OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 687
134th General Assembly

Final Fiscal Note & Local Impact Statement

Click here for H.B. 687's Bill Analysis

Primary Sponsor: Rep. Oelslager

Local Impact Statement Procedure Required: No

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Highlights

Capital appropriations

- The bill makes capital appropriations totaling $3.51 billion for the FY 2023-FY 2024 biennium.
- The bill requires the Director of Budget and Management to make transfers of up to $1.50 billion from the GRF to bond funds during the FY 2023-FY 2024 biennium to support capital appropriations and permits the Office of Budget and Management (OBM) Director to make additional transfers unless disapproved by either the Speaker of the House of Representatives or the President of the Senate. Using the GRF instead of bonds would decrease the state's spending on debt service for several years.

Operating appropriations

- The bill contains new operating appropriations of approximately $1.21 billion for FY 2022. This includes GRF appropriations totaling $805.0 million and State Fiscal Recovery Fund (Fund 5CV3) appropriations totaling $401.2 million. The bill reappropriates the unexpended unencumbered balance of these appropriations at the end of FY 2022 for FY 2023.
- In particular, the bill includes $600.0 million in GRF for onshoring incentive grants, $95.0 million in GRF for local roads and $110.0 million in GRF for state roads, $101.2 million in Fund 5CV3 for local water and sewer projects, and $300.0 million in Fund 5CV3 for water reclamation project grants.

Megaproject tax incentives

- The bill modifies certain tax incentives and creates new tax incentives related to "megaprojects" by semiconductor manufacturers that could decrease state revenue by hundreds of millions of dollars across several fiscal years, depending on the level of investments by the semiconductor business and its suppliers in Ohio.

Detailed Analysis

Capital appropriations

The bill makes capital appropriations totaling $3.51 billion for the FY 2023-FY 2024 biennium. LBO's Capital Item Analysis[1] provides summary reports and detailed information on capital appropriations.

GRF transfers to support capital appropriations

The bill requires the Director of Budget and Management to transfer up to $1.50 billion from the General Revenue Fund (GRF) to the various bond funds that support the bill's capital appropriations as well as the capital reappropriations in H.B. 597 of the 134th General Assembly. These transfers can be made throughout the FY 2023-FY 2024 biennium if the Director determines that the GRF cash balance is sufficient. The bill permits the Director to transfer additional cash above the $1.50 billion, if neither the Speaker of the House of Representatives nor the President of the Senate disapprove of such transfers within seven calendar days of receiving notice from the Director itemizing the proposed transfers. The disapproval must be in writing. The Director must notify the Speaker and the President in writing within seven calendar days of making any transfer authorized under this provision of the bill.

The use of cash in the GRF to fund capital projects instead of issuing bonds will decrease the state's expenditures on debt service for several years. Financing $1.50 billion in capital projects in FY 2022 using cash may decrease debt service expenses by about $57.0 million during the FY 2023-FY 2024 biennium. Those savings would continue in future years.[2]

Operating appropriations

The bill contains a combination of GRF and State Fiscal Recovery Fund (Fund 5CV3) appropriations totaling approximately $1.21 billion in FY 2022. If all the funding is not distributed in FY 2022, the bill allows for any remaining amount to be carried forward and used in FY 2023. These appropriations are detailed in the following table.

Table 1. Operating Appropriations for the Department of Development and Department of Transportation

Fund	Appropriation Line Item	Amount ($ in millions)
Department of Development		
GRF	195459, Ohio Onshoring Incentive	$600.0
GRF	195456, Local Roads	$95.0
5CV3	195457, Local Water and Sewer	$101.2

[1] See LBO's Capital Item Analysis (PDF) which is available on LSC's website: lsc.ohio.gov/Budget Central.

[2] Total reduction in interest payments over the next 20 years could exceed $1 billion, depending on assumed 20-year bond issuance at 4.5% annual coupon rate. Please note different assumptions on bond issuance, terms, and interest rates would yield differing savings.

Table 1. Operating Appropriations for the Department of Development and Department of Transportation		
Fund	**Appropriation Line Item**	**Amount ($ in millions)**
5CV3	1956D4, Water Reclamation Project	$300.0
Department of Transportation		
GRF	775471, State Road Improvements	$110.0
	Total	**$1,206.2**

Grants issued under two of these line items – GRF line item 195459, Ohio Onshoring Incentive, and Fund 5CV3 line item 1956D4, Water Reclamation Project – may be subject to clawbacks under the terms of grant agreements between the Department of Development and a megaproject operator. This would allow the Department to recoup portions or all of the grant amounts awarded if agreed-upon job creation, payroll, or capital investment goals are not achieved.

Megaproject tax incentives

The bill modifies tax incentives applicable to a specified "megaproject" enterprise that manufactures semiconductors and related suppliers. It also creates new commercial activity tax (CAT) and sales tax expenditures for those businesses. (In continuing law, a megaproject is a large-scale development that meets certain investment or payroll thresholds.) Those provisions will decrease state revenues by hundreds of millions of dollars across several fiscal years, depending on the level of investments by the semiconductor business and its suppliers in Ohio.

Under codified law, the fiscal loss would be shared by the GRF (96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions. Decreases in CAT receipts would also affect the GRF (which receives 85% of CAT receipts), the School District Tangible Property Tax Replacement Fund (Fund 7047, 13%), and the Local Government Tangible Property Tax Replacement Fund (Fund 7081, 2%). Provisions that reduce state sales tax revenue would also reduce permissive county and transit authority sales taxes, as those taxes share the state sales tax base.

In particular, the bill expands the special tax incentives for businesses involved with a megaproject to apply to a business that intends to build a semiconductor manufacturing facility in Ohio, and its qualified suppliers. The bill modifies the definition of a "megaproject operator" to include a business that (1) is headquartered in the U.S., (2) spends at least 50% of its research and development budget in the U.S., and (3) intends to build a semiconductor manufacturing facility in Ohio. Note that the business must meet existing megaproject requirements relating to payroll or investment.[3] The bill also expands the definition of a "megaproject supplier" to include

[3] Under continuing law, a megaproject operator must compensate project employees at an average hourly wage of at least 300% of the federal minimum wage and make at least $1 billion in fixed-asset investments

a supplier to a business described above, if the supplier's products are subject to substantial manufacturing, assembly, or processing in Ohio. However, the supplier may, but does not have to, meet existing megaproject requirements relating to investment and payroll.

The bill extends eligibility for a megaproject Job Creation Tax Credit (JCTC) to both the megaproject operator or the supplier for a JCTC for a term of up to 30 years (as authorized under continuing law for any megaproject), but if the supplier does not meet existing law's investment and payroll requirements, its JCTC term may not exceed 15 years.

A provision in the bill extends existing authority for counties and municipalities to enter into a community reinvestment area (CRA) property tax exemption agreement with respect to a megaproject to the above businesses. Under continuing law, the term of the CRA is 30 years, though the bill limits this term to 15 years for a supplier that does not meet existing law's JCTC investment and payroll requirements.

New CAT and sales tax incentives for a semiconductor megaproject

The bill authorizes a new CAT incentive that would exempt receipts from the sale of new capital equipment that will be used at a semiconductor megaproject site and that, per item, costs more than $100 million.

The bill also provides for the following new sales and use tax exemptions. It expands an existing sales tax exemption for qualified research and development (R&D) equipment to include any items used primarily by a megaproject operator to perform R&D at a semiconductor megaproject site. It allows an exemption for building and construction materials that will be incorporated into a manufacturing or research and development facility at a semiconductor megaproject site. Another provision in the bill allows a sales tax exemption for certain items used in a manufacturing process at a semiconductor megaproject site.

Clawback provision

The bill requires that, if a semiconductor megaproject operator fails to meet the terms of its JCTC agreement, the Tax Credit Authority may require it to make a recoupment payment that can equal up to the amount of tax revenue loss to the state from the CAT and sales tax exemptions described above and the CAT exemption for any megaproject supplier. The bill states that the bill's new or modified CAT and sales and use tax exemptions apply on and after January 1, 2022.

Changes to existing law governing all megaproject operators and suppliers

The bill requires a megaproject operator to submit an economic impact report to the Director of Development each year, detailing their purchasing, construction, and employment activity. The bill also requires the Director of Development to issue a certificate to megaproject operators and suppliers annually, certifying that the business continues to qualify for the JCTC.

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and create at least $75 million in employee payroll. A megaproject supplier, a business that sells tangible property to a megaproject operator, is required to make at least $100 million in fixed-asset investments, create at least $10 million in employee payroll, and maintain at least $10 million in employee payroll over the term of its job creation tax credit. Other requirements apply to megaproject operators and suppliers.

(Continuing law also requires the Director to issue an annual certificate certifying that the JCTC recipient is in compliance with their agreement.)

The bill states that megaproject changes apply on and after the bill's effective date with respect to all megaproject agreements, including those entered into before the bill's effective date, so long as the bill supports the actions taken by such agreements.

Capital reappropriation adjustments

The bill redirects funding for several reappropriations in H.B. 597 of the 134th General Assembly, as shown in the table below. Overall, no increase in appropriation results from these adjustments. The bill also amends Section 223.15 of H.B. 597 to eliminate a $15,000 earmark for the Lorain Pier Planning Project. Under H.B. 597, this project would have been supported by the Parks and Recreation Improvement Fund (Fund 7035) which receives proceeds from the sale of bonds. This project will instead be supported by the GRF under appropriations made in H.B. 338 of the 134th General Assembly.

Table 2. H.B. 597 Capital Reappropriations Appropriation Line Item (ALI) and Earmark Adjustments Summary

Agency	Fund	ALI	ALI/Earmark Name	Current Amount	Proposed Amount
DDD	7033	C59064	Heinzerling Community Facilities	$350,000	$0
DNR	7035	C725E2	Lakefront Pedestrian Bridge	$3,500,000	$0
DNR	7035	C725E2	City of Cleveland-Lakefront Access Project	$1,500,000	$0
DNR	7035	C725E2	Downtown Cleveland Lakefront Access Project	$0	$5,000,000
DNR	7035	C725E2	Clear Creek Bike Path Connector	$0	$250,000
DNR	7035	C725E2	Warren County Sports Park	$0	$1,000,000
DPS	7026	C76061	Warren County Drug Taskforce Headquarters	$500,000	$0
DRC	7027	C50100	Warren County Jail Interceptor Center	$750,000	$0
FCC	7030	C23072	Madisonville Arts Center of Hamilton County	$36,000	$0
FCC	7030	C230BB	Golf Manor Volunteer Park Outdoor Amphitheater	$45,000	$0
FCC	7030	C230FM	Nancy & David Wolf Holocaust & Humanity Center	$0	$56,000
FCC	7030	C230FM	Evendale Cultural Arts Center	$0	$25,000
MHA	7033	C58001	Heinzerling Community Facilities	$0	$350,000

Finally, the bill renames several H.B. 597 reappropriation projects. These changes are as follows:

- DPS Fund 7026 line item C76076, Ohio Task Force One (OH-TF1) Warehouse, with an appropriation of $50,000, is renamed Ohio Task Force One (OH-TF1) Training Center;
- DNR Fund 7035 line item C725E2, Local Parks, Recreation, and Conservation Projects, with an earmark of $500,000 for Massillon Reservoir Park Splash Pad is renamed Massillon Park Splash Pad;
- DNR Fund 7035 line item C725E2, Local Parks, Recreation, and Conservation Projects, with an earmark of $40,000 for Rittman Youth Football Field is renamed Rittman Splash Pad;
- FCC Fund 7030 line item C230FM, Cultural and Sports Facilities, with an earmark of $64,000 for Burnison Barn is renamed Hardin County Historical Society Improvements; and
- MHA Fund 7033 line item C58001, Community Assistance Projects, with an earmark of $4,500,000 for Maryhaven-Comprehensive Addiction Center is renamed Comprehensive Addiction Center.

Ohio Facilities Construction Commission (OFCC) provisions

The bill makes several changes to the way OFCC administers or manages state agency and school facilities construction projects. Generally, OFCC may experience reduced administrative workload or increased flexibility in their administrative responsibilities as a result of these changes. These changes include the following:

- Increases the project cost limit for which OFCC may permit certain state agencies to administer a capital facilities project from $1.5 million to $3.0 million.
- Extends, from one year to two years, the timeframe within which OFCC may reimburse a school district for any amount spent on an eligible project under the Expedited Local Partnership Program (ELPP)[4] that is more than its required local share as determined after the basic project cost is recalculated when the district becomes eligible for the Classroom Facilities Assistance Program (CFAP), OFCC's main school facilities assistance program.
- Eliminates the requirement that OFCC certify to the Director of Budget and Management how it allocated the amounts credited to the Capital Donations Fund (Fund 5A10) from investment earnings during the preceding quarter of the fiscal year.

[4] ELPP is designed to give districts not yet eligible for participation in CFAP the opportunity to spend local resources on portions of their project. When the district becomes eligible for CFAP, the money spent by the district is credited against the local share of the entire master facilities plan, which is recalculated by OFCC at the time of CFAP eligibility. If the amount a school district already spent under ELPP is more than the local share under the new basic project cost, OFCC may, under current law, reimburse the school district, within one year, for the difference between the new local share calculation and the amount locally expended, provided that the total amount OFCC spends on a project does not exceed the state's portion of the recalculated basic project cost.

Professional design services or design-build services

Public authorities may experience increased flexibility and cost savings in their construction delivery methods for being exempt from certain continuing law requirements for contracts for professional design or design-build services if those contracts are $25,000 or less. Under current law, a public authority contracting for professional design services with an estimated fee of less than $50,000 is exempt from the bidding, evaluation, and ranking requirements that otherwise would apply, provided that it meets both of the following conditions: (1) the respective public authority selects a single design professional or firm from among those that have submitted a current statement of qualifications, based on the public authority's determination that the selected design professional or firm is the most qualified to provide the required professional design services, and (2) the public authority and the selected design professional or firm comply with certain requirements related to the negotiation of a contract. The bill eliminates the conditions required for a public authority to waive the bidding, evaluation, and ranking requirements to contract for professional design services or design-build services if the estimated fee is $25,000 or less, but retains them for a project with an estimated fee of more than $25,000 but less than $50,000.

Notification for in-house services on design-build projects

The bill eliminates the requirement that a public authority notify OFCC before it uses its own employee as the architect or engineer for a design-build project. To the extent that a public authority uses its own employees as architects or engineers for design-build projects, it may decrease its administrative workload by no longer having to report this information to OFCC.

AGO debt collections and recovery management system

The bill:

- Authorizes the Attorney General (AGO) to acquire and implement a secure, end-to-end collections and recovery management system that is designed to collect and recover more debt, control costs, and stay compliant with state rules and federal regulations;
- Permits AGO to enter into lease-purchase agreements to finance, or refinance, the system and provides that lease payments are to be made from the Attorney General Claims Fund (Fund 4190); and
- Requires the Director of Budget and Management, at request of the AGO, to arrange for the issuance of obligations of not more than $25 million to finance the system.

Transfer from the Clean Ohio Revitalization Fund to the Service Station Cleanup Fund

During the FY 2023-FY 2024 biennium, the bill allows the OBM Director, on request of the Director of Development, to transfer up to the remaining unobligated cash balance from the Clean Ohio Revitalization Fund (Fund 7003) to the Service Station Cleanup Fund (Fund 7100) as needed to award grants under the Abandoned Gas Station Cleanup Grant. This grant provides funding to assess and clean up former gas and service stations with documented petroleum releases. As of mid-May 2022, the unobligated cash balance in Fund 7003 is nearly $14.0 million.

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