- Increases to 13 months (from one year) the period after which the conditional approval of state funding for a school district's classroom facilities construction project lapses if the district voters do not approve a bond issue and tax levy to pay the district's portion of the project cost.

- Specifies procedures for setting a new project scope and cost estimate for districts for which funding has lapsed.

- Requires that funds reserved to pay the state and school district shares of all projects be spent simultaneously, in proportion to their respective shares, instead of spending the state funds first.

- Specifies procedures for close-out of projects.

- Codifies and makes permanent the Corrective Action Program.

- Eliminates the prohibition of a school district that is within three fiscal years of eligibility for the Classroom Facilities Assistance Program from participating in the Exceptional Needs Program.

- Codifies and makes permanent an Exceptional Needs sub-program to assist districts to relocate or replace a facility due to environmental contamination.

- Authorizes the School Facilities Commission, with Controlling Board approval, to provide funding to a STEM school that is not governed by a single school district board, and requires the STEM school to secure at least 50% of the total cost from nonstate sources.

- Would have revised the method for computing the wealth percentile rankings of school districts, including Expedited Local Partner districts, that had relatively higher percentages of tangible personal property valuation before the law phased out the tax on most tangible personal property (VETOED).

- Permits a school district that received classroom facilities assistance under pre-1997 law and that is eligible for additional assistance to undertake a segment that addresses only part of a facility to renovate or replace work from the earlier project.

- Adds the cost of nonrequired locally funded initiatives, in an amount of up to 50% of the district's project cost, to the list of improvements for which a district

participating in a state-assisted classroom facilities project may incur debt in excess of the ordinary debt limit of 9% of its tax valuation.

- Modifies the standards by which the Superintendent of Public Instruction may certify a school district as a "special needs" district that may exceed the ordinary debt limit to acquire permanent improvements.

- Increases the debt a "special needs" district may incur.

- Permits a joint vocational school district, in the same resolution, to commit existing or new tax levies to finance the annual debt service on bonds issued for both its state-assisted classroom facilities project and locally funded initiatives related to that project.

- Requires school districts, when applying to the School Facilities Commission to purchase energy conservation measures, to report both (1) forgone residual value of materials or equipment replaced by the energy conservation measures and (2) a baseline analysis of energy consumption data for the preceding five years.

- Requires that a district's report on its monitoring of the approved energy cost-saving measures be submitted annually to the Commission, instead of be made available to the Commission upon request.

- Authorizes the Commission to request the Director of Administrative Services to debar a contractor from contract awards for Commission projects in the same manner the Director debars contractors from contracts for other public improvements.

Background to school facilities programs

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are

served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows certain Big-Eight school districts[254] to receive CFAP assistance earlier than otherwise permitted.

Lapse of project funding

(R.C. 3318.032, 3318.05, and 3318.41)

Once a district is eligible for funding under CFAP or the Vocational School Facilities Assistance Program, it must secure local funding to pay its portion of the project cost. Usually, the district seeks approval by its voters for a bond issue and an accompanying property tax levy to pay its share. Under prior law, if the voters did not approve the bond issue and tax levy within one year after the School Facilities Commission's conditional approval of the project, the encumbrance of state funds for the project lapsed. In other words, a district had one year to secure funds to pay its share of the project. If it could not do so by that time, those state funds were offered to other eligible districts. A district for which funding lapses does have first priority for funding in the future, however.

The act extends to 13 months the period from conditional approval to lapse of funding if a district does not secure funding for its share of the project. This extension provides a district the same number of levy opportunities as before H.B. 48 of the 128th General Assembly increased the election filing deadline from 75 to 90 days.

[254] The program applies to Akron, Dayton, Cincinnati, Columbus, Cleveland, and Toledo. The other two Big-Eight districts, Canton and Youngstown, had received CFAP funding before the Accelerated Urban Program began.

New estimates for renewal of lapsed projects

(R.C. 3318.032, 3318.05, 3318.054, and 3318.41)

As noted above, a district for which state funding lapses because the voters fail to approve local funding has first priority for funding in the future. But prior law did not specify what project scope and costs a district board must resubmit to the voters after a project's funding lapses. In practice, it has been the former project scope and costs that were resubmitted, which may not reflect the district's current needs, tax valuation, and relative wealth. In fact, the new election may be years after the project was conditionally approved. Thus, what the voters approve might not be enough to pay the district's portion. Or a district might wish to scale down its project before resubmitting the project to the voters. In either case, prior law did not provide guidance to districts in seeking voter approval after their projects lapse.

The act establishes procedures for a district board to follow if it wishes to revive its project after lapse. To do so, the board must request that the School Facilities Commission set a new scope and estimated cost for the project based on the district's *current* wealth percentile and tax valuation. In the case of districts that participated in the Expedited Local Partnership Program and are now eligible for CFAP funding, their respective shares will continue to be based on the percentage specified in their Expedited Local Partner agreements.

The new scope and estimated costs are valid for one year. The district board may resubmit the project, based on the new estimates, to the district's voters. If approved by the voters, the district's project will receive first priority for funding as it becomes available, as provided under continuing law.

Simultaneous spending of state and school district shares

(R.C. 183.51, 3318.08, 3318.38, and 3318.41)

Under prior law, for all school districts except the Big-Eight districts participating in the Accelerated Urban Program or joint vocational districts, the state funds encumbered for a district's project were to be spent before the district's funds were spent. For the Accelerated Urban districts and joint vocational districts, the state and district funds must be spent simultaneously, in proportion to their respective percentages of the total project cost. The act requires simultaneous spending of the state and district shares for *all* district projects. As is the case under continuing law for the Accelerated Urban districts and joint vocational districts, the act authorizes a district to spend a greater portion of its own funds during any specific period than would otherwise be required, if necessary to maintain the federal tax status or tax-exempt status of the notes or bonds issued by the district.

Final close-out of projects

(R.C. 3318.12 and 3318.48)

The act specifies some procedures for the School Facilities Commission to use in closing out completed projects.

First, it requires the Commission to issue a "certificate of completion" to the district's board when all of the following have occurred: (1) all facilities have been completed and the district has received permanent certificates of occupancy, (2) the Commission has issued certificates of contract completion on all prime construction contracts, (3) the Commission has completed a final accounting of the district's project construction fund and determined that all payments were in compliance with Commission policies, (4) any litigation concerning the project has been resolved, and (5) all construction management services provided by the Commission have been delivered and no state funds for those services remain encumbered.

However, the act permits the Commission to issue a certificate of completion prior to satisfaction of those conditions, if the Commission determines that the circumstances preventing their satisfaction "are so minor in nature that the project should be considered complete." When doing so, the Commission may specify any of the following: (1) the work that has yet to be completed and the manner in which the district board must oversee its completion, (2) terms and conditions for the resolution of pending litigation, or (3) any remaining responsibilities of the project construction manager.

Finally, the act also permits the Commission to issue a certificate of completion even when the district does not voluntarily participate in the close-out process. The Commission may do so if the construction manager verifies that all facilities have been completed and the facilities have been occupied for at least a year. If there are any state funds remaining in the project construction fund that have not been returned within 60 days after issuance of the certificate of completion, the Auditor of State must issue a finding for recovery against the district and request legal action by the Attorney General.

Corrective Action Program

(R.C. 3318.49; Sections 620.30 and 620.31)

H.B. 462 of the 128th General Assembly, the capital reauthorization act for the 2010-2012 biennium, gave temporary authority to the School Facilities Commission and appropriated $23.3 million for grants to districts to correct defective or omitted work connected with a project. The act codifies that authority and makes it a permanent

program. Beginning July 1, 2011, the Commission must operate the program using the new codified statutory language.

For purposes of the permanent program, the Commission must define both "defective" and "omitted" and establish procedures and deadlines for districts to use in applying for assistance. The permanent authorization also differs from H.B. 462's temporary provisions as follows:

(1) It changes the deadline for a school district to notify the Commission of defects or omissions to five years after facility occupancy, instead of five years after project close-out as under H.B. 462.

(2) It states that the Commission's procedures for corrective action first must focus on engaging the responsible contractors.

(3) It requires a local share of the cost of the corrective work, based on the method used to determine respective shares of CFAP or vocational district projects. But the act allows a district to request additional state assistance if it cannot provide its share.

(4) The act requires the Commission to seek recovery from responsible parties and to apply any recovered funds first to the district's share of the cost of the corrective work and then to the state's share.

Eligibility for Exceptional Needs Program

(R.C. 3318.37)

The act eliminates the stipulation of prior law that, regardless of other qualifications, any district reasonably expected to be eligible for CFAP within three fiscal years after its application for assistance under the Exceptional Needs Program is ineligible for the Exceptional Needs Program.

As noted above, the Exceptional Needs Program provides districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, with funding in advance of their districtwide CFAP projects to address acute health and safety issues.

Environmental contamination program

(R.C. 3318.371)

In 1999, the General Assembly authorized a temporary sub-program of the Exceptional Needs Program to assist districts that needed to relocate or replace a facility

due to environmental contamination. Established in uncodified law, it has been reauthorized in every biennial budget act since. The act codifies and makes permanent that authority. As in the prior temporary provisions, the new codified sub-program is available to any district regardless of wealth. And, if a district receives restitution for the contamination from the federal government or some other public or private entity, it must repay the state any amount of that restitution that exceeds the district's share of the cost of the project under the sub-program.

On the other hand, the act's new permanent sub-program differs from the temporary sub-program in that, first, it requires the School Facilities Commission to adopt guidelines for determining district eligibility and funding. Second, it makes the Commission's use of environmental consultants optional, rather than mandatory. Third, it specifies that the contamination may include any contamination of air, soil, or water that impacts the occupants of a classroom facility. Prior uncodified law referred only to "extreme environmental contamination."

Finally, the most recent enactment of the temporary sub-program, in H.B. 1 of the 128th General Assembly, capped a district's local share at 50% of the project cost, regardless of the district's wealth ranking. The sub-program, as codified by the act, does not cap a district's share.

Classroom facilities funding for certain STEM schools

(R.C. 3318.70)

The act authorizes the School Facilities Commission, with Controlling Board approval, to provide funding to any STEM school that is not governed by a single school district board. Under the act, if the governing body of an eligible STEM school wishes to receive classroom facilities funding, it must submit a written proposal to the Commission indicating the total amount of state funding requested and the amount of nonstate funding pledged for the project, the latter of which must not be less than the requested state funding. In other words, the STEM school must secure at least 50% of the project cost from nonstate sources.

However, the act does not stipulate how the Commission should prioritize funding among eligible schools and school districts under this and its other programs. Nor does the act set any limit on the size of a STEM school's project, but, presumably, the Commission will evaluate each project in the same manner as it does under its other programs. The act does require the project agreement between the Commission and a STEM school to include a stipulation of the ownership of the classroom facilities in the event the school permanently closes.

Background

A STEM school is an independent, public science, technology, engineering, and mathematics school for any of grades 6 to 12 established through a collaborative endeavor of both public and private entities, including at least one school district.[255] They are established and receive state operating funding under one of two models. Under the original model, each STEM school receives a per-pupil amount for each of its enrolled students that is deducted from the student's resident school district, in the same manner as funds are paid to community schools. It is this type of STEM school that may receive facilities funding under the act.

Under the alternative model, a single school district board of education is the governing body of the STEM school. That district includes its resident students attending the STEM school in its student count, receives state funding directly for those students, and must allocate to the school funds at least equal to what would be calculated for the students under the open enrollment laws. If students from other districts enroll in a STEM school established under this alternative model, the Department of Education must transfer state funds from the students' resident school districts to the district operating the STEM school using the formulas of the open enrollment laws. The act does not authorize facilities funding for STEM schools established under the alternative model.

Accounting for reduced tangible personal property valuations (VETOED)

(R.C. 3318.011 and 3318.36; Section 387.70)

The Governor vetoed a provision that would have changed the way the average adjusted valuation per pupil is computed for school districts that had relatively high tangible personal property valuations before the law phased out the tax on most tangible personal property.

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, averaged over three years. That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years and is now fully phased out.[256] Thus, the value of that tangible personal property is no longer included in a district's current total taxable value. But since the formula for determining a district's wealth percentile, which in turn is used to

[255] R.C. 3326.03, not in the act. See generally R.C. Chapter 3326.

[256] R.C. 5711.22, not in the act.

determine its share of its CFAP project cost, is averaged over three years and itself includes a three-year average of a district's tax valuation, some districts may appear to have a greater tax capacity than they actually have for a few years, until that former tangible personal property valuation is no longer reflected in their averaged tax valuations.

The act would have addressed this situation by specifying that, if a school district's tangible personal property valuation, minus its public utility personal property valuation, made up 18% or more of its total taxable value for tax year 2005, its three-year "average taxable value" used in determining the wealth percentiles must include only its real property and public utility personal property tax valuations, and not its other tangible personal property tax valuation. Since the Department of Education had already certified the equity list for fiscal year 2011 to determine funding under the School Facilities Commission's programs for fiscal year 2012, the act also would have required the Department to calculate and certify a new, alternate equity list for use in fiscal year 2012 using the revised definition of "average taxable value." Finally, the act would have made an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their local share percentage when they eventually become eligible for CFAP. Under the act, when an Expedited Local Partner district became eligible for CFAP, if the district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005, the district's share of its CFAP project cost would have been the least of (1) the percentage locked in under the Expedited Local Partner agreement, (2) the percentage computed using its current wealth percentile rank, or (3) for a CFAP project approved for fiscal year 2012, the amount computed under the alternative equity list as described above.

Segmented projects for "1990 look-back" districts

(R.C. 3318.034)

A school district is permitted to divide its CFAP project into segments and to proceed with only one or more separate segments of the total project at a time. Thus, a district need not seek voter approval for a bond issue for the complete project all at once. However, (1) each segment must consist of new construction or complete renovation of one or more entire buildings, (2) the district's share of the cost of each segment must equal at least 4% of the district's tax valuation, and (3) a segment may not leave a building uncompleted.

The act exempts from these requirements certain segmented projects by "1990 look-back" districts. Those districts are ones that received assistance under CFAP as it was administered by the Department of Education before creation of the School

Facilities Commission in 1997. That program often did not provide for district-wide assistance to a district. Continuing law permits such districts to receive additional assistance, when their wealth percentiles are eligible, if they did not receive assistance for a complete district-wide renovation prior to 1997.

Under the act, when a 1990 look-back district opts to segment its new project, it may create a segment that addresses only a *part* of a facility in order to renovate or replace work done under its prior project, if the Commission determines that the renovation or replacement is necessary to protect the facility. The cost of the segment is to be shared by the state and the district in the usual manner, but the minimum size requirements described above do not apply. Also, the district need not seek a maintenance levy for that segment, as is otherwise required for all CFAP projects. (Continuing law generally requires each district participating in a state classroom facilities program to levy an additional tax of one-half mill for 23 years or generate the equivalent of that amount by some other means.)

School district debt limit

(R.C. 133.06(E) and (I); Section 733.40)

All political subdivisions, including school districts, are subject to some debt limit that is based on a percentage of their property tax valuations. The percentage and the types of debt that are included in those limits vary among types of subdivisions. Generally, a school district may not incur debt in a net amount greater than 9% of its tax valuation. However, a school district may incur debt exceeding that limit when undertaking a state-assisted classroom facilities project or if the state Superintendent certifies that the district has "special needs" for public improvements that it cannot finance without exceeding the limit. The act makes changes to both of these exceptions to the general school district debt limit.

State-assisted school facilities projects

Under continuing law, a district undertaking a state-assisted facilities project may exceed the ordinary debt limit to raise funds necessary to pay for (1) the district's share of the project, (2) the site for the project, and (3) any "required" locally funded initiatives. The School Facilities Commission may require districts to pay the entire amount for certain items that do not meet the Commission's specifications but are closely associated with the state-assisted portion of the entire project. The act adds, to this list of improvements for which the district may exceed the debt limit, the cost of other, *nonrequired* locally funded initiatives in an amount of up to 50% of the district's project cost.

Special needs districts

Upon application, the state Superintendent may declare a school district as a "special needs" district, permitting the district to incur debt in excess of the ordinary limit in order to acquire needed permanent improvements. The act makes several changes to the process to apply for a special needs certification and the amount of additional debt a special needs district may incur.

First, in applying for this certification, prior law required a district to submit to the state Superintendent a history and projection of the growth of the district's student population. The act eliminates that requirement, but it retains in continuing law the requirement that a district submit to the state Superintendent (1) a history and projection of the growth of its tax valuation, (2) its projected facilities needs, and (3) the estimated cost to meet those projected needs.

Next, the act changes the standard for certification of special needs. Under prior law, the state Superintendent could certify a district as an "approved special needs district" if the Superintendent found that the growth in the district's tax valuation during the next five years is projected to average at least 3% per year. The act reduces required projected average tax valuation growth to only 1.5% per year. It retains in continuing law a requirement that the state Superintendent also find that the district does not have available sufficient funds from state or federal sources to meet its projected facilities needs.

Finally, the act increases the amount of debt a certified special needs district may incur. Under prior law, a special needs district could incur debt equal to the greater of:

(1) 9% of the sum of its tax valuation plus the product of the tax valuation times the percentage by which the tax valuation has increased over the 60-month period prior to an election on the issuance of securities; or

(2) 9% of the sum of its tax valuation plus the product of the tax valuation times the percentage the state Superintendent projects the district's tax valuation will increase during the next 10 years.

The act increases the percentages to 12% of either sum as described above, instead of 9%.

Applicability to pending proceedings

The act provides that the provisions amending the law governing school district limits may apply to proceedings that are pending or completed, elections that are

authorized, conducted, or certified, or securities that are authorized or issued on the date those provisions take effect (September 29, 2011).

Financing under the Vocational School Facilities Assistance Program

(R.C. 3318.44)

The Vocational School Facilities Assistance Program provides assistance to joint vocational school districts (JVSDs) on a graduated, cost-sharing basis in a manner similar to other districts under CFAP. Continuing law provides JVSDs with a wide array of options for financing their shares of their projects. The act expands those options by permitting a JVSD board to combine in a single resolution propositions to commit the use of existing or new tax levies to finance the annual debt service on bonds issued for *both* its state-assisted classroom facilities project and locally funded initiatives related to that project.

Energy conservation measures

(R.C. 133.06(G) and 3313.372)

Continuing law permits a school district, subject to approval by the School Facilities Commission, to issue bonds to purchase energy conservation improvements without voter approval in an amount up to 9/10 of 1% of the district's tax valuation. The debt service on the bonds is paid with the estimated savings on energy costs. In a similar manner, districts may enter into a series of installment contracts for energy conservation improvements with the approval of the Commission.

In applying for approval, continuing law requires a district to submit to the Commission a report that includes estimates of all costs of design, engineering, installation, maintenance, repairs, debt service, and amounts by which energy consumption and resultant operational and maintenance costs may be reduced. The act adds requirements that the report also include estimates of both (1) forgone residual value of materials or equipment replaced by the new energy conservation measures, and (2) a baseline analysis of actual energy consumption data for the preceding five years.

Continuing law also requires the district board to monitor the savings and maintain a report of those savings. Under prior law, the district board had to make that report available to the Commission upon request. The act, instead, requires outright that the district board submit its report to the Commission annually.

Debarment of contractors on SFC projects

(R.C. 153.02 and 3318.31)

The act authorizes the School Facilities Commission to request the Director of Administrative Services to debar a contractor from contract awards for classroom facilities projects. The Director is to use the same grounds, and follow the same procedures, for debarring a contractor from public improvement contract awards under pre-existing law. During the period of debarment, the contractor is not eligible to bid for or participate in any contract for a public improvement or a classroom facilities project.