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## OHIO FACILITIES CONSTRUCTION COMMISSION

### Elimination of Ohio Cultural Facilities Commission; transfer of authority

- Eliminates the Ohio Cultural Facilities Commission (CFC) as of July 1, 2013.
- Transfers CFC's functions to the Ohio Facilities Construction Commission (FCC).
- Revises the requirements for a cooperative agreement between FCC and a governmental agency or cultural organization to provide construction services for a state-funded cultural project.
- Revises the conditions under which state funds may be spent on a sports facility.
- Makes changes to the permitted content and use of cultural facility-related funds.
- Specifies procedures for the transfer of CFC's responsibilities, financial obligations, employees, equipment, assets, and records to FCC and allows FCC to enter into an agreement to transfer some of those responsibilities to the Department of Administrative Services (DAS).

### Transfer of construction authority from Department of Natural Resources

- Transfers from the Department of Natural Resources (DNR) to FCC, with certain exceptions, the authority to administer DNR's capital facilities projects.
- Authorizes DNR to administer improvements under an agreement with the supervisors of a soil and water conservation district.
- Authorizes DNR to administer certain dam, waterway, wildlife, and roadway activities and projects, and requires FCC and DNR to review this provision in two years.
- Allows DNR, in the case of a public exigency, to let contracts for those dam, waterway, wildlife, and roadway activities and projects without competitive bidding or selection.
- Permits the Executive Director of FCC to allow DNR to administer any other project of which the estimated cost is not more than \$1,500,000.

### School Facilities Commission

- Requires that the Executive Director of FCC also serve as the Executive Director of the School Facilities Commission (SFC).



- Permits SFC to delegate contracting authority to FCC.
- Requires SFC to consider the extent to which its classroom facilities project design standards support the trends in educational delivery methods, including digital access and blended learning.
- Eliminates the requirement that, at the time SFC conditionally approves projects for which it intends to provide assistance for a fiscal year, it must identify and give priority to the next ten school districts in future fiscal years.
- Would have revised the method of determining a school district's priority for assistance, and local share, under the Classroom Facilities Assistance Program, if the district is participating in the Expedited Local Partnership Program and its tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005 (VETOED).
- Requires that school facilities project agreements contain stipulations ensuring compliance by the school district with the provision of continuing law requiring a district to offer to sell or lease unused real property.
- Conditions approval of a district board's request to incur debt for energy conservation measures on SFC determining that the request for approval is complete and that the modifications are consistent with a specific state-assisted school facilities project.
- Provides specific conditions for a district in fiscal watch or fiscal emergency or that has an academic distress commission to receive approval to incur debt for energy conservation measures.
- Requires that energy savings installment contracts contain a provision requiring that payment be stated as a percentage of savings and avoided costs attributable to one or more measures to be taken over a defined period of time and prescribes that payments will be made only to the extent that the projected savings and avoided costs actually occur.

### **Other provisions**

- Requires a public authority that plans to contract for design-build services and that uses an in-house criteria architect or engineer to notify FCC, instead of DAS, before the architect or engineer performs the work.



- Transfers from DAS to the Executive Director of FCC the authority to contract for the design and implementation of energy and water conservation programs for state institutions and the authority to adopt and enforce rules regarding those contracts.

### **Elimination of Ohio Cultural Facilities Commission; transfer of authority**

(R.C. 123.19, 123.201, 123.21, 123.27, 154.01, 154.23, 307.674, 3383.01 (123.28), and 3383.07 (123.281); Section 282.90; R.C. 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.08, and 3383.09 (repealed))

Effective July 1, 2013, the act eliminates the Ohio Cultural Facilities Commission (CFC), and transfers its functions to the Ohio Facilities Construction Commission (FCC).

### **Cooperative agreements to administer cultural projects**

Beginning July 1, 2013, the act requires FCC to administer the construction of state-funded cultural projects, unless FCC has entered into a cooperative agreement with a governmental agency or cultural organization in order for that agency or organization to administer the project. Under prior law, FCC could enter into an agreement with CFC or with a governmental agency or cultural organization to administer a project.

The act removes state agencies and state institutions of higher education from the definition of "governmental agency," and adds the Ohio Historical Society to the definition of "cultural organization." Under continuing law, a political subdivision, a combination of political subdivisions, the U.S. government, and entities established pursuant to an interstate compact are considered governmental agencies. The continuing definition of "cultural organization" includes a governmental agency or Ohio nonprofit corporation that provides cultural programs or activities and a regional arts and cultural district.

Under the act, a cooperative agreement between FCC and a governmental agency or cultural organization must include provisions that do all of the following:

- Specify how the project will support culture;
- Specify that the funds must be used only for construction;
- Identify the facility to be constructed, renovated, remodeled, or improved;



- Specify that the project scope meets the intent and purpose of the project appropriation and that the project can be completed and ready for full occupancy without exceeding appropriated funds;
- Specify that the governmental agency or cultural organization must hold FCC harmless from all liability for the operation and maintenance costs of the facility; and
- Provide that amendments to the agreement require FCC's approval.

Continuing law requires such an agreement to specify the following:

- That the governmental agency or cultural organization has local contributions amounting to not less than 50% of the total state funding for the project;
- That the agreement and any actions taken under it are not subject to Chapters 123. (public works) or 153. (public improvements) of the Revised Code, except for the requirements regarding the use of domestic steel products; and
- That the agreement and those actions are subject to the wage and hour requirements for public works projects.

However, under continuing law, a cooperative agreement with a cultural organization regarding a state historical facility is not required to include 50% local contributions, and the agreement and any actions taken under it are not subject to the domestic steel and wage and hour requirements.

The act also eliminates provisions of law that specified under what circumstances CFC, a cultural organization, or the Ohio Building Authority were responsible to provide general building services for an Ohio cultural facility.

### **Requirements for Ohio sports facilities**

Effective July 1, 2013, the act makes several changes to the requirements for the construction of Ohio sports facilities. First, the act eliminates provisions of law that required the governmental agency or nonprofit corporation that will own an Ohio sports facility that is financed in part by state bonds to administer the construction of the facility and to provide general building services for the facility.

The act also eliminates the requirements that the agreement for such a facility and for the provision of general building services for the facility specify (1) that the

agreement and any actions taken under it are not subject to Chapters 123. (public works) or 153. (public improvements) of the Revised Code, except for the requirements regarding the use of domestic steel products, and (2) that the agreement and those actions are subject to the wage and hour requirements for public works projects.

Finally, the act eliminates a provision of law that prohibited state funds from being spent on an Ohio sports facility unless CFC had determined that a need for the facility existed in that region of the state.

Under continuing law, state funds may not be spent on an Ohio sports facility unless the owner of the facility has presented a satisfactory financial and development plan and has provided for a contribution of not less than 85% of the total construction cost, excluding any site acquisition cost, from sources other than the state.

### **Changes to funds**

As of July 1, 2013, the act transfers responsibility for three CFC funds to FCC: the Ohio Cultural Facilities Administration Fund, the Cultural and Sports Facilities Building Fund, and the Capital Donations Fund. Under the act, the Director of Budget and Management must transfer any existing encumbrances against the CFC Administration Fund to FCC's new Ohio Cultural Facilities Administration Fund.

Subject to applicable tax law limitations, the act allows the Executive Director of FCC to ask the Director of Budget and Management to transfer to FCC's Ohio Cultural Facilities Administration Fund moneys credited to the Cultural and Sports Facilities Building Fund, instead of only interest earnings and bond premiums, to pay the cost of administering projects funded through the Cultural and Sports Facilities Building Fund.

The act also creates the Theater Equipment Maintenance Fund to receive all theater-related revenues of the Department of Administrative Services (DAS) and to pay DAS's theater-related expenses. The fund's investment earnings are to be credited to the fund. Under the act, the Director of Budget and Management must transfer from the former CFC Administration Fund to the new Theater Equipment Maintenance Fund any funds that were collected under a management contract for the Riffe Theatres.

### **Transfer provisions**

The act includes several provisions of law to facilitate the transfer of CFC's responsibilities, financial obligations, equipment, assets, records, and any employees to FCC. FCC also may enter into an interagency agreement with the Department of Administrative Services (DAS) to require DAS to perform any of the functions transferred from CFC to FCC.



The act allows FCC to designate the CFC positions, if any, to be transferred to FCC, along with any equipment assigned to those positions. Under the act, any transferred employee retains the employee's respective classification, but FCC may reassign and reclassify the employee's position and compensation if FCC determines the change to be in the best interest of office administration.

The act specifies that FCC must complete any construction activities begun but not finished by CFC, and that CFC's rules, orders, and determinations related to CFC's construction functions continue in effect as rules, orders, and determinations of FCC. The act also provides that any reference to CFC in any statute, rule, contract, grant, or other document is deemed to refer to FCC, and that FCC replaces CFC as a party to any pending judicial or administrative action or proceeding.

### **Transfer of construction authority from Department of Natural Resources**

(R.C. 1501.011; Section 715.10)

With certain exceptions, the act transfers from the Department of Natural Resources (DNR) to FCC the authority to administer DNR's construction projects. FCC administers construction and improvement projects on behalf of most state agencies.

Under the act, DNR, like other state agencies, still may administer construction projects whose estimated cost is less than \$200,000. Beginning on September 29, 2016, that amount will be adjusted periodically to reflect inflation. Additionally, the act requires DNR to administer the following types of construction and improvement projects that FCC otherwise would administer:

- (1) The construction of improvements under an agreement with the supervisors of a soil and water conservation district;
- (2) Dam repairs administered by the Division of Engineering;
- (3) Projects or improvements administered by the Division of Watercraft and funded through the Waterways Safety Fund;
- (4) Projects or improvements administered by the Division of Wildlife; and
- (5) Activities conducted by DNR in cooperation with the Department of Transportation to maintain DNR's roadway inventory.

For dam, waterway, wildlife, and roadway projects, the act allows DNR to award a contract without competitive bidding or selection if the contract involves a public exigency. The act also allows the Executive Director of FCC to authorize DNR to



administer any other project or improvement whose estimated cost, including design fees, construction, equipment, and contingency amounts, is not more than \$1,500,000.

Regarding the projects that DNR administers, the act eliminates the prior requirements under which DNR advertised for bids, awarded contracts using competitive bidding and selection, altered existing contracts under certain circumstances, and used a modified bidding process for contracts that involve a public exigency. Instead, under the act, the Public Improvements Law governs DNR-administered projects. That Law establishes the administrative, bidding, and other requirements for most public improvement projects.

Finally, two years after this portion of the act takes effect (September 29, 2015), FCC and DNR must review the provisions that give DNR construction authority for dam, waterway, wildlife, and roadway projects.

## **School Facilities Commission**

### **Executive director; contracting authority**

(R.C. 3318.31)

In 2012, H.B. 487 of the 129th General Assembly retained the School Facilities Commission (SFC) as an independent agency within FCC, an agency created by that act. This act removes the provision for appointment of a separate executive director for both commissions and instead requires that the Executive Director of FCC also serve as the Executive Director of SFC. The act also permits SFC to authorize FCC to make and enter into contracts and to execute all corresponding instruments on behalf of SFC. Under preexisting law, SFC already shares employees and facilities with FCC.

### **Next ten list**

(R.C. 3318.023 (repealed))

Under continuing law, SFC annually conditionally approves for assistance, under the Classroom Facilities Assistance Program (CFAP), 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. Under former law, SFC, each fiscal year when it determined the districts it planned to serve during that year, was required to fix the priority of the next ten school districts according to their adjusted valuations per pupil. Such districts were generally given priority for funding in future fiscal years.

The act eliminates the requirement to create the next ten list and to give those districts priority.



## **Project design standards**

(R.C. 3318.031)

The act eliminates the requirement that SFC consider the extent to which its design standards support and facilitate smaller classes and smaller schools and replaces it with a requirement to consider the extent to which the design standards support the trends in educational delivery methods, including digital access and blended learning. Under law unchanged by the act, SFC must also consider the extent to which the design standards support sufficient space for: training new teachers and promotion of collaboration among teaching professionals, teacher planning and collaboration, parent involvement activities, and innovative partnerships between schools and health and social service agencies.

## **CFAP shares for Expedited Local Partner districts (VETOED)**

(R.C. 3318.36)

The Governor vetoed a provision that would have made an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their priority and local share percentage for their eventual projects under the Classroom Facilities Assistance Program (CFAP). Under the act, if a 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 year the tax on that property began to phase out), the district's priority for CFAP funding would have been based on the *smaller* of its percentile when it entered into the Expedited Local Partnership agreement or its current percentile. In addition, the district's share of its CFAP project cost would have been the *lesser* of (1) the percentage locked in under the Expedited Local Partnership agreement or (2) the percentage computed using its current wealth percentile. Due to the phase-out of tangible personal property from districts' total taxable valuations, a district's total taxable value may be significantly lower now than it was when it entered into its Expedited Local Partnership agreement. That lower valuation could result in a higher priority for state funds and a lower share of the total cost of its state-assisted project. The act would have permitted an affected Expedited Local Partnership district to take advantage of that lower current valuation.

## **Disposal of school district property**

(R.C. 3318.08)

The act requires that the agreement between a school district and SFC for the construction of a state-assisted classroom facilities project contain stipulations ensuring



that SFC will not release project funds or approve demolition of a facility unless and until the district complies, and remains in compliance, with the provision of continuing law requiring districts to offer unused property for sale or lease to community schools and college-preparatory schools.<sup>106</sup> Continuing law already required the agreement to contain a similar stipulation regarding the right of first refusal for community schools and college preparatory boarding schools located within the district when it decides voluntarily to sell a parcel of real property.<sup>107</sup>

### **Energy conservation measures**

(R.C. 133.06 and 3313.372)

#### **Report of cost savings**

A school district may issue bonds, subject to approval by SFC but not voter approval, to purchase energy conservation improvements in an amount up to  $\frac{1}{10}$  of 1% of the district's tax valuation. In applying for approval, a district must submit to SFC 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. Under continuing law, the report must 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 three years. However, under the act, the utility baseline analysis must be based only on the actual energy consumption data for the preceding 12 months. Districts also may enter into a series of installment contracts for energy conservation improvements with the approval of SFC.

#### **Requests for approval**

Under the act, SFC may approve a district board's request for approval to incur indebtedness only after SFC determines (1) that the request for approval is complete, and (2) that the installations, modifications, or remodeling are consistent with any project to construct or acquire classroom facilities, or to reconstruct or make additions to existing classroom facilities under a state-assisted school facilities project. Continuing law also requires that prior to approval, SFC must determine that the district board's findings are reasonable.

The act also permits SFC, in consultation with the Auditor of State, to deny a request if the district has been declared to be in a state of fiscal watch and SFC finds that

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<sup>106</sup> R.C. 3313.411, not in the act.

<sup>107</sup> R.C. 3314.41, not in the act.



the expenditure of funds is not in the best interest of that district. Moreover, under the act, a district that has been declared to be under fiscal emergency must submit evidence that the installations, modifications, or remodeling have been approved by the district's financial planning and supervision commission. Likewise, a district for which the Superintendent of Public Instruction is required to establish an academic distress commission must receive prior approval of its request by its academic distress commission.<sup>108</sup>

### **Debt service**

Formerly, debt service on energy conservation bonds was to be paid with estimated savings on energy costs. The act requires that the terms of any installment contract for energy savings measures include a provision requiring that all payments, except payments for repairs and obligations upon premature contract termination, be stated as a percentage of savings and avoided costs attributable to one or more measures to be taken over a defined period of time. Under the act, debt service on energy conservation contracts must be paid only to the extent that the projected savings outlined in the contract *actually* occur. The act also requires the contractor to: (1) warrant and guarantee that the energy conservation measures will realize guaranteed savings, and (2) pay the amount of any shortfall in the projected savings.

### **Notification of use of criteria architect or engineer**

(R.C. 153.692)

The act requires a public authority that plans to contract for design-build services and that uses an in-house criteria architect or engineer to notify FCC, instead of DAS, before the architect or engineer performs the work.

### **Energy and water conservation programs**

(R.C. 156.02, 156.03, 156.04, and 156.05)

The act transfers from DAS to the Executive Director of FCC the authority to contract for the design and implementation of energy and water conservation programs for state institutions and to adopt and enforce rules regarding those contracts.

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<sup>108</sup> The Superintendent of Public Instruction must establish an academic distress commission for each school district that receives extremely low academic performance ratings for three or more consecutive years (see R.C. 3302.10, not in the act).