of elementary, secondary, vocational, and special education programs. In accordance with this

requirement, the bill specifies that net state lottery proceeds may not be pledged or used for the payment of debt service except on obligations issued for capital facilities for the public school system.

(2) Current law provides that the state's taxes, excises, and other revenues that are pledged to the payment of debt service on general obligations are deemed to be levied and collected for the purpose of paying that debt service, in addition to any other purposes for which they are levied and collected. The bill specifies that this provision applies to obligations issued for Clean Ohio conservation projects.

(3) Under current law, the term "obligations" is defined to mean bonds, notes, or other evidences of obligation of the state, including any appertaining interest coupons. The bill provides that this definition applies to obligations issued for Clean Ohio conservation and revitalization projects.

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## **HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

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