



## *Bill Analysis*

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**Am. Sub. H.B. 524\***  
124th General Assembly  
(As Passed by the House)\*\*

**Reps. Carey, Faber, Schmidt, Evans, Calvert, Flowers, Latta, Coates,  
Aslanides, Ogg, Redfern, Lendrum**

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### **BILL SUMMARY**

- Requires the School Facilities Commission each fiscal year, when it determines the districts it plans to provide assistance to during that year, to fix the priority of the next ten school districts according to their adjusted valuation per pupil.
- 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.

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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 Sub. H.B. 524 for analysis of those provisions.*

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

- 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.
- 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.
- Permits a local donated contribution under a state-assisted school facilities project to be paid directly by an entity to a contractor on behalf of the appropriate school district as long as certain conditions are satisfied.
- 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.
- Allows a school district undertaking a project under the Expedited Local Partnership Program to meet its maintenance requirement by dedicating the prescribed amount of a tax used to leverage bonds for the project.
- Permits a district undertaking a project under the Expedited Local Partnership Program to combine a ballot measure for the levy of a property tax for the maintenance of facilities under that project with a related combined bond and property tax ballot measure.
- 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 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.

- Exempts a school district participating in a school facilities project from having to obtain prior approval from the Superintendent of Public Instruction and the Tax Commissioner to submit to the voters the question of issuing debt that would result in the district's total net indebtedness exceeding 4%.
- 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.
- Requires that the Governor receive recommendations from the Ohio Housing Council for the appointees to the Ohio Housing Finance Agency who are to represent the interests of nonprofit multifamily housing development organizations or for-profit multifamily housing development corporations.
- Requires that the Ohio Finance House Agency appointees who represent multifamily housing interests be associated with organizations that regularly participate in Agency programs, and establishes conditions under which they can avoid violating certain state ethics statutes with regard to Agency contracts.
- Expands a tax exemption for major league professional athletic facilities to include minor league baseball facilities, and modifies the conditions under which the exemption can be claimed.

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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

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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.*

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.

### **Priorities for receiving assistance**

(R.C. 3318.023)

As noted above, a district's priority for funding and its relative share of the project cost under CFAP is determined by the district's wealth compared to other districts. That determination is made by calculating the three-year average adjusted valuation per pupil of all school districts, rank ordering them on a list from lowest to highest valuation, and dividing that list into percentiles. Generally, districts with lower valuations (that is in the lower percentiles of wealth) receive their funding before districts with higher valuations (in the higher percentiles). With some exceptions, the law also requires the School Facilities Commission to serve all the needs of each district within each percentile before moving on to the next higher percentile. In doing so, the Commission annually conditionally approves for assistance a select number of districts from the list of those with the lowest valuations and which have not already received CFAP assistance based on the districts' estimated project costs and the amount of funding available for the fiscal year. The projects then must be finally approved by the Controlling Board. Each approved district must raise its share of the project before entering into an agreement with the Commission for completion of the project.

The bill requires the Commission, each fiscal year when it determines the districts it plans to serve during that year, to also fix the priority of the next ten school districts according to their adjusted valuation per pupil so that future changes in valuation will not affect those districts' priority for funding. Such

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

districts are to have priority for funding under CFAP in future years over all other school districts except:

- (1) Those that are receiving additional assistance under a provision applying to districts that originally received assistance prior to May 20, 1997 and did not receive assistance for a districtwide project;<sup>5</sup>
- (2) Those receiving assistance under the Exceptional Needs Program;
- (3) Those receiving assistance under the Accelerated Urban Program; and
- (4) Those that had projects conditionally approved but whose electors did not approve bond and tax measures necessary for participating in CFAP until a later year.

**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>6</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.

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<sup>5</sup> *May 20, 1997, is the effective date of Am. Sub. S.B. 102 of the 122nd General Assembly, which created the Ohio School Facilities Commission and generally established the current framework of the Classroom Facilities Assistance Program. Under the previous state-assisted school facilities program, which was operated by the Department of Education, districts were not rank ordered by wealth, and not all of the districts that were given assistance were afforded a districtwide project. In 2000, the General Assembly provided for additional assistance to those pre-S.B.102 districts (R.C. 3318.04(B)(2), as amended by Am. Sub. S.B. 272 of the 123rd General Assembly).*

<sup>6</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).*

### 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>7</sup> The law prescribes the form of the ballot that must be presented to the voters.<sup>8</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>9</sup>

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>10</sup>

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<sup>7</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>8</sup> R.C. 3318.06(C).

<sup>9</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)).

<sup>10</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.



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 bonds issued.<sup>11</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.

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<sup>11</sup> The substantive changes to make this provision effective are in R.C. 3318.06(B) and (C) and 3318.062.



**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 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.

**Paying the "local donated contribution" directly to a contractor**

(R.C. 3318.084)

Ordinarily a school district raises its portion of the cost of acquiring classroom facilities under a state-assisted project with a voter-approved bond issue. However, the law also permits a district to generate some or all of its portion by dedicating for that purpose a local donated contribution.

At present a "local donated contribution" may take the form of money irrevocably donated or granted to the district by some source other than the state, any cash the district has on hand (which may include year-end operating balances), or a letter of credit issued on behalf of the school district. The bill also

allows money paid directly to a contractor (as opposed to being donated to the school district to pay the contractor), by a source other than the school district or the state, to be counted as a local donated contribution. In that case, the school district, the Commission, and the entity providing the local donated contribution must enter into an agreement that, among other matters, identifies the facilities to be constructed or renovated, requires an audit by the Commission of expenditures made on behalf of the district for those facilities, and specifies the maximum amount of credit to be allowed for those expenditures.

Upon completing the construction or renovation, the bill provides, the Commission must determine the actual amount that the Commission will credit toward the district's portion of the basic project cost, any project cost overruns, or the basic project cost of any future segments of the project. The actual amount of the credit is not to exceed the amount specified in the agreement or the actual cost of the project, whichever is less. The state share of the project cost may be released even if the entity providing the local donated contribution has not spent the money so dedicated, as long as the agreement has been executed.

**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))

Currently, before any state money may be released for a 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.

**Expedited Local Partnership Program**

**Dedication of tax proceeds to leverage bonds** (R.C. 3318.36). Under the School Building Assistance Expedited Local Partnership Program, a school district not already participating in the Classroom Facilities Assistance Program may enter into an agreement with the School Facilities Commission permitting the district (1) to proceed with a project to construct new classroom facilities, or to make major repairs to part of the district's existing classroom facilities and (2) apply the amount of local resources the district expends on the construction or repairs to the

basic project cost of the district's total classroom facilities needs when it does become eligible to participate in the Classroom Facilities Assistance Program. The bill allows a district undertaking a project under the Expedited Local Partnership Program to dedicate the prescribed amount of the proceeds of a tax used to leverage bonds for the project, or to dedicate a local donated contribution in an amount equivalent to the taxes that must be levied, for maintenance of the classroom facilities included in the basic project cost. (This maintenance requirement otherwise must be met by levying a tax of at least ½-mill for 23 years or dedicating an equivalent amount of a permanent improvements levy.)

**Combining ballot measures** (R.C. 5705.218). The bill also permits a school district undertaking a project under the Expedited Local Partnership Program to combine a ballot measure for the levy of a property tax for the maintenance of facilities acquired under that project with a related combined bond and property tax ballot measure.

**Adjustment in the event of 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 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. (Specifically, the valuation used is that for the tax year preceding the calendar year in which the fiscal year during which the calculation or recalculation is made begins.) 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

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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.

adjustment is made for all other districts under the school facilities programs. The bill also specifies that the calculations or recalculations are to be made beginning in fiscal year 2003.

**Elimination of certain approval requirements to exceed total net indebtedness of 4%**

(R.C. 133.06)

Under current law, a school district is forbidden to submit to a vote of the electors the question of issuing securities in an amount that would make the district's net indebtedness after issuance of the securities more than 4% of the district's tax valuation unless the Superintendent of Public Instruction, acting under policies adopted by the State Board of Education, and the Tax Commissioner, acting under written policies of the Commissioner, consent to the submission. The bill eliminates this consent requirement when a district will exceed the 4% debt limit in order to pay its share of the basic project cost of a state-assisted classroom facilities project. Instead, the School Facilities Commission will simply notify the Superintendent of Public Instruction that the district will exceed the 4% limit.

**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.

### **Ohio Housing Finance Agency membership and contracts**

(R.C. 175.03 and 2921.42)

Am. Sub. H.B. 94 of the 124th General Assembly expanded the Ohio Housing Finance Agency's governing body from nine to eleven members, and specified that of the Governor's nine appointments at least one must represent the interests of nonprofit multifamily housing development organizations and at least one the interests of for-profit multifamily housing development corporations.

The bill requires that the Governor receive recommendations from the Ohio Housing Council for the appointees representing the interests of nonprofit multifamily housing development organizations or for-profit multifamily housing development corporations. Each such appointee must be active in the represented area, meaning that the organization with which the appointee is associated regularly participates in Ohio Housing Finance Agency programs.

The bill establishes conditions under which the members representing multifamily housing development interests can avoid violating certain state ethics statutes with regard to agency contracts. No violation occurs for a contract the



agency enters into for a loan, a grant, or participation in a program administered or funded by the agency as long as (1) the contract is awarded pursuant to agency rules and (2) the member does not participate in the discussion or vote on the contract if the contract secures a grant or loan that would directly benefit the member or a family member or business associate of the member. The ethics statutes to which this provision applies prohibit a public official from:

--Having an unlawful interest in a public contract (R.C. 2921.42(A));

--Using the authority or influence of office to secure anything of value that is of such a character as to manifest a substantial and improper influence upon the official with respect to the official's duties (R.C. 102.03(D));

--Soliciting or accepting anything of value that is of such a character as to manifest a substantial and improper influence upon the official with respect to the official's duties (R.C. 102.03(E)).

**Tax exemption for minor league baseball facilities**

(R.C. 5709.081; Section 57)

Under certain conditions in existing law, the buildings, structures, and tangible personal property that make up a major league professional athletic facility are exempt from property taxation. Among the conditions are that the property must be owned by a political subdivision or a corporation controlled by a political subdivision, and controlled and managed by the political subdivision or corporation or by a designee or agent pursuant to a management or similar agreement. In addition, the property must have been constructed or acquired pursuant to a municipal development plan for a distressed area or financed in whole or part with public obligations, or be an improvement or addition to property so constructed, acquired, or financed.

The bill expands the tax exemption to include buildings, structures, and tangible personal property that make up a facility used by a class A to class AAA minor league affiliate of a major league baseball team. In addition, land acquired by a political subdivision in 1999 for a facility to which the exemption applies is exempted.

The bill also modifies the conditions that must be met for the exemption to apply. Besides being constructed or acquired pursuant to a municipal development plan for a distressed area or financed in whole or part with public obligations, a facility can be exempt if it is otherwise paid for in whole or part by one or more political subdivisions. In addition, the facility can be controlled and

managed by a tenant (not just a designee or agent) of the political subdivision or corporation that owns it pursuant to a lease or similar agreement.

The bill states that its changes are remedial in nature, and apply to the tax years and property at issue in any application for exemption pending on its effective date before the Tax Commissioner, the Board of Tax Appeals, any Court of Appeals, or the Supreme Court.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-26-02	pp. 1454-1455
Reported, H. Finance and Appropriations	03-12-02	pp. 1512-1513
Passed House (83-9)	---	---

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