

Ohio Public Construction Law

as amended by Am. Sub. H.B. 153

Chapter 7: PROCESS; PUBLICATION

7.10 Legal advertisements, notices, and proclamations.

For the publication of advertisements, notices, and proclamations, except those relating to proposed amendments to the Ohio Constitution, required to be published by a public officer of the state, a benevolent or other public institution, a trustee, assignee, executor, or administrator, or by or in any court of record, except when the rate is otherwise fixed by law, publishers of newspapers may charge and receive for such advertisements, notices, and proclamations rates charged on annual contracts by them for a like amount of space to other advertisers who advertise in its general display advertising columns.

For the publication of advertisements, notices, or proclamations required to be published by a public officer of a county, municipal corporation, township, school, or other political subdivision, publishers of newspapers shall establish a government rate, which shall include free publication of advertisements, notices, or proclamations on the newspaper's internet web site, if the newspaper has one. The government rate shall not exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers.

Legal advertising, except that relating to proposed amendments to the Ohio Constitution, shall be set up in a compact form, without unnecessary spaces, blanks, or headlines, and printed in not smaller than six-point type. The type used must be of such proportions that the body of the capital letter M is no wider than it is high and all other letters and characters are in proportion.

Except as provided in section 2701.09 of the Revised Code, all legal advertisements or notices shall be printed in newspapers of general circulation and also shall be posted on the state public notice web site created under section 125.182 of the Revised Code, and on a newspaper's internet web site, if the newspaper has one.

Effective Date: 09-23-1977; 09-29-2011

7.11 Publication in newspapers of general circulation.

A proclamation for an election, an order fixing the time of holding court, notice of the rates of taxation, bridge and pike notices, notice to contractors, and such other advertisements of general interest to the taxpayers as the county auditor, county treasurer, probate judge, or board of county commissioners deems proper shall be published in a newspaper of general circulation, as defined in section 7.12 of the Revised Code at the county seat. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notice shall be made in a newspaper of general circulation, as defined in such section, in such city. The cost of any publication authorized by this section, which shall be printed in display form, shall be the government rate established by such newspaper under section 7.10 of the Revised Code.

Effective Date: 09-09-1961; 09-29-2011

7.12 Qualifications for newspapers publishing legal notices.

(A) Whenever a state agency or a political subdivision of the state is required by law to make any legal publication in a newspaper, the newspaper shall also be a newspaper of general circulation. As used in the Revised Code, "newspaper" or "newspaper of general circulation," except daily law journals in

existence on or before July 1, 2011, and performing the functions described in section 2701.09 of the Revised Code for a period of three years immediately preceding any such legal publication required to be made, is a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements:

(1) It is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or sixteen pages in the tabloid format.

(2) It contains at least twenty-five per cent editorial content, which includes, but is not limited to, local news, political information, and local sports.

(3) It has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision.

(4) The publication has the ability to add subscribers to its distribution list.

(5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service "Statement of Ownership, Management, and Circulation" (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication.

(B) A person who disagrees that a publication is a "newspaper of general circulation" in which legal publication may be made under this section may deliver a written request for mediation to the publisher of the publication and to the court of common pleas of the county in which is located the political subdivision in which the publication is circulated, or in the Franklin county court of common pleas if legal publication is to be made by a state agency. The court of common pleas shall appoint a mediator, and the parties shall follow the procedures of the mediation program operated by the court.

Effective Date: 10-07-1977; 09-29-2011

7.16 [Electronic publication of notices].

(A) If a section of the Revised Code or an administrative rule requires a state agency or a political subdivision of the state to publish a notice or advertisement two or more times in a newspaper of general circulation and the section or administrative rule refers to this section, the first publication of the notice or advertisement shall be made in its entirety in a newspaper of general circulation and may be made in a preprinted insert in the newspaper, but the second publication otherwise required by that section or administrative rule may be made in abbreviated form in a newspaper of general circulation in the state or in the political subdivision, as designated in that section or administrative rule, and on the newspaper's internet web site, if the newspaper has one. The state agency or political subdivision may eliminate any further newspaper publications required by that section or administrative rule, provided that the second, abbreviated notice or advertisement meets all of the following requirements:

(1) It is published in the newspaper of general circulation in which the first publication of the notice or advertisement was made and is published on that newspaper's internet web site, if the newspaper has one.

(2) It includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice or advertisement, and includes a statement that the notice or advertisement is posted in its entirety on the state public notice web site established under section 125.182 of the Revised Code. The notice or advertisement also may be posted on the state agency's or political subdivision's internet web site.

(3) It includes the internet addresses of the state public notice web site, and of the newspaper's and state agency's or political subdivision's internet web site if the notice or advertisement is posted on

those web sites, and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for publication of the notice or advertisement.

(B) A notice or advertisement published under this section on an internet web site shall be published in its entirety in accordance with the section of the Revised Code or the administrative rule that requires the publication.

(C) If a state agency or political subdivision does not operate and maintain, or ceases to operate and maintain, an internet web site, and if the state public notice web site established under section 125.182 of the Revised Code is not operational, the state agency or political subdivision shall not publish a notice or advertisement under this section, but instead shall comply with the publication requirements of the section of the Revised Code or the administrative rule that refers to this section.

Effective Date: 09-29-2011

Chapter 9: MISCELLANEOUS

9.24 Findings for recovery.

(A) Except as may be allowed under division (F) of this section, no state agency and no political subdivision shall award a contract as described in division (G)(1) of this section for goods, services, or construction, paid for in whole or in part with state funds, to a person against whom a finding for recovery has been issued by the auditor of state on and after January 1, 2001, if the finding for recovery is unresolved.

A contract is considered to be awarded when it is entered into or executed, irrespective of whether the parties to the contract have exchanged any money.

(B) For purposes of this section, a finding for recovery is unresolved unless one of the following criteria applies:

(1) The money identified in the finding for recovery is paid in full to the state agency or political subdivision to whom the money was owed;

(2) The debtor has entered into a repayment plan that is approved by the attorney general and the state agency or political subdivision to whom the money identified in the finding for recovery is owed. A repayment plan may include a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the finding for recovery was issued.

(3) The attorney general waives a repayment plan described in division (B)(2) of this section for good cause;

(4) The debtor and state agency or political subdivision to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement.

(5) The state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the attorney general concurs, that all of the following are true:

(a) Essential services the state agency or political subdivision is seeking to obtain from the debtor cannot be provided by any other person besides the debtor;

(b) Awarding a contract to the debtor for the essential services described in division (B)(5)(a) of this section is in the best interest of the state;

(c) Good faith efforts have been made to collect the money identified in the finding of recovery.

(6) The debtor has commenced an action to contest the finding for recovery and a final determination on the action has not yet been reached.

(C) The attorney general shall submit an initial report to the auditor of state, not later than December 1, 2003, indicating the status of collection for all findings for recovery issued by the auditor of state for calendar years 2001, 2002, and 2003. Beginning on January 1, 2004, the attorney general shall submit to the auditor of state, on the first day of every January, April, July, and October, a list of all findings for recovery that have been resolved in accordance with division (B) of this section during the calendar quarter preceding the submission of the list and a description of the means of resolution. The attorney general shall notify the auditor of state when a judgment is issued against an entity described in division (F)(1) of this section.

(D) The auditor of state shall maintain a database, accessible to the public, listing persons against whom an unresolved finding for recovery has been issued, and the amount of the money identified in the unresolved finding for recovery. The auditor of state shall have this database operational on or before January 1, 2004. The initial database shall contain the information required under this division for calendar years 2001, 2002, and 2003.

Beginning January 15, 2004, the auditor of state shall update the database by the fifteenth day of every January, April, July, and October to reflect resolved findings for recovery that are reported to the auditor of state by the attorney general on the first day of the same month pursuant to division (C) of this section.

(E) Before awarding a contract as described in division (G)(1) of this section for goods, services, or construction, paid for in whole or in part with state funds, a state agency or political subdivision shall verify that the person to whom the state agency or political subdivision plans to award the contract has no unresolved finding for recovery issued against the person. A state agency or political subdivision shall verify that the person does not appear in the database described in division (D) of this section or shall obtain other proof that the person has no unresolved finding for recovery issued against the person.

(F) The prohibition of division (A) of this section and the requirement of division (E) of this section do not apply with respect to the companies, payments, or agreements described in divisions (F)(1) and (2) of this section, or in the circumstance described in division (F)(3) of this section.

(1) A bonding company or a company authorized to transact the business of insurance in this state, a self-insurance pool, joint self-insurance pool, risk management program, or joint risk management program, unless a court has entered a final judgment against the company and the company has not yet satisfied the final judgment.

(2) To medicaid provider agreements under Chapter 5111. of the Revised Code.

(3) When federal law dictates that a specified entity provide the goods, services, or construction for which a contract is being awarded, regardless of whether that entity would otherwise be prohibited from entering into the contract pursuant to this section.

(G)(1) This section applies only to contracts for goods, services, or construction that satisfy the criteria in either division (G)(1)(a) or (b) of this section. This section may apply to contracts for goods, services, or construction that satisfy the criteria in division (G)(1)(c) of this section, provided that the contracts also satisfy the criteria in either division (G)(1)(a) or (b) of this section.

(a) The cost for the goods, services, or construction provided under the contract is estimated to exceed twenty-five thousand dollars.

(b) The aggregate cost for the goods, services, or construction provided under multiple contracts entered into by the particular state agency and a single person or the particular political subdivision and a single person within the fiscal year preceding the fiscal year within which a contract is being entered into by that same state agency and the same single person or the same political subdivision and the same single person, exceeded fifty thousand dollars.

(c) The contract is a renewal of a contract previously entered into and renewed pursuant to that preceding contract.

(2) This section does not apply to employment contracts. (H) As used in this section:

(1) "State agency" has the same meaning as in section [9.66](#) of the Revised Code.

(2) "Political subdivision" means a political subdivision as defined in section [9.82](#) of the Revised Code that has received more than fifty thousand dollars of state money in the current fiscal year or the preceding fiscal year.

(3) "Finding for recovery" means a determination issued by the auditor of state, contained in a report the auditor of state gives to the attorney general pursuant to section [117.28](#) of the Revised Code, that public money has been illegally expended, public money has been collected but not been accounted for, public money is due but has not been collected, or public property has been converted or misappropriated.

(4) "Debtor" means a person against whom a finding for recovery has been issued.

(5) "Person" means the person named in the finding for recovery.

(6) "State money" does not include funds the state receives from another source and passes through to a political subdivision.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-29-2004; 10-01-2005; 2008 HB562 09-22-2008; 09-29-2011

9.30 Public utility service without bidding and notice.

The appropriate public officer of the state, county, municipal corporation, township, school, or other public body or institution, may acquire the service, product, or commodity of a public utility at the schedule of rates and charges applicable to such service, product, or commodity on file with the public utilities commission, or the applicable charge established by a utility operating its property not for profit, at any location where such public utility service, product, or commodity is not available, from alternate public utilities, without the necessity of advertising to obtain bids, and without notice, irrespective of the amount of money involved.

Effective Date: 09-29-1955

9.31 Erroneous bids.

A bidder for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the Ohio department of transportation, for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, highway, or other improvement

may withdraw his bid from consideration if the price bid was substantially lower than the other bids, providing the bid was submitted in good faith, and the reason for the price bid being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, or material made directly in the compilation of the bid. Notice of a claim of right to withdraw such bid must be made in writing filed with the contracting authority within two business days after the conclusion of the bid opening procedure.

No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder.

No bidder who is permitted to withdraw a bid shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted, without the approval of the contracting authority. The person to whom the contract was awarded and the withdrawing bidder are jointly liable to the contracting authority in an amount equal to any compensation paid to or for the benefit of the withdrawing bidder without such approval, in addition to the penalty provided in section [2913.31](#) of the Revised Code.

If a bid is withdrawn under authority of this section, the contracting authority may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding. In the event the contracting authority resubmits the project for bidding the withdrawing bidder shall pay the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, if the contracting authority finds that such costs would not have been incurred but for such withdrawal.

The contracting authority, if it intends to contest the right of a bidder to withdraw a bid, shall hold a hearing thereon within ten days after the opening of such bids and issue any order allowing or denying the claim of such right within five days after such hearing is concluded. The contracting authority shall give to the withdrawing bidder timely and reasonable notice of the time and place of any such hearing. The contracting authority shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. Such order may be appealed under section [119.12](#) of the Revised Code. The bidder shall pay the costs of the hearing.

In the event the contracting authority denies the claim for withdrawal and the bidder elects to appeal or otherwise refuses to perform, the contracting authority may reject all bids or award to the next lowest bidder.

Effective Date: 08-01-1980

9.311 Bonds accompanying bid to be executed by approved surety.

(A) A bid for a contract with the state or any political subdivision, district, institution, or other agency of the state, for the rendering of services, or the supplying of materials, or for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, highway, or other improvement shall be deemed nonresponsive and shall be rejected if the bidder submits with his bid a bid bond, performance bond, payment bond, or combination of those bonds, executed by a surety not licensed, or a surplus lines company not approved, by the superintendent of insurance to execute such a bond in the state.

(B) All of those bonds shall affirmatively state on their face that the surety is authorized to execute bonds in the state and that the liability incurred is within the limits of section [3929.02](#) of the Revised Code. Failure to include this statement shall not cause the bid to be deemed nonresponsive and rejected if the surety is in fact authorized to execute bonds in the state and the liability incurred is within the limits of section [3929.02](#) of the Revised Code.

Effective Date: 08-08-1991

9.312 Factors to determine whether bid is responsive and bidder is responsible.

(A) If a state agency or political subdivision is required by law or by an ordinance or resolution adopted under division (C) of this section to award a contract to the lowest responsive and responsible bidder, a bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the state agency or political subdivision shall consider in determining whether a bidder on the contract is responsible include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly.

For purposes of this division, the provision of a bid guaranty in accordance with divisions (A)(1) and (B) of section [153.54](#) of the Revised Code issued by a surety licensed to do business in this state is evidence of financial responsibility, but a state agency or political subdivision may request additional financial information for review from an apparent low bidder after it opens all submitted bids. A state agency or political subdivision shall keep additional financial information it receives pursuant to a request under this division confidential, except under proper order of a court. The additional financial information is not a public record under section [149.43](#) of the Revised Code.

An apparent low bidder found not to be responsive and responsible shall be notified by the state agency or political subdivision of that finding and the reasons for it. Except for contracts awarded by the department of administrative services pursuant to section [125.11](#) of the Revised Code, the notification shall be given in writing and by certified mail. When awarding contracts pursuant to section [125.11](#) of the Revised Code, the department may send such notice in writing by first class mail.

(B) Where a state agency or a political subdivision that has adopted an ordinance or resolution under division (C) of this section determines to award a contract to a bidder other than the apparent low bidder or bidders for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, it shall meet with the apparent low bidder or bidders upon a filing of a timely written protest. The protest must be received within five days of the notification required in division (A) of this section. No final award shall be made until the state agency or political subdivision either affirms or reverses its earlier determination. Notwithstanding any other provisions of the Revised Code, the procedure described in this division is not subject to Chapter 119. of the Revised Code.

(C) A municipal corporation, township, school district, board of county commissioners, any other county board or commission, or any other political subdivision required by law to award contracts by competitive bidding may by ordinance or resolution adopt a policy of requiring each competitively bid contract it awards to be awarded to the lowest responsive and responsible bidder in accordance with this section.

Effective Date: 09-20-2002

9.313 Reduction of performance bond after substantial performance.

A contract for the rendering of services or the supplying of materials entered into on or after the effective date of this section shall be deemed to include a provision that authorizes the contracting authority, in its sole discretion, to reduce any bond filed by the person contracting to render the services or supply the materials by twenty-five per cent of the total amount of the bond upon demonstration satisfactory to the contracting authority that at least fifty per cent of the services have been rendered or

materials have been supplied in accordance with the terms of the contract, and by fifty per cent of the total amount of the bond upon demonstration satisfactory to the contracting authority that at least seventy-five per cent of the services have been rendered or materials have been supplied in accordance with the terms of the contract.

As used in this section, "contracting authority" means an officer, board, or other authority of the state or any political subdivision, district, institution, or other agency thereof authorized to contract for the rendering of services or the supplying of materials, but does not include an officer, board, or other authority of the Ohio Department of Transportation.

Effective Date: 04-16-1993

9.314 Purchasing services or supplies by reverse auction.

(A) As used in this section:

(1) "Contracting authority" has the same meaning as in section [307.92](#) of the Revised Code.

(2) "Political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state and also includes a contracting authority.

(3) "Reverse auction" means a purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the internet.

(4) "Services" means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

(5) "Supplies" means all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property.

(B)(1) Whenever any political subdivision determines that the use of a reverse auction is advantageous to the political subdivision, the political subdivision, in accordance with this section and rules the political subdivision shall adopt, may purchase services or supplies by reverse auction.

(2) A political subdivision shall not purchase supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.

(C) A political subdivision shall solicit proposals through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors. The political subdivision shall give notice of the request for proposals in accordance with the rules it adopts.

(D) As provided in the request for proposals and in the rules a political subdivision adopts, and to ensure full understanding of and responsiveness to solicitation requirements, the political subdivision may conduct discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. The political subdivision shall accord offerors fair and equal treatment with respect to any opportunity for discussion regarding any clarification, correction, or revision of their proposals.

(E) A political subdivision may award a contract to the offeror whose proposal the political subdivision determines to be the most advantageous to the political subdivision, taking into consideration factors

such as price and the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

(F) The rules that a political subdivision adopts under this section may require the provision of a performance bond, or another similar form of financial security, in the amount and in the form specified in the rules.

(G) If a political subdivision is required by law to purchase services or supplies by competitive sealed bidding or competitive sealed proposals, a purchase made by reverse auction satisfies that requirement.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-26-2001; 09-16-2004; 11-05-2004

9.315 Requiring particular surety or insurance company or a particular agent or broker on public bids prohibited.

(A) As used in sections 9.315 and [9.316](#) of the Revised Code:

(1) "Public authority" means the state or a county, township, municipal corporation, school district, or other political subdivision of the state, or any public agency, authority, board, commission, instrumentality, or special district of the state or of a county, township, municipal corporation, school district, or other political subdivision of the state.

(2) "Self-insured public authority" means a public authority that has been granted the privilege to self-insure a construction project against workers' compensation liability by the administrator of workers' compensation pursuant to division (O) of section [4123.35](#) of the Revised Code.

(B) No officer, employee, or other agent of a public authority, in issuing an invitation for bids or a request for proposals for a contract with the public authority for the rendering of services or the supplying of materials, or for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, highway, or other improvement, shall, directly or indirectly, require that any bid bond, performance bond, payment bond, or other bond, or any insurance policy, required under the contract be furnished by or acquired from a particular surety or insurance company or a particular agent or broker.

(C) Division (B) of this section does not apply to any insurance policy entered into by a self-insured public authority in connection with a contract otherwise subject to this section. This division does not exempt any bid bond, performance bond, payment bond, or other bond from the appropriate application of division (B) of this section.

Effective Date: 05-16-2002

9.316 Injunctive relief.

(A) A person that is likely to be damaged by a violation of section [9.315](#) of the Revised Code may commence a civil action for injunctive relief against the public authority, and the court of common pleas involved in that action may grant injunctive relief based on the principles of equity and on the terms that the court considers reasonable. Proof of monetary damage or loss of profits is not required in a civil action commenced under this division.

(B) The court may award reasonable attorney's fees and court costs to the prevailing party in a civil action authorized by division (A) of this section.

Effective Date: 05-16-2002

9.317 Purchase of supplies or services by reverse auction.

As used in this section, "reverse auction" has the meaning defined in section [9.314](#) of the Revised Code, and "state agency" has the meaning defined in section [9.23](#) of the Revised Code.

A state agency shall not purchase supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.

Added by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

9.32 Notification of surety and agent of construction contract award.

Whenever the state, or any political subdivision, district, institution, or other agency thereof awards a contract for the construction, demolition, alteration, repair, or reconstruction of a public improvement, the contracting authority shall simultaneously notify the surety on the contractor's bond of the award and the agent of the surety who executed the bond on behalf of the surety. The notice shall be given in writing and mailed to the surety and the agent whose names and addresses appear on the bond.

Effective Date: 08-01-1980

9.33 Construction management services definitions.

As used in sections 9.33 to [9.335](#) of the Revised Code:

(A) "Construction manager" means a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement, but does not mean the person who provides the professional design services or who actually performs the construction, demolition, alteration, repair, or reconstruction work on the project.

(B)(1) "Construction manager at risk" means a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement and who provides the public authority a guaranteed maximum price as determined in section 9.334 of the Revised Code.

(2) As used in division (B)(1) of this section:

(a) "Construct" includes performing, or subcontracting for performing, construction, demolition, alteration, repair, or reconstruction.

(b) "Manage" includes approving bidders and awarding subcontracts for furnishing materials regarding, or for performing, construction, demolition, alteration, repair, or reconstruction.

(C) "Construction management contract" means a contract between a public authority and another person obligating the person to provide construction management services.

(D) "Construction management services" or "management services" means the range of services that either a construction manager or a construction manager at risk may provide.

(E) "Qualified" means having the following qualifications:

(1) Competence to perform the required management services as indicated by the technical training, education, and experience of the construction manager's or construction manager at risk's personnel, especially the technical training, education, and experience of the construction manager's or construction manager at risk's employees who would be assigned to perform the services;

(2) Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously;

(3) Past performance as reflected by the evaluations of previous clients with respect to factors such as control of costs, quality of work, and meeting of deadlines;

(4) Financial responsibility as evidenced by the capability to provide a letter of credit pursuant to Chapter 1305. of the Revised Code, a surety bond, certified check, or cashier's check in an amount equal to the value of the construction management contract, or by other means acceptable to the public authority;

(5) Other similar factors.

(F)(1) "Public or construction manager at risk's" means the state, any state institution of higher education as defined in section 3345.011 of the Revised Code, any county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision.

(2) "Public authority" does not include the Ohio turnpike commission.

(G) "Open book pricing method" means a method in which a construction manager at risk provides the public authority, at the public authority's request, all books, records, documents, and other data in its possession pertaining to the bidding, pricing, or performance of a construction management contract awarded to the construction manager at risk.

Effective Date: 11-24-1995; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

9.331 Notice of accepting bids for construction manager.

(A) Before entering into a contract to employ a construction manager or construction manager at risk, a public authority shall advertise, in a newspaper of general circulation in the county where the contract is to be performed, and may advertise by electronic means pursuant to rules adopted by the director of administrative services, notice of its intent to employ a construction manager or construction manager at risk. The notice shall invite interested parties to submit proposals for consideration and shall be published at least thirty days prior to the date for accepting the proposals. The public authority also may advertise the information contained in the notice in appropriate trade journals and otherwise notify persons believed to be interested in employment as a construction manager or construction manager at risk.

(B) The advertisement shall include a general description of the project, a statement of the specific management services required, and a description of the qualifications required for the project.

Effective Date: 06-14-1988; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

9.332 Selection of and contract with construction manager.

Every public authority planning to contract for construction management services with a construction manager shall evaluate the proposals submitted and may hold discussions with individual construction

managers to explore further their proposals, the scope and nature of the services they would provide, and the various technical approaches they may take regarding the project. Following this evaluation, the public authority shall:

(A) Select and rank no fewer than three construction managers that it considers to be the most qualified to provide the required construction management services, except when the public authority determines in writing that fewer than three qualified construction managers are available in which case it shall select and rank them;

(B) Negotiate a contract with the construction manager ranked most qualified to perform the required services at a compensation determined in writing to be fair and reasonable. Contract negotiations shall be directed toward:

(1) Ensuring that the construction manager and the public authority have a mutual understanding of the essential requirements involved in providing the required services;

(2) Determining that the construction manager will make available the necessary personnel, equipment, and facilities to perform the services within the required time.

(C) Upon failure to negotiate a contract with the construction manager ranked most qualified, the public authority shall inform the construction manager in writing of the termination of negotiations and enter into negotiations with the construction manager ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified construction manager selected and ranked pursuant to division (A) of this section, in order of ranking, until a contract is negotiated.

(D) If the public authority fails to negotiate a contract with any of the construction managers selected pursuant to division (A) of this section, the public authority may select and rank additional construction managers, based on their qualifications, and negotiations may continue as with the construction managers selected and ranked initially until a contract is negotiated.

(E) Nothing in this section affects a public authority's right to accept or reject any or all proposals in whole or in part.

Effective Date: 11-24-1995; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

9.333 Financial assurance to be provided by construction manager.

(A) No public authority shall enter into a construction management contract with a construction manager unless the construction manager provides a letter of credit pursuant to Chapter 1305. of the Revised Code, a surety bond pursuant to sections [153.54](#) and [153.57](#) of the Revised Code, a certified check or cashier's check in an amount equal to the value of the construction management contract for the project, or provides other reasonable financial assurance of a nature and in an amount satisfactory to the public authority. The public authority may waive this requirement for good cause.

(B) Before construction begins pursuant to a construction management contract with a construction manager at risk, the construction manager at risk shall provide a surety bond to the public owner in accordance with rules adopted by the director of administrative services under Chapter 119. of the Revised Code.

Effective Date: 11-24-1995; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

9.334 [Selection of and contract with construction manager at risk].

(A) Every public authority planning to contract for construction management services with a construction manager at risk shall evaluate the proposals submitted and select not fewer than three construction managers at risk the public authority considers to be the most qualified to provide the required construction management services, except that the public authority shall select and rank fewer than three when the public authority determines in writing that fewer than three qualified construction managers at risk are available.

(B) The public authority shall provide each construction manager at risk selected under division (A) of this section with a description of the project, including a statement of available design detail, a description of how the guaranteed maximum price for the project shall be determined, including the estimated level of design detail upon which the guaranteed maximum price shall be based, the form of the construction management contract, and a request for a pricing proposal.

(C) The pricing proposal of each construction manager at risk shall include at least the following regarding the construction manager at risk:

(1) A list of key personnel for the project;

(2) A statement of the general conditions and contingency requirements;

(3) A fee proposal divided into a preconstruction fee, a construction fee, and the portion of the construction fee to be at risk in a guaranteed maximum price.

(D) The public authority shall evaluate the submitted pricing proposals and may hold discussions with individual construction managers at risk to explore their proposals further, including the scope and nature of the proposed services and potential technical approaches.

(E) After evaluating the pricing proposals, the public authority shall rank the selected construction managers at risk based on its evaluation of the value of each pricing proposal, with such evaluation considering the proposed cost and qualifications.

(F) The public authority shall enter into negotiations for a construction management contract with the construction manager at risk whose pricing proposal the public authority determines to be the best value under division (E) of this section. Contract negotiations shall be directed toward:

(1) Ensuring that the construction manager at risk and the public authority mutually understand the essential requirements involved in providing the required construction management services, including the provisions for the use of contingency funds and the possible distribution of savings in the final costs of the project;

(2) Ensuring that the construction manager at risk will be able to provide the necessary personnel, equipment, and facilities to perform the construction management services within the time required by the construction management contract;

(3) Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the public authority to the construction manager at risk for the project and that shall include the costs of all the work, the cost of its general conditions, the contingency, and the fee payable to the construction manager at risk.

(G)(1) If the public authority fails to negotiate a construction management contract with the construction manager at risk whose pricing proposal the public authority determines to be the best value

under division (E) of this section, the public authority shall inform the construction manager at risk, in writing, of the termination of negotiations.

(2) Upon terminating negotiations, the public authority may enter into negotiations as provided in this section with the construction manager at risk that the public authority ranked next highest under division (E) of this section. If negotiations fail, the public authority may enter into negotiations as provided in this section with the construction manager at risk the public authority ranked next highest under division (E) of this section.

(3) If a public authority fails to negotiate a construction management contract with a construction manager at risk whose pricing proposal the public authority determines to be the best value under division (E) of this section, the public authority may select additional construction managers at risk to provide pricing proposals to the public authority pursuant to this section or may select an alternative delivery method for the project.

(H) If the public authority and construction manager at risk fail to agree on a guaranteed maximum price, nothing in this section shall prohibit the public authority from allowing the construction manager at risk to provide the management services that a construction manager is authorized to provide.

(I) Nothing in this section affects a public authority's right to accept or reject any or all proposals in whole or in part.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

9.335 [Precedence of Revised Code provisions].

The requirements set forth in sections 9.33 to 9.334 of the Revised Code for the bidding, selection, and award of a construction management contract by a public authority prevail in the event of any conflict with a provision of Chapter 153. of the Revised Code.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

9.47 Certificate of compliance with affirmative action programs.

(A) Any person desiring to bid on a contract awarded pursuant to Chapter 153. of the Revised Code by an owner referred to in section [153.01](#) of the Revised Code or awarded by the director of transportation pursuant to Chapter 5525. of the Revised Code may make application for a certificate of compliance with affirmative action programs. Application shall be made to the equal employment opportunity coordinator of the department of administrative services or the employee who succeeds to that officer's duties. The coordinator shall promptly determine whether the person has complied with all federal affirmative action programs to which the person was subject and any state affirmative action program to which the person was subject pursuant to section [153.59](#) of the Revised Code which state or federal affirmative action program arose out of a contract the person had with the federal government, the state, or a political subdivision of the state. Where the coordinator determines the person has not committed any violation of such prior affirmative action programs during the five years immediately preceding the date of determination, the coordinator shall issue a dated certificate of compliance with affirmative action programs. The coordinator may issue an updated certificate to a person upon request but not more frequently than once every one hundred eighty days. A person who violates an affirmative action program during the five years preceding the date of determination is ineligible to bid on a contract awarded pursuant to Chapter 153. of the Revised Code by an owner referred to in section [153.01](#) of the Revised Code or awarded by the director of transportation pursuant to Chapter 5525. of the Revised Code for a period of three years after the date of determination.

(B) Notwithstanding division (A) of this section, this section is prospective in operation only and applicable to a violation of an affirmative action program that occurs after December 13, 1979. For the purpose of determining whether or not to issue a certificate of compliance with affirmative action

programs during the five years subsequent to December 13, 1979, the coordinator shall make any specific determination based upon the period from December 13, 1979 to the date on which the determination is made, even though the period involved is less than five years. Five years after December 13, 1979, the coordinator shall make any determination solely pursuant to division (A) of this section.

(C) Any person denied a certificate or an updated certificate may appeal to the director of administrative services for a review of the coordinator's determination. The appeal must be filed within ten days of the date of the determination. The director shall within five days after receipt of the appeal, either affirm or reverse the coordinator's determination.

(D) Any person dissatisfied with the decision of the director on review may, within thirty days, appeal the decision of the director to the court of common pleas of Franklin county. The court may affirm or reverse the decision of the director. At the hearing before the court, evidence may be introduced for and against the decision of the director. The decision of the court may be appealed as in other cases.

(E) The director of administrative services, in accordance with Chapter 119. of the Revised Code, shall adopt, and may amend or rescind, rules to implement this section.

Effective Date: 11-15-1981

9.56 Plans and drawings for public buildings filed with county recorder.

(A) As used in this section, "owner of any public building" means any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

(B) Except as otherwise provided in division (C) of this section, the owner of any public building, within thirty days after the completion of the project, shall file the plans and drawings representing the building as built for any such public building constructed or being constructed after the effective date of this section with the county recorder in the county where the building is located. The plans and drawings and the paper, inks, and markings used thereon shall be of a quality that ensures a legible reproduction.

(C) No plans and drawings representing the building as built need be filed for a building under division (B) of this section if either of the following applies:

(1) A political subdivision approves the plans and drawings representing the building as built for that building and records and maintains the plans and drawings and makes them available for public inspection and the plans and drawings and the paper, inks, and markings used thereon are of a quality that ensures a legible reproduction.

(2) The building is located in a political subdivision that records and maintains the plans and drawings representing the building as built and makes them available for public inspection and the plans and drawings and the paper, inks, and markings used thereon are of a quality that ensures a legible reproduction.

(D) No plans and drawings shall be destroyed or transferred without approval by the county recorder.

Effective Date: 05-01-1992

Chapter 123: DEPARTMENT OF ADMINISTRATIVE SERVICES - PUBLIC WORKS

123.01 Powers and duties.

(A) The department of administrative services, in addition to those powers enumerated in Chapters 124. and 125. of the Revised Code and provided elsewhere by law, shall exercise the following powers:

(1) To prepare, or contract to be prepared, by licensed engineers or architects, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for any projects, improvements, or public buildings to be constructed by state agencies that may be authorized by legislative appropriations or any other funds made available therefor, provided that the construction of the projects, improvements, or public buildings is a statutory duty of the department. This section does not require the independent employment of an architect or engineer as provided by section [153.01](#) of the Revised Code in the cases to which that section applies nor affect or alter the existing powers of the director of transportation.

(2) To have general supervision over the construction of any projects, improvements, or public buildings constructed for a state agency and over the inspection of materials previous to their incorporation into those projects, improvements, or buildings;

(3) To make contracts for and supervise the construction of any projects and improvements or the construction and repair of buildings under the control of a state agency, except contracts for the repair of buildings under the management and control of the departments of public safety, job and family services, mental health, developmental disabilities, rehabilitation and correction, and youth services, the bureau of workers' compensation, the rehabilitation services commission, and boards of trustees of educational and benevolent institutions and except contracts for the construction of projects that do not require the issuance of a building permit or the issuance of a certificate of occupancy and that are necessary to remediate conditions at a hazardous waste facility, solid waste facility, or other location at which the director of environmental protection has reason to believe there is a substantial threat to public health or safety or the environment. These contracts shall be made and entered into by the directors of public safety, job and family services, mental health, developmental disabilities, rehabilitation and correction, and youth services, the administrator of workers' compensation, the rehabilitation services commission, the boards of trustees of such institutions, and the director of environmental protection, respectively. All such contracts may be in whole or in part on unit price basis of maximum estimated cost, with payment computed and made upon actual quantities or units.

(4) To prepare and suggest comprehensive plans for the development of grounds and buildings under the control of a state agency;

(5) To acquire, by purchase, gift, devise, lease, or grant, all real estate required by a state agency, in the exercise of which power the department may exercise the power of eminent domain, in the manner provided by sections [163.01](#) to [163.22](#) of the Revised Code;

(6) To make and provide all plans, specifications, and models for the construction and perfection of all systems of sewerage, drainage, and plumbing for the state in connection with buildings and grounds under the control of a state agency;

(7) To erect, supervise, and maintain all public monuments and memorials erected by the state, except where the supervision and maintenance is otherwise provided by law;

(8) To procure, by lease, storage accommodations for a state agency;

(9) To lease or grant easements or licenses for unproductive and unused lands or other property under the control of a state agency. Such leases, easements, or licenses shall be granted for a period not to exceed fifteen years and shall be executed for the state by the director of administrative services and

the governor and shall be approved as to form by the attorney general, provided that leases, easements, or licenses may be granted to any county, township, municipal corporation, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, conservancy district, or other political subdivision or taxing district, or any agency of the United States government, for the exclusive use of that agency, political subdivision, or taxing district, without any right of sublease or assignment, for a period not to exceed fifteen years, and provided that the director shall grant leases, easements, or licenses of university land for periods not to exceed twenty-five years for purposes approved by the respective university's board of trustees wherein the uses are compatible with the uses and needs of the university and may grant leases of university land for periods not to exceed forty years for purposes approved by the respective university's board of trustees pursuant to section [123.77](#) of the Revised Code.

(10) To lease space for the use of a state agency;

(11) To have general supervision and care of the storerooms, offices, and buildings leased for the use of a state agency;

(12) To exercise general custodial care of all real property of the state;

(13) To assign and group together state offices in any city in the state and to establish, in cooperation with the state agencies involved, rules governing space requirements for office or storage use;

(14) To lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, buildings, structures, and other improvements for any public purpose, and, in conjunction therewith, to grant leases, easements, or licenses for lands under the control of a state agency for a period not to exceed forty years. The lease-purchase plan shall provide that at the end of the lease period, the buildings, structures, and related improvements, together with the land on which they are situated, shall become the property of the state without cost.

(a) Whenever any building, structure, or other improvement is to be so leased by a state agency, the department shall retain either basic plans, specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders all needed information or, alternatively, all of the following plans, details, bills of materials, and specifications:

(i) Full and accurate plans suitable for the use of mechanics and other builders in the improvement;

(ii) Details to scale and full sized, so drawn and represented as to be easily understood;

(iii) Accurate bills showing the exact quantity of different kinds of material necessary to the construction;

(iv) Definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needed information;

(v) A full and accurate estimate of each item of expense and of the aggregate cost thereof.

(b) The department shall give public notice, in such newspaper, in such form, and with such phraseology as the director of administrative services prescribes, published once each week for four consecutive weeks, of the time when and place where bids will be received for entering into an agreement to lease to a state agency a building, structure, or other improvement. The last publication shall be at least eight days preceding the day for opening the bids. The bids shall contain the terms upon which the builder would propose to lease the building, structure, or other improvement to the state agency. The form of the bid approved by the department shall be used, and a bid is invalid and shall not be considered unless that form is used without change, alteration, or addition. Before submitting bids pursuant to this section, any builder shall comply with Chapter 153. of the Revised Code.

(c) On the day and at the place named for receiving bids for entering into lease agreements with a state agency, the director of administrative services shall open the bids and shall publicly proceed immediately to tabulate the bids upon duplicate sheets. No lease agreement shall be entered into until the bureau of workers' compensation has certified that the person to be awarded the lease agreement has complied with Chapter 4123. of the Revised Code, until, if the builder submitting the lowest and best bid is a foreign corporation, the secretary of state has certified that the corporation is authorized to do business in this state, until, if the builder submitting the lowest and best bid is a person nonresident of this state, the person has filed with the secretary of state a power of attorney designating the secretary of state as its agent for the purpose of accepting service of summons in any action brought under Chapter 4123. of the Revised Code, and until the agreement is submitted to the attorney general and the attorney general's approval is certified thereon. Within thirty days after the day on which the bids are received, the department shall investigate the bids received and shall determine that the bureau and the secretary of state have made the certifications required by this section of the builder who has submitted the lowest and best bid. Within ten days of the completion of the investigation of the bids, the department shall award the lease agreement to the builder who has submitted the lowest and best bid and who has been certified by the bureau and secretary of state as required by this section. If bidding for the lease agreement has been conducted upon the basis of basic plans, specifications, bills of materials, and estimates of costs, upon the award to the builder the department, or the builder with the approval of the department, shall appoint an architect or engineer licensed in this state to prepare such further detailed plans, specifications, and bills of materials as are required to construct the building, structure, or improvement. The department shall adopt such rules as are necessary to give effect to this section. The department may reject any bid. Where there is reason to believe there is collusion or combination among bidders, the bids of those concerned therein shall be rejected.

(15) To acquire by purchase, gift, devise, or grant and to transfer, lease, or otherwise dispose of all real property required to assist in the development of a conversion facility as defined in section 5709.30 of the Revised Code as that section existed before its repeal by Amended Substitute House Bill 95 of the 125th general assembly;

(16) To lease for a period not to exceed forty years, notwithstanding any other division of this section, the state-owned property located at 408-450 East Town Street, Columbus, Ohio, formerly the state school for the deaf, to a developer in accordance with this section. "Developer," as used in this section, has the same meaning as in section [123.77](#) of the Revised Code.

Such a lease shall be for the purpose of development of the land for use by senior citizens by constructing, altering, renovating, repairing, expanding, and improving the site as it existed on June 25, 1982. A developer desiring to lease the land shall prepare for submission to the department a plan for development. Plans shall include provisions for roads, sewers, water lines, waste disposal, water supply, and similar matters to meet the requirements of state and local laws. The plans shall also include provision for protection of the property by insurance or otherwise, and plans for financing the development, and shall set forth details of the developer's financial responsibility.

The department may employ, as employees or consultants, persons needed to assist in reviewing the development plans. Those persons may include attorneys, financial experts, engineers, and other necessary experts. The department shall review the development plans and may enter into a lease if it finds all of the following:

(a) The best interests of the state will be promoted by entering into a lease with the developer;

(b) The development plans are satisfactory;

(c) The developer has established the developer's financial responsibility and satisfactory plans for financing the development.

The lease shall contain a provision that construction or renovation of the buildings, roads, structures, and other necessary facilities shall begin within one year after the date of the lease and shall proceed according to a schedule agreed to between the department and the developer or the lease will be

terminated. The lease shall contain such conditions and stipulations as the director considers necessary to preserve the best interest of the state. Moneys received by the state pursuant to this lease shall be paid into the general revenue fund. The lease shall provide that at the end of the lease period the buildings, structures, and related improvements shall become the property of the state without cost.

(17) To lease to any person any tract of land owned by the state and under the control of the department, or any part of such a tract, for the purpose of drilling for or the pooling of oil or gas. Such a lease shall be granted for a period not exceeding forty years, with the full power to contract for, determine the conditions governing, and specify the amount the state shall receive for the purposes specified in the lease, and shall be prepared as in other cases.

(18) To manage the use of space owned and controlled by the department, including space in property under the jurisdiction of the Ohio building authority, by doing all of the following:

(a) Biennially implementing, by state agency location, a census of agency employees assigned space;

(b) Periodically in the discretion of the director of administrative services:

(i) Requiring each state agency to categorize the use of space allotted to the agency between office space, common areas, storage space, and other uses, and to report its findings to the department;

(ii) Creating and updating a master space utilization plan for all space allotted to state agencies. The plan shall incorporate space utilization metrics.

(iii) Conducting a cost-benefit analysis to determine the effectiveness of state-owned buildings;

(iv) Assessing the alternatives associated with consolidating the commercial leases for buildings located in Columbus.

(c) Commissioning a comprehensive space utilization and capacity study in order to determine the feasibility of consolidating existing commercially leased space used by state agencies into a new state-owned facility.

(B) This section and section [125.02](#) of the Revised Code shall not interfere with any of the following:

(1) The power of the adjutant general to purchase military supplies, or with the custody of the adjutant general of property leased, purchased, or constructed by the state and used for military purposes, or with the functions of the adjutant general as director of state armories;

(2) The power of the director of transportation in acquiring rights-of-way for the state highway system, or the leasing of lands for division or resident district offices, or the leasing of lands or buildings required in the maintenance operations of the department of transportation, or the purchase of real property for garage sites or division or resident district offices, or in preparing plans and specifications for and constructing such buildings as the director may require in the administration of the department;

(3) The power of the director of public safety and the registrar of motor vehicles to purchase or lease real property and buildings to be used solely as locations to which a deputy registrar is assigned pursuant to division (B) of section [4507.011](#) of the Revised Code and from which the deputy registrar is to conduct the deputy registrar's business, the power of the director of public safety to purchase or lease real property and buildings to be used as locations for division or district offices as required in the maintenance of operations of the department of public safety, and the power of the superintendent of the state highway patrol in the purchase or leasing of real property and buildings needed by the patrol, to negotiate the sale of real property owned by the patrol, to rent or lease real property owned or leased by the patrol, and to make or cause to be made repairs to all property owned or under the control of the patrol;

(4) The power of the division of liquor control in the leasing or purchasing of retail outlets and warehouse facilities for the use of the division;

(5) The power of the director of development to enter into leases of real property, buildings, and office space to be used solely as locations for the state's foreign offices to carry out the purposes of section [122.05](#) of the Revised Code;

(6) The power of the director of environmental protection to enter into environmental covenants, to grant and accept easements, or to sell property pursuant to division (G) of section [3745.01](#) of the Revised Code.

(C) Purchases for, and the custody and repair of, buildings under the management and control of the capitol square review and advisory board, the rehabilitation services commission, the bureau of workers' compensation, or the departments of public safety, job and family services, mental health, developmental disabilities, and rehabilitation and correction, and buildings of educational and benevolent institutions under the management and control of boards of trustees, are not subject to the control and jurisdiction of the department of administrative services.

(D) Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section [5301.012](#) of the Revised Code.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 06-29-2004; 12-30-2004; 09-29-2005

123.011 Office of energy services.

(A) As used in this section:

(1) "Construct" includes reconstruct, improve, renovate, enlarge, or otherwise alter.

(2) "Energy consumption analysis" means the evaluation of all energy consuming systems, components, and equipment by demand and type of energy, including the internal energy load imposed on a facility by its occupants and the external energy load imposed by climatic conditions.

(3) "Energy performance index" means a number describing the energy requirements of a facility per square foot of floor space or per cubic foot of occupied volume as appropriate under defined internal and external ambient conditions over an entire seasonal cycle.

(4) "Facility" means a building or other structure, or part of a building or other structure, that includes provision for a heating, refrigeration, ventilation, cooling, lighting, hot water, or other major energy consuming system, component, or equipment.

(5) "Life-cycle cost analysis" means a general approach to economic evaluation that takes into account all dollar costs related to owning, operating, maintaining, and ultimately disposing of a project over the appropriate study period.

(6) "Political subdivision" means a county, township, municipal corporation, board of education of any school district, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(7) "State funded" means funded in whole or in part through appropriation by the general assembly or through the use of any guarantee provided by this state.

(8) "State institution of higher education" has the same meaning as in section [3345.011](#) of the Revised Code.

(B) There is hereby created within the department of administrative services the office of energy services. The office shall be under the supervision of a manager, who shall be appointed by the director of administrative services. The director shall assign to the office such number of employees and furnish such equipment and supplies as are necessary for the performance of the office's duties .

The office shall develop energy efficiency and conservation programs in each of the following areas:

- (1) New construction design and review;
- (2) Existing building audit and retrofit;
- (3) Energy efficient procurement;
- (4) Alternative fuel vehicles.

The office may accept and administer grants from public and private sources for carrying out any of its duties under this section.

(C) No state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution, including those agencies otherwise excluded from the jurisdiction of the department under division (A)(3) of section [123.01](#) of the Revised Code, shall lease, construct, or cause to be leased or constructed, within the limits prescribed in this section, a state-funded facility, without a proper life-cycle cost analysis or, in the case of a lease, an energy consumption analysis, as computed or prepared by a qualified architect or engineer in accordance with the rules required by division (D) of this section.

Construction shall proceed only upon the disclosure to the office, for the facility chosen, of the life-cycle costs as determined in this section and the capitalization of the initial construction costs of the building. The results of life-cycle cost analysis shall be a primary consideration in the selection of a building design. That analysis shall be required only for construction of buildings with an area of five thousand square feet or greater. An energy consumption analysis for the term of a proposed lease shall be required only for the leasing of an area of twenty thousand square feet or greater within a given building boundary. That analysis shall be a primary consideration in the selection of a facility to be leased.

Nothing in this section shall deprive or limit any state agency that has review authority over design , construction, or leasing plans from requiring a life-cycle cost analysis or energy consumption analysis.

(D) For the purposes of assisting the department in its responsibility for state-funded facilities pursuant to section [123.01](#) of the Revised Code and of cost-effectively reducing the energy consumption of those and any other state-funded facilities, thereby promoting fiscal, economic, and environmental benefits to this state, the office shall promulgate rules specifying cost-effective, energy efficiency and conservation standards that may govern the lease, design, construction, operation, and maintenance of all state-funded facilities, except facilities of state institutions of higher education or facilities operated by a political subdivision. The office of energy efficiency in the department of development shall cooperate in providing information and technical expertise to the office of energy services to ensure promulgation of rules of maximum effectiveness. The standards prescribed by rules promulgated under this division may draw from or incorporate, by reference or otherwise and in whole or in part, standards already developed or implemented by any competent, public or private standards organization or program. The rules also may include any of the following:

(1) Specifications for a life-cycle cost analysis that shall determine , for the economic life of such state-funded facility, the reasonably expected costs of facility ownership, operation, and maintenance including labor and materials. Life-cycle cost may be expressed as an annual cost for each year of the facility's use.

A life-cycle cost analysis additionally may include an energy consumption analysis that conforms to division (D)(2) of this section.

(2) Specifications for an energy consumption analysis of the facility's heating, refrigeration, ventilation, cooling, lighting, hot water, and other major energy consuming systems, components, and equipment.

A life-cycle cost analysis and energy consumption analysis shall be based on the best currently available methods of analysis, such as those of the national institute of standards and technology, the United States department of energy or other federal agencies, professional societies, and directions developed by the department.

(3) Specifications for energy performance indices, to be used to audit and evaluate competing design proposals submitted to the state.

(4) A requirement that, not later than two years after April 6, 2007, each state-funded facility, except a facility of a state institution of higher education or a facility operated by a political subdivision, is managed by at least one building operator certified under the building operator certification program or any equivalent program or standards as shall be prescribed in the rules and considered reasonably equivalent.

(5) An application process by which a manager of a specified state-funded facility, except a facility of a state institution of higher education or a facility operated by a political subdivision, may apply for a waiver of compliance with any provision of the rules required by divisions (D)(1) to (4) of this section.

(E) The office of energy services shall promulgate rules to ensure that energy efficiency and conservation will be considered in the purchase of products and equipment, except motor vehicles, by any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution. Minimum energy efficiency standards for purchased products and equipment may be required, based on federal testing and labeling where available or on standards developed by the office. The rules shall apply to the competitive selection of energy consuming systems, components, and equipment under Chapter 125. of the Revised Code where possible.

The office also shall ensure energy efficient and energy conserving purchasing practices by doing all of the following:

(1) Cooperatively with the office of energy efficiency, identifying available energy efficiency and conservation opportunities;

(2) Providing for interchange of information among purchasing agencies;

(3) Identifying laws, policies, rules, and procedures that need modification;

(4) Monitoring experience with and the cost-effectiveness of this state's purchase and use of motor vehicles and of major energy-consuming systems, components, equipment, and products having a significant impact on energy consumption by government;

(5) Cooperatively with the office of energy efficiency, providing technical assistance and training to state employees involved in the purchasing process.

The department of development shall make recommendations to the office regarding planning and implementation of purchasing policies and procedures supportive of energy efficiency and conservation.

(F)(1) The office of energy services shall require all state agencies, departments, divisions, bureaus, offices, units, commissions, boards, authorities, quasi-governmental entities, institutions, and state institutions of higher education to implement procedures ensuring that all their passenger automobiles acquired in each fiscal year, except for those passenger automobiles acquired for use in law enforcement or emergency rescue work, achieve a fleet average fuel economy of not less than the fleet average fuel economy for that fiscal year as shall be prescribed by the office by rule. The office shall promulgate the rule prior to the beginning of the fiscal year in accordance with the average fuel economy standards established pursuant to federal law for passenger automobiles manufactured during the model year that begins during the fiscal year.

(2) Each state agency, department, division, bureau, office, unit, commission, board, authority, quasi-governmental entity, institution, and state institution of higher education shall determine its fleet average fuel economy by dividing:

(a) The total number of passenger vehicles acquired during the fiscal year, except for those passenger vehicles acquired for use in law enforcement or emergency rescue work, by

(b) A sum of terms, each of which is a fraction created by dividing:

(i) The number of passenger vehicles of a given make, model, and year, except for passenger vehicles acquired for use in law enforcement or emergency rescue work, acquired during the fiscal year, by

(ii) The fuel economy measured by the administrator of the United States environmental protection agency, for the given make, model, and year of vehicle, that constitutes an average fuel economy for combined city and highway driving.

As used in division (F)(2) of this section, "acquired" means leased for a period of sixty continuous days or more, or purchased.

(G) Each state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, institution, and state institution of higher education shall comply with any applicable provision of this section or of a rule promulgated pursuant to division (D) or (F) of this section.

Effective Date: 09-29-1995; 04-05-2007; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

123.04 Director of administrative services - control of public works.

The director of administrative services shall be appointed superintendent of public works and shall have the care and control of the public works of the state and shall protect, maintain, and keep them in repair.

Subject to the approval of the governor, the director may purchase on behalf of the state such real or personal property, rights, or privileges as are necessary, in the director's judgment, to acquire in the maintenance of the public works or their improvement.

Any instrument by which the state or an agency of the state acquires real property pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section [5301.012](#) of the Revised Code.

Effective Date: 10-26-1999; 04-06-2007

123.07 Director may maintain an action.

The director of administrative services may maintain an action in the name of the state for violations of any law relating to the public works for an injury to property pertaining to the public works, or for any other cause which is necessary in the performance of his duties.

Effective Date: 12-04-1973

123.08 Power to administer oaths.

The director of administrative services may administer oaths to persons required by law to file affidavits or statements in the department of administrative services and to witnesses who are examined in matters pertaining to the administration of public works.

Effective Date: 12-04-1973

123.09 Rules and regulations.

The director of administrative services shall have supervision of the public works of the state and shall make such rules and regulations for the improvement, maintenance, and operation of the public works as are necessary.

Effective Date: 12-04-1973

123.10 Regulation and collection of tolls, rentals, and other revenues - state architect's fund.

(A) The director of administrative services shall regulate the rate of tolls to be collected on the public works of the state, and shall fix all rentals and collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the public works, including the sale, construction, purchase, or rental of property, except that the director shall not collect a commission or fee from a real estate broker or the private owner when real property is leased or rented to the state.

(B) There is hereby created in the state treasury the state architect's fund which shall consist of money received by the department of administrative services under division (A) of this section, fees paid under section [123.17](#) of the Revised Code, transfers of money to the fund authorized by the general assembly, and such amount of the investment earnings of the administrative building fund created in division (F) of section 154.24 of the Revised Code as the director of budget and management determines to be appropriate and in excess of the amounts required to meet estimated federal arbitrage rebate requirements. Money in the fund shall be used by the department of administrative services for the following purposes:

- (1) To pay personnel and other administrative expenses of the department;
- (2) To pay the cost of conducting evaluations of public works;
- (3) To pay the cost of building design specifications;
- (4) To pay the cost of providing project management services;
- (5) To pay the cost of operating the local administration competency certification program prescribed by section [123.17](#) of the Revised Code;

(6) Any other purposes that the director of administrative services determines to be necessary for the department to execute its duties under this chapter.

Effective Date: 06-29-2004; 05-06-2005; 09-29-2011

123.101 [Use of the capital improvements module of the Ohio administrative knowledge system for reporting purposes].

(A) As used in this section:

"Capital facilities project" means the construction, reconstruction, improvement, enlargement, alteration, or repair of a building by a public entity.

"Public entity" includes a state agency and a state institution of higher education.

"State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.

(B) Commencing not later than July 1, 2012, and upon completion of a capital facilities project that is funded wholly or in part using state funds, each public entity shall submit a report about the project to the director of administrative services. The report shall be submitted in Ohio administrative knowledge system capital improvement format or in a manner determined by the director and not later than thirty days after the project is complete. The report shall provide the total original contract bid, total cost of change orders, total actual cost of the project, total costs incurred for mediation and litigation services, and any other data requested by the director. The first report submitted pursuant to this division shall include information about any capital facilities project completed on or after July 1, 2011. Any capital facilities project that is funded wholly or in part through appropriations made to the Ohio school facilities commission, the Ohio public works commission, or the Ohio cultural facilities commission, or for which a joint use agreement has been entered into with any public entity, is exempt from the reporting requirement prescribed under this division.

(C) Commencing not later than July 1, 2012, and annually thereafter, the attorney general shall report to the director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered. The report shall be submitted in a manner prescribed by the director and shall contain any information requested by the director related to capital facilities project mediation and litigation costs.

(D) As soon as practicable after such information is made available, the director of administrative services shall incorporate the information reported pursuant to divisions (B) and (C) of this section into the Ohio administrative knowledge system.

Effective Date: 09-29-2011

123.11 Preferential parking for carpools, vanpools and buspools.

Each state agency and any county, township, or municipal corporation owning, leasing, or controlling the operation of parking spaces for use by its employees may provide preferential parking for those vehicles used in carpools, vanpools, and buspools. The department of administrative services shall coordinate the efforts of the state agencies in providing preferential parking for such vehicles.

Effective Date: 05-21-1982

123.13 Appointment of employees.

The director of administrative services shall appoint such foremen, patrolmen, lock tenders, inspectors, engineers, and all other employees as are necessary for the improvement, maintenance, and operation of the public works. They shall be assigned to duty under the supervision of the director, under rules and regulations prescribed by him. Any such employee, when deemed necessary by the director, shall give proper bond to the state, conditioned for the faithful performance of his duties. Such bonds may, in the discretion of the director, be individual, schedule, or blanket bonds.

Effective Date: 12-04-1973

123.14 Claims paid upon order of director.

All claims against the state for the improvement, repair, maintenance, and operation of the public works of Ohio, including salary and expenses of all employees engaged in such work, shall be paid upon the order of the director of administrative services.

Effective Date: 07-01-1985

123.15 Authority to contract - declaration of public exigency.

(A) As used in this section and section [123.21](#) of the Revised Code, "public exigency" means an injury or obstruction that occurs in any public works and that materially impairs its immediate use or places in jeopardy property adjacent to it; an immediate danger of such an injury or obstruction; or an injury or obstruction, or an immediate danger of an injury or obstruction, that occurs during the process of construction of any public works and that materially impairs its immediate use or places in jeopardy property adjacent to it.

(B) The director of administrative services may enter into contracts with proper persons for the performance of labor, the furnishing of materials, or the construction of any structures and buildings necessary to the maintenance, control, and management of the public works of the state or any part of those public works. Except as provided in division (C) of this section for public exigencies, the director shall advertise, award, and administer those contracts in accordance with the requirements set forth in Chapter 153. of the Revised Code.

(C) The director of administrative services may issue a declaration of a public exigency on the director's own initiative or upon the request of the director of any state agency. The director's declaration shall identify the specific injury, obstruction, or danger that is the subject of the declaration and shall set forth a dollar limitation for the repair, removal, or prevention of that exigency under the declaration.

Before any project to repair, remove, or prevent a public exigency under the director's declaration may begin, the director shall send notice of the project, in writing, to the director of budget and management. That notice shall detail the project to be undertaken to address the public exigency and shall include a copy of the director's declaration that establishes the monetary limitations on that project.

Effective Date: 09-14-2000

123.151 Rules for certification as minority business enterprises.

(A) As used in this section, "minority business enterprise" has the same meaning as in division (E)(1) of section [122.71](#) of the Revised Code.

(B)(1) The director of administrative services shall make rules in accordance with Chapter 119. of the Revised Code establishing procedures by which minority businesses may apply to the equal employment opportunity coordinator for certification as minority business enterprises.

(2) The coordinator shall approve the application of any minority business enterprise that complies with the rules adopted under this division. Any person adversely affected by an order of the coordinator denying certification as a minority business enterprise may appeal as provided in Chapter 119. of the Revised Code. The coordinator shall prepare and maintain a list of certified minority business enterprises.

(C) The department of administrative services, every other state agency authorized to enter into contracts for construction or contracts for purchases of equipment, materials, supplies, insurance, or services, and every port authority shall file a report every ninety days with the equal employment opportunity coordinator. The report shall be filed at a time and in a form prescribed by the coordinator. The report shall include the name of each minority business enterprise that the agency or port authority entered into a contract with during the preceding ninety-day period and the total value and type of each such contract. No later than thirty days after the end of each fiscal year, the coordinator shall notify in writing each state agency and port authority that has not complied with the reporting requirements of this division for the prior fiscal year. A copy of this notification regarding a state agency shall be submitted to the director of budget and management. No later than thirty days after the notification, the agency or port authority shall submit to the coordinator the information necessary to comply with the reporting requirements of this division.

If, after the expiration of this thirty-day period, a state agency has not complied with the reporting requirements of this division, the coordinator shall certify to the director of budget and management that the agency has not complied with the reporting requirements. A copy of this certification shall be submitted to the agency. Thereafter, no funds of the agency shall be expended during the fiscal year for construction or purchases of equipment, materials, supplies, contracts of insurance, or services until the coordinator certifies to the director of budget and management that the agency has complied with the reporting requirements of this division for the prior fiscal year.

If any port authority has not complied with the reporting requirement after the expiration of the thirty-day period, the coordinator shall certify to the speaker of the house of representatives and the president of the senate that the port authority has not complied with the reporting requirements of this division. A copy of this certification shall be submitted to the port authority. Upon receipt of the certification, the speaker of the house of representatives and the president of the senate shall take such action or make such recommendations to the members of the general assembly as they consider necessary to correct the situation.

Effective Date: 03-09-1999; 12-30-2004; 06-27-2005

123.152 Encouraging diversity, growth, and equity program.

(A) As used in this section, "EDGE business enterprise" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity program by the director of administrative services under this section of the Revised Code.

(B) The director of administrative services shall establish a business assistance program known as the encouraging diversity, growth, and equity program and shall adopt rules in accordance with Chapter 119. of the Revised Code to administer the program that do all of the following:

(1) Establish procedures by which a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture may apply for certification as an EDGE business enterprise;

(2) Except as provided in division (B)(14) of this section, establish agency procurement goals for contracting with EDGE business enterprises in the award of contracts under Chapters 123., 125., and 153. of the Revised Code based on the availability of eligible program participants by region or geographic area, as determined by the director, and by standard industrial code or equivalent code classification.

(a) Goals established under division (B)(2) of this section shall be based on a percentage level of participation and a percentage of contractor availability.

(b) Goals established under division (B)(2) of this section shall be applied at the contract level, relative to an overall dollar goal for each state agency, in accordance with the following certification categories: construction, architecture, and engineering; professional services; goods and services; and information technology services.

(3) Establish a system of certifying EDGE business enterprises based on a requirement that the business owner or owners show both social and economic disadvantage based on the following, as determined to be sufficient by the director:

(a) Relative wealth of the business seeking certification as well as the personal wealth of the owner or owners of the business;

(b) Social disadvantage based on any of the following:

(i) A rebuttable presumption when the business owner or owners demonstrate membership in a racial minority group or show personal disadvantage due to color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, location in an area of high unemployment;

(ii) Some other demonstration of personal disadvantage not common to other small businesses;

(iii) By business location in a qualified census tract.

(c) Economic disadvantage based on economic and business size thresholds and eligibility criteria designed to stimulate economic development through contract awards to businesses located in qualified census tracts.

(4) Establish standards to determine when an EDGE business enterprise no longer qualifies for EDGE business enterprise certification;

(5) Develop a process for evaluating and adjusting goals established by this section to determine what adjustments are necessary to achieve participation goals established by the director;

(6) Establish a point system or comparable system to evaluate bid proposals to encourage EDGE business enterprises to participate in the procurement of professional design and information technology services;

(7) Establish a system to track data and analyze each certification category established under division (B)(2)(b) of this section;

(8) Establish a process to mediate complaints and to review EDGE business enterprise certification appeals;

(9) Implement an outreach program to educate potential participants about the encouraging diversity, growth, and equity program;

(10) Establish a system to assist state agencies in identifying and utilizing EDGE business enterprises in their contracting processes;

(11) Implement a system of self-reporting by EDGE business enterprises as well as an on-site inspection process to validate the qualifications of an EDGE business enterprise;

(12) Establish a waiver mechanism to waive program goals or participation requirements for those companies that, despite their best-documented efforts, are unable to contract with certified EDGE business enterprises;

(13) Establish a process for monitoring overall program compliance in which equal employment opportunity officers primarily are responsible for monitoring their respective agencies;

(14) Establish guidelines for state universities as defined in section [3345.011](#) of the Revised Code and the Ohio school facilities commission created in section [3318.30](#) of the Revised Code for awarding contracts pursuant to Chapters 153., 3318., and 3345. of the Revised Code to allow the universities and commission to establish agency procurement goals for contracting with EDGE business enterprises.

(C) Business and personal financial information and trade secrets submitted by encouraging diversity, growth, and equity program applicants to the director pursuant to this section are not public records for purposes of section [149.43](#) of the Revised Code, unless the director presents the financial information or trade secrets at a public hearing or public proceeding regarding the applicant's eligibility to participate in the program.

Effective Date: 09-26-2003; 09-29-2005

123.153 Report on minority business enterprise program.

(A) As used in this section:

(1) "Minority business enterprise" has the same meaning as in section [123.151](#) of the Revised Code.

(2) "EDGE business enterprise" has the same meaning as in section [123.152](#) of the Revised Code.

(B) Beginning October 1, 2009, and on the first day of October in each year thereafter, the director of administrative services shall submit a written report to the governor and to each member of the general assembly describing the progress made by state agencies in advancing the minority business enterprise program and the encouraging diversity, growth, and equity program. The report shall highlight the initiatives implemented to encourage participation of minority-owned, as well as socially and economically disadvantaged, businesses in programs funded by federal money received by the state for fiscal stabilization and recovery purposes. The report shall also include the total number of procurement contracts each agency has entered into with certified minority business enterprises and EDGE business enterprises.

Added by 128th General Assembly ch. 1, HB 2, § 101.01, eff. 7/1/2009.

123.16 Filing of bids, proposals and contracts.

All bids, proposals, and contracts received by the director of administrative services shall be indorsed, filed, and preserved in his office.

Copies of contracts for work or materials, water privileges or lands on which such privileges are to be used, leases, and all other contracts entered into by the director shall be filed and recorded in his office within thirty days from their execution.

123.17 Local administration competence certification program.

(A) As used in this section, "institution of higher education" means a state university or college, as defined in section [3345.12](#) of the Revised Code, or a state community college.

(B) Not later than December 30, 2005, the state architect shall establish a local administration competency certification program to certify institutions of higher education to administer capital facilities projects pursuant to section [3345.51](#) of the Revised Code without the supervision, control, or approval of the department of administrative services. The program shall offer instruction in the administration of capital facilities projects for employees of institutions of higher education who are responsible for such administration and who are selected by their employing institutions to participate in the program.

(C) The program shall provide instruction about the provisions of Chapters 9., 123., and 153. of the Revised Code and any rules or policies adopted by the department regarding the planning, design, and construction of capital facilities, including all of the following:

- (1) The planning, design, and construction process;
- (2) Contract requirements;
- (3) Construction management;
- (4) Project management.

(D) The state architect shall award local administration competency certification to any institution of higher education if all of the following apply:

- (1) The institution applied for certification on a form and in a manner prescribed by the state architect.
- (2) The state architect determines that a sufficient number of the institution's employees, representing a sufficient number of employee classifications, responsible for the administration of capital facilities projects have successfully completed the certification program to ensure that any capital facilities project undertaken by the institution will be administered successfully and in accordance with all provisions of the Revised Code, and the board of trustees of the institution provides written assurance to the state architect that the institution will select new employees to participate in the certification program as necessary to compensate for employee turnover.
- (3) The state architect determines that the employees of the institution enrolled in the program demonstrate successful completion of the competency certification training and a satisfactory level of knowledge of and competency in the requirements for administering capital facilities projects.
- (4) The institution pays the fee prescribed by division (F) of this section.
- (5) The board of trustees of the institution provides written assurance to the state architect that the institution will conduct biennial audits of the institution's administration of capital facilities projects in accordance with division (C) of section [3345.51](#) of the Revised Code.
- (6) The board of trustees of the institution agrees in writing to indemnify and hold harmless the state and the department for any claim of injury, loss, or damage that results from the institution's administration of a capital facilities project.

(E) Local administration competency certification granted under this section shall remain in effect for as long as the state architect determines that both of the following apply:

(1) The institution of higher education maintains a sufficient number of employees responsible for the administration of capital facilities projects who have successfully completed the certification program and have demonstrated a satisfactory level of knowledge of and competency in the requirements for administering capital facilities projects;

(2) The institution is performing the biennial audits prescribed in division (C) of section [3345.51](#) of the Revised Code.

If the state architect determines that an institution of higher education has failed to comply with the conditions of division (E)(1) or (2) of this section, the state architect shall revoke the institution's certification and shall notify the board of trustees of the institution in writing of the revocation.

(F) The state architect shall establish, subject to the approval of the director of budget and management, the amount of the fee required to be paid by any institution of higher education that seeks certification under this section. The amount of the fees shall be set to cover the costs to implement this section, including the costs for materials and the competency certification training sessions. Any fees received under this section shall be paid into the state treasury to the credit of the state architect's fund established under section [123.10](#) of the Revised Code.

(G) Nothing in this section shall prohibit an institution that administers a capital facilities project under section [3345.51](#) of the Revised Code from requesting guidance or other services from the department of administrative services.

Effective Date: 05-06-2005; 06-30-2005

123.21 Power to take lands and materials.

When a public exigency, as defined in division (A) of section [123.15](#) of the Revised Code, exists, the director of administrative services may take possession of lands and use them, or materials and other property necessary for the maintenance, protection, or repair of the public works, in accordance with sections [163.01](#) to [163.22](#) of the Revised Code.

Effective Date: 09-14-2000

123.46 Power and duties conferred.

No land lease or sale of state lands shall be made by the director of administrative services except upon the written approval of the governor and the attorney general.

Effective Date: 07-01-1989

123.47 Custodian.

Except as otherwise provided by law, the director of administrative services shall have the custody and control of the books, records, papers, surveys, maps, plats, and documents that pertain to any of the public works of this state.

Effective Date: 07-01-1989

123.48 Annual report.

The director of administrative services shall make an annual report to the governor containing a statement of the expenses of the public works under his supervision during the preceding year, setting forth an account of moneys expended on each of the public works during the year, and such other

information and records as he deems proper. Such report shall contain a statement of the moneys received from all sources and an estimate of the appropriations necessary to maintain the public works and keep them in repair. The report shall also contain a list of all persons regularly employed, together with the salary, compensation, or allowance paid each.

He shall further from time to time when he deems it necessary, or when called upon by the governor, to do so, make such other reports as are proper, touching on the general condition and welfare of the public works and the drainage, leaseholds, and water powers incident thereto.

Effective Date: 12-04-1973

123.49 Administrative rules.

The department of administrative services may adopt, amend, and rescind rules pertaining to lands under the supervision of the department in accordance with Chapter 119. of the Revised Code.

Effective Date: 07-01-1989

123.77 Lease of state university land - development.

The department of administrative services may lease land belonging to or under the control or jurisdiction of a state university, not required nor to be required for the use of the university, to a developer in accordance with this section. "Developer," as used in this section, means a person, partnership, association, corporation, or community improvement corporation established pursuant to Chapter 1724. of the Revised Code who or which submits a development plan to the department as provided in this section and requests the department to enter into a lease.

Such a lease of university land shall be for the purpose of development of the land by establishing, constructing, altering, repairing, expanding, and improving industrial, distribution, commercial, or research facilities. A developer desiring to lease land of the university for such development shall prepare and submit to the department of administrative services and to the board of trustees of the university a plan for such development. Plans shall include provisions for roads, streets, sewers, water lines, waste disposal, water supply, and similar matters to meet the requirements of state and local laws. The plans shall also include provision for protection of the property by insurance or otherwise and plans for financing the development, and shall set forth details of the developer's financial responsibility.

The department of administrative services may employ as employees or consultants, persons needed to assist it in reviewing the development plans. Such persons may include attorneys, financial experts, engineers, and other necessary experts. The department of administrative services shall review the development plans and may enter into a lease if it finds that:

- (A) The best interests of the university will be promoted by entering into a lease with the developer.
- (B) The development plans are satisfactory.
- (C) The developer has established his financial responsibility and satisfactory plans for financing the development.
- (D) The university board of trustees approves the lease.

A lease may be entered into pursuant to this section for an annual rent agreed to between the department and the developer for a maximum term of forty years and may be renewed for a like or lesser term. The lease shall contain a provision that construction of buildings, structures, roads, and other necessary facilities shall begin within one year after the date of the lease and shall proceed according to a schedule agreed to between the department and the developer or the lease will be

terminated. Moneys received by the state pursuant to such leases shall be paid into the state treasury as an addition to the appropriation made to the university which has control or jurisdiction of the land or to which the land belongs.

Effective Date: 08-26-1977

Chapter 125: DEPARTMENT OF ADMINISTRATIVE SERVICES - OFFICE SERVICES

125.01 Department of administrative services - office services definitions.

As used in this chapter:

(A) "Order" means a copy of a contract or a statement of the nature of a contemplated expenditure, a description of the property or supplies to be purchased or service to be performed, other than a service performed by officers and regular employees of the state, and per diem of the national guard, and the total sum of the expenditure to be made therefor, if the sum is fixed and ascertained, otherwise the estimated sum thereof, and an authorization to pay for the contemplated expenditure, signed by the person instructed and authorized to pay upon receipt of a proper invoice.

(B) "Invoice" means an itemized listing showing delivery of the supplies or performance of the service described in the order, and the date of the purchase or rendering of the service, or an itemization of the things done, material supplied, or labor furnished, and the sum due pursuant to the contract or obligation.

(C) "Products" means materials, manufacturer's supplies, merchandise, goods, wares, and foodstuffs.

(D) "Produced" means the manufacturing, processing, mining, developing, and making of a thing into a new article with a distinct character in use through the application of input, within the state, of Ohio products, labor, skill, or other services. "Produced" does not include the mere assembling or putting together of non-Ohio products or materials.

(E) "Ohio products" means products that are mined, excavated, produced, manufactured, raised, or grown in the state by a person where the input of Ohio products, labor, skill, or other services constitutes no less than twenty-five per cent of the manufactured cost. With respect to mined products, such products shall be mined or excavated in this state.

(F) "Purchase" means to buy, rent, lease, lease purchase, or otherwise acquire supplies or services. "Purchase" also includes all functions that pertain to the obtaining of supplies or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, all phases of contract administration, and receipt and acceptance of the supplies and services and payment for them.

(G) "Services" means the furnishing of labor, time, or effort by a person, not involving the delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

(H) "Supplies" means all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or an interest in real property.

(I) "Competitive selection" means any of the following procedures for making purchases:

- (1) Competitive sealed bidding under section [125.07](#) of the Revised Code;
- (2) Competitive sealed proposals under section [125.071](#) of the Revised Code;
- (3) Reverse auctions under section [125.072](#) of the Revised Code.

Effective Date: 10-26-2001

125.182 [State public notice web site].

The office of information technology, by itself or by contract with another entity, shall establish, operate, and maintain a state public notice web site. In establishing, maintaining, and operating the state public notice web site, the office of information technology shall:

- (A) Use a domain name for the web site that will be easily recognizable and remembered by and understandable to users of the web site;
- (B) Maintain the web site so that it is fully accessible to and searchable by members of the public at all times;
- (C) Not charge a fee to a person who accesses, searches, or otherwise uses the web site;
- (D) Not charge a fee to a state agency or political subdivision for publishing a notice on the web site;
- (E) Ensure that notices displayed on the web site conform to the requirements that would apply to the notices if they were being published in a newspaper, as directed in section 7.16 of the Revised Code or in the relevant provision of the statute or rule that requires the notice;
- (F) Ensure that notices continue to be displayed on the web site for not less than the length of time required by the relevant provision of the statute or rule that requires the notice;
- (G) Devise and display on the web site a form that may be downloaded and used to request publication of a notice on the web site;
- (H) Enable responsible parties to submit notices and requests for their publication;
- (I) Maintain an archive of notices that no longer are displayed on the web site;
- (J) Enable notices, both those currently displayed and those archived, to be accessed by key word, by party name, by case number, by county, and by other useful identifiers;
- (K) Maintain adequate systemic security and backup features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseeable difficulties;
- (L) Maintain the web site in such a manner that it will not infringe legally protected interests, so that vulnerability of the web site to interruption because of litigation or the threat of litigation is reduced; and
- (M) Submit a status report to the secretary of state twice annually that demonstrates compliance with statutory requirements governing publication of notices.

The office of information technology shall bear the expense of maintaining the state public notice web site domain name.

Effective Date: 09-29-2011

Chapter 126: OFFICE OF BUDGET AND MANAGEMENT

126.14 Controlling board to approve release of appropriation for purchase of real estate or other capital project.

The release of any money appropriated for the purchase of real estate shall be approved by the controlling board. The release of money appropriated for all other capital projects is also subject to the approval of the controlling board, except that the director of budget and management may approve the release of money appropriated for specific projects in accordance with the requirements of this section and except that the director of budget and management may approve the release of unencumbered capital balances, for a project to repair, remove, or prevent a public exigency declared to exist by the director of administrative services under section [123.15](#) of the Revised Code, in the amount designated in that declaration.

Within sixty days after the effective date of any act appropriating money for capital projects, the director shall determine which appropriations are for general projects and which are for specific projects. Specific projects may include specific higher education projects that are to be funded from general purpose appropriations from the higher education improvement fund created in section [154.21](#) of the Revised Code. Upon determining which projects are general and which are specific, the director shall submit to the controlling board a list that includes a brief description of and the estimated expenditures for each specific project. The release of money for any specific higher education projects that are to be funded from general purpose appropriations from the higher education improvement fund but that are not included on the list, and the release of money for any specific higher education projects included on the list that will exceed the estimated expenditures by more than ten per cent, are subject to the approval of the controlling board. The director may create new appropriation line items and make transfers of appropriations to them for specific higher education projects included on the list that are to be funded from general purpose appropriations for basic renovations that are made from the higher education improvement fund.

Effective Date: 09-14-2000

126.141 [Capital facilities project release to include contingency reserve].

Any request for release of capital appropriations by the director of budget and management or the controlling board for facilities projects shall contain a contingency reserve, the amount of which shall be determined by the public authority, for payment of unanticipated project expenses. Any amount deducted from the encumbrance for a contractor's contract as an assessment for liquidated damages shall be added to the encumbrance for the contingency reserve. Contingency reserve funds shall be used to pay costs resulting from unanticipated job conditions, to comply with rulings regarding building and other codes, to pay costs related to errors, omissions, or other deficiencies in contract documents, to pay costs associated with changes in the scope of work, to pay interest due on late payments, and to pay the costs of settlements and judgments related to the project.

Any funds remaining upon completion of a project may, upon approval of the controlling board, be released for the use of the agency or instrumentality to which the appropriation was made for other capital facilities projects.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

126.15 Adjusting capital or operating budgets.

If the director of budget and management determines that adjustments to the capital or operating budgets are required because of the reorganization of administrative agencies, the transfer of programs, the creation of new funds, the modification of capital projects, or the consolidation of funds, as authorized by an act of the general assembly, the director may both require the head of the administering agency to certify the estimated amount of the cash balance to be transferred to the receiving fund and transfer the estimated amount to the receiving fund when needed to make payment. Not more than thirty days after certifying the estimated amount, the head of the administering agency shall certify to the director the final amount to be transferred. The director shall adjust the amount transferred to reflect any difference between the estimated amount transferred and the final amount.

The director of budget and management may cancel encumbrances and reestablish encumbrances or parts of encumbrances as needed in the appropriate funds and appropriation items for the same purposes and same vendors. The director may transfer appropriation authority necessary to reestablish such encumbrances in a different fund or appropriation item within an agency or between agencies as the director determines necessary. The director shall reduce each of the appropriation balances of each fiscal year by the amount of the encumbrances canceled in the respective funds or appropriation items.

The director also may transfer any unencumbered or unallotted balances to the appropriate line item to be used for the same purposes.

Effective Date: 03-18-1999

Chapter 127: CONTROLLING BOARD

127.16 Purchasing by competitive selection.

(A) Upon the request of either a state agency or the director of budget and management and after the controlling board determines that an emergency or a sufficient economic reason exists, the controlling board may approve the making of a purchase without competitive selection as provided in division (B) of this section.

(B) Except as otherwise provided in this section, no state agency, using money that has been appropriated to it directly, shall:

(1) Make any purchase from a particular supplier, that would amount to fifty thousand dollars or more when combined with both the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of all outstanding encumbrances for purchases made by the agency from the supplier, unless the purchase is made by competitive selection or with the approval of the controlling board;

(2) Lease real estate from a particular supplier, if the lease would amount to seventy-five thousand dollars or more when combined with both the amount of all disbursements to the supplier during the fiscal year for real estate leases made by the agency and the amount of all outstanding encumbrances for real estate leases made by the agency from the supplier, unless the lease is made by competitive selection or with the approval of the controlling board.

(C) Any person who authorizes a purchase in violation of division (B) of this section shall be liable to the state for any state funds spent on the purchase, and the attorney general shall collect the amount from the person.

(D) Nothing in division (B) of this section shall be construed as:

- (1) A limitation upon the authority of the director of transportation as granted in sections [5501.17](#), [5517.02](#), and [5525.14](#) of the Revised Code;
- (2) Applying to medicaid provider agreements under Chapter 5111. of the Revised Code ;
- (3) Applying to the purchase of examinations from a sole supplier by a state licensing board under Title XLVII of the Revised Code;
- (4) Applying to entertainment contracts for the Ohio state fair entered into by the Ohio expositions commission, provided that the controlling board has given its approval to the commission to enter into such contracts and has approved a total budget amount for such contracts as agreed upon by commission action, and that the commission causes to be kept itemized records of the amounts of money spent under each contract and annually files those records with the clerk of the house of representatives and the clerk of the senate following the close of the fair;
- (5) Limiting the authority of the chief of the division of mineral resources management to contract for reclamation work with an operator mining adjacent land as provided in section [1513.27](#) of the Revised Code;
- (6) Applying to investment transactions and procedures of any state agency, except that the agency shall file with the board the name of any person with whom the agency contracts to make, broker, service, or otherwise manage its investments, as well as the commission, rate, or schedule of charges of such person with respect to any investment transactions to be undertaken on behalf of the agency. The filing shall be in a form and at such times as the board considers appropriate.
- (7) Applying to purchases made with money for the per cent for arts program established by section [3379.10](#) of the Revised Code;
- (8) Applying to purchases made by the rehabilitation services commission of services, or supplies, that are provided to persons with disabilities, or to purchases made by the commission in connection with the eligibility determinations it makes for applicants of programs administered by the social security administration;
- (9) Applying to payments by the department of job and family services under section [5111.13](#) of the Revised Code for group health plan premiums, deductibles, coinsurance, and other cost-sharing expenses;
- (10) Applying to any agency of the legislative branch of the state government;
- (11) Applying to agreements or contracts entered into under section [5101.11](#), [5101.20](#), [5101.201](#), [5101.21](#), or [5101.214](#) of the Revised Code;
- (12) Applying to purchases of services by the adult parole authority under section [2967.14](#) of the Revised Code or by the department of youth services under section [5139.08](#) of the Revised Code;
- (13) Applying to dues or fees paid for membership in an organization or association;
- (14) Applying to purchases of utility services pursuant to section [9.30](#) of the Revised Code;
- (15) Applying to purchases made in accordance with rules adopted by the department of administrative services of motor vehicle, aviation, or watercraft fuel, or emergency repairs of such vehicles;
- (16) Applying to purchases of tickets for passenger air transportation;

- (17) Applying to purchases necessary to provide public notifications required by law or to provide notifications of job openings;
- (18) Applying to the judicial branch of state government;
- (19) Applying to purchases of liquor for resale by the division of liquor control;
- (20) Applying to purchases of motor courier and freight services made in accordance with department of administrative services rules;
- (21) Applying to purchases from the United States postal service and purchases of stamps and postal meter replenishment from vendors at rates established by the United States postal service;
- (22) Applying to purchases of books, periodicals, pamphlets, newspapers, maintenance subscriptions, and other published materials;
- (23) Applying to purchases from other state agencies, including state-assisted institutions of higher education;
- (24) Limiting the authority of the director of environmental protection to enter into contracts under division (D) of section [3745.14](#) of the Revised Code to conduct compliance reviews, as defined in division (A) of that section;
- (25) Applying to purchases from a qualified nonprofit agency pursuant to sections [125.60](#) to [125.6012](#) or [4115.31](#) to [4115.35](#) of the Revised Code;
- (26) Applying to payments by the department of job and family services to the United States department of health and human services for printing and mailing notices pertaining to the tax refund offset program of the internal revenue service of the United States department of the treasury;
- (27) Applying to contracts entered into by the department of developmental disabilities under section [5123.18](#) of the Revised Code;
- (28) Applying to payments made by the department of mental health under a physician recruitment program authorized by section [5119.101](#) of the Revised Code;
- (29) Applying to contracts entered into with persons by the director of commerce for unclaimed funds collection and remittance efforts as provided in division (F) of section [169.03](#) of the Revised Code. The director shall keep an itemized accounting of unclaimed funds collected by those persons and amounts paid to them for their services.
- (30) Applying to purchases made by a state institution of higher education in accordance with the terms of a contract between the vendor and an inter-university purchasing group comprised of purchasing officers of state institutions of higher education;
- (31) Applying to the department of job and family services' purchases of health assistance services under the children's health insurance program part I provided for under section [5101.50](#) of the Revised Code, the children's health insurance program part II provided for under section [5101.51](#) of the Revised Code, or the children's health insurance program part III provided for under section [5101.52](#) of the Revised Code, or the children's buy-in program provided for under sections [5101.5211](#) to [5101.5216](#) of the Revised Code;
- (32) Applying to payments by the attorney general from the reparations fund to hospitals and other emergency medical facilities for performing medical examinations to collect physical evidence pursuant to section [2907.28](#) of the Revised Code;

(33) Applying to contracts with a contracting authority or administrative receiver under division (B) of section [5126.056](#) of the Revised Code;

(34) Applying to purchases of goods and services by the department of veterans services in accordance with the terms of contracts entered into by the United States department of veterans affairs;

(35) Applying to payments by the superintendent of the bureau of criminal identification and investigation to the federal bureau of investigation for criminal records checks pursuant to section [109.572](#) of the Revised Code.

(E) When determining whether a state agency has reached the cumulative purchase thresholds established in divisions (B)(1) and (2) of this section, all of the following purchases by such agency shall not be considered:

(1) Purchases made through competitive selection or with controlling board approval;

(2) Purchases listed in division (D) of this section;

(3) For the purposes of the threshold of division (B)(1) of this section only, leases of real estate.

(F) As used in this section, "competitive selection," "purchase," "supplies," and "services" have the same meanings as in section [125.01](#) of the Revised Code.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 7/17/2009 and 10/16/2009.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 12-18-2003; 07-01-2005; 04-06-2007; 07-01-2007; 2007 HB119 07-01-2007; 2008 HB562 09-22-2008

See 128th General Assembly File No. 9, HB 1, §812.30.

Chapter 149: DOCUMENTS, REPORTS, AND RECORDS

149.011 Documents, reports, and records definitions.

As used in this chapter, except as otherwise provided:

(A) "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(B) "State agency" includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision. "State agency" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(C) "Public money" includes all money received or collected by or due a public official, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. It also includes any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

(D) "Public official" includes all officers, employees, or duly authorized representatives or agents of a public office.

(E) "Color of office" includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(F) "Archive" includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.

(G) "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Amended by 129th General Assembly File No. 1, HB 1, § 1, eff. 2/18/2011.

Effective Date: 09-26-2003; 2006 HB9 09-29-2007

Chapter 153: PUBLIC IMPROVEMENTS

153.01 Architect must submit accurate plans, estimates, bills of materials, and details to scale.

(A) Whenever any building or structure for the use of the state or any institution supported in whole or in part by the state or in or upon the public works of the state that is administered by the director of administrative services or by any other state officer or state agency authorized by law to administer a project, including an educational institution listed in section [3345.50](#) of the Revised Code, is to be erected or constructed, whenever additions, alterations, or structural or other improvements are to be made, or whenever heating, cooling, or ventilating plants or other equipment is to be installed or material supplied therefor, the estimated cost of which amounts to two hundred thousand dollars or more, or the amount determined pursuant to section 153.53 of the Revised Code, each officer, board, or other authority upon which devolves the duty of constructing, erecting, altering, or installing the same, referred to in sections 153.01 to [153.60](#) of the Revised Code as the public authority, shall cause to be made, by an architect or engineer whose contract of employment shall be prepared and approved by the attorney general, the following:

(1) Full and accurate plans, suitable for the use of mechanics and other builders in the construction, improvement, addition, alteration, or installation;

(2) Details to scale and full-sized, so drawn and represented as to be easily understood;

(3) Definite and complete specifications of the work to be performed, together with directions that will enable a competent mechanic or other builder to carry them out and afford bidders all needful information;

(4) A full and accurate estimate of each item of expense and the aggregate cost of those items of expense;

(5) A life-cycle cost analysis;

(6) Further data as may be required by the department of administrative services.

(B) Division (A) of this section shall not be required with respect to a construction management contract entered into with a construction manager at risk as described in section 9.334 of the Revised Code or a

design-build contract entered into with a design-build firm as described in section 153.693 of the Revised Code.

Effective Date: 09-14-2000; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.011 Using domestic steel products in state supported projects.

(A) Except as provided in division (D) of this section, whenever any building or structure, including highway improvements, in whole or in part supported by state capital funds, including moneys from the education facilities trust fund, is to be erected or constructed, or whenever additions, alterations, or structural or other improvements are to be made, if any steel products are to be purchased for or provided in the construction, repair, or improvement project, only steel products as defined in division (F) of this section shall be purchased for or provided in the project.

(B)(1) No person shall purchase or provide steel products in violation of division (A) of this section.

(2) Notwithstanding division (B) of section [153.99](#) of the Revised Code, no person who purchases steel products in violation of division (A) of this section shall be held liable in a civil action commenced under division (C) of this section, or pay a civil penalty under division (B) of section [153.99](#) of the Revised Code, if that person can demonstrate the person's compliance with division (E) of this section.

(C) Whenever the director of administrative services has reasonable cause to believe that any person has purchased or provided steel products in violation of division (A) of this section, the director shall conduct an investigation to determine whether the person has purchased or provided or is purchasing or providing steel products in violation of division (A) of this section. Upon conducting the investigation, if the director finds that the person has purchased or provided or is purchasing or providing steel products in violation of division (A) of this section, the director shall request the attorney general to commence a civil action under this section against the person for violating division (A) of this section. The remedy provided in this section is concurrent with any other remedy provided in this chapter, and the existence or exercise of one remedy does not prevent the exercise of any other. Upon collection of the civil penalty under division (B) of section [153.99](#) of the Revised Code, pursuant to an action authorized under this section, the attorney general shall pay the money collected to the treasurer of the board of education of the city, local, or exempted village school district and joint vocational school district, if one exists, in which the construction, repair, or improvement project for which the steel products used in violation of division (A) of this section is located. The treasurer shall deposit the civil penalty in equal amounts into the school district's general fund and the joint vocational school district's general fund. If a joint vocational school district does not exist where the violation occurred, then the entire sum of the civil penalty shall be deposited into the school district's general fund.

(D) Pursuant to section [5525.21](#) of the Revised Code, the director of transportation may authorize the purchase or provision or both of a minimal amount of foreign steel products for use in contracts for public bridge projects.

The director of administrative services may waive the requirements of division (A) of this section if the director determines that either division (A) or (B) of section [5525.21](#) of the Revised Code is true in connection with a public bridge project. The director shall issue this determination in writing.

(E) The following notice shall be included in boldface type and capital letters in all bid notifications and specifications between all parties to any contract authorized under Chapter 153. of the Revised Code or subject to this section and section [153.99](#) of the Revised Code: "Domestic steel use requirements as specified in section 153.011 of the Revised Code apply to this project. Copies of section 153.011 of the Revised Code can be obtained from any of the offices of the department of administrative services."

(F) As used in this section:

(1) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, and used for load-bearing structural purposes, from steel made in the United States by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

(2) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

Effective Date: 03-29-2001

153.012 Preference to contractors having principal place of business in Ohio.

With respect to the award of any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting or decoration of a public improvement, including any highway improvement, made by the state or in whole or in part supported by the state, except for a contract for products produced or mined in Ohio or for a contract financed in whole or in part by contributions or loans from any agency of the United States government, preference shall be given to contractors having their principal place of business in Ohio over contractors having their principal place of business in a state which provides a preference in that state in favor of contractors of that state for the same type of work. Where a preference is provided by another state for contractors of that state, contractors having their principal place of business in Ohio are to be granted in Ohio the same preference over them in the same manner and on the same basis and to the same extent as the preference is granted in letting contracts for the same type of work by the other state. If one party to a joint venture is a contractor having its principal place of business in Ohio, the joint venture shall be considered as having its principal place of business in Ohio.

Effective Date: 10-10-1983

153.013 Compliance with regulations or ordinances of political subdivisions for certain projects.

If a project for the construction, alteration, or other improvement of a building or structure is administered by the director of administrative services or by another state agency authorized to administer a project under this chapter, if the project is located in a municipal corporation with a population of at least four hundred thousand that is in a county with a population of at least one million two hundred thousand, and if a political subdivision contributes at least one hundred thousand dollars to the project, then a contractor for the project shall comply with regulations or ordinances of the political subdivision that are in effect before July 1, 2009, and that specifically relate to the employment of residents and local businesses of the political subdivision in the performance of the work of the project, and such ordinances or regulations shall be included by reference unambiguously in the contract between the administering state agency and the contractor for the project.

Added by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 1/1/2010.

153.02 Debarment of contractor from contract awards.

(A) The director of administrative services, on the director's own initiative or upon request of the Ohio school facilities commission, may debar a contractor from contract awards for public improvements as referred to in section [153.01](#) of the Revised Code or for projects as defined in section 3318.01 of the Revised Code, upon proof that the contractor has done any of the following:

(1) Defaulted on a contract requiring the execution of a takeover agreement as set forth in division (B) of section [153.17](#) of the Revised Code;

(2) Knowingly failed during the course of a contract to maintain the coverage required by the bureau of workers' compensation;

(3) Knowingly failed during the course of a contract to maintain the contractor's drug-free workplace program as required by the contract;

(4) Knowingly failed during the course of a contract to maintain insurance required by the contract or otherwise by law, resulting in a substantial loss to the owner, as owner is referred to in section [153.01](#) of the Revised Code, or to the commission and school district board, as provided in division (F) of section 3318.08 of the Revised Code;

(5) Misrepresented the firm's qualifications in the selection process set forth in sections [153.65](#) to [153.71](#) or section 3318.10 of the Revised Code;

(6) Been convicted of a criminal offense related to the application for or performance of any public or private contract, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the contractor's business integrity;

(7) Been convicted of a criminal offense under state or federal antitrust laws;

(8) Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract;

(9) Been debarred from bidding on or participating in a contract with any state or federal agency.

(B) When the director reasonably believes that grounds for debarment exist, the director shall send the contractor a notice of proposed debarment indicating the grounds for the proposed debarment and the procedure for requesting a hearing on the proposed debarment. The hearing shall be conducted in accordance with Chapter 119. of the Revised Code. If the contractor does not respond with a request for a hearing in the manner specified in Chapter 119. of the Revised Code, the director shall issue the debarment decision without a hearing and shall notify the contractor of the decision by certified mail, return receipt requested.

(C) The director shall determine the length of the debarment period and may rescind the debarment at any time upon notification to the contractor. During the period of debarment, the contractor is not eligible to bid for or participate in any contract for a public improvement as referred to in section [153.01](#) of the Revised Code or for a project as defined in section 3318.01 of the Revised Code. After the debarment period expires, the contractor shall be eligible to bid for and participate in such contracts for a public improvement.

(D) The director, through the office of the state architect, shall maintain a list of all contractors currently debarred under this section. Any governmental entity awarding a contract for construction of a public improvement or project may use a contractor's presence on the debarment list to determine whether a contractor is responsible or best under section [9.312](#) or any other section of the Revised Code in the award of a contract.

Effective Date: 09-29-2005; 09-29-2011

153.03 Contracts to require drug-free workplace program.

(A) As used in this section:

(1) "Contracting authority" means any state agency or other state instrumentality that is authorized to award a public improvement contract.

- (2) "Bidder" means a person who submits a bid to a contracting authority to perform work under a public improvement contract.
- (3) "Contractor" means any person with whom a contracting authority has entered into a public improvement contract to provide labor for a public improvement.
- (4) "Subcontractor" means any person who undertakes to provide any part of the labor on the site of a public improvement under a contract with any person other than the contracting authority, including all such persons in any tier.
- (5) "Construction manager" has the same meaning as in section 9.33 of the Revised Code.
- (6) "Construction manager at risk" has the same meaning as in section 9.33 of the Revised Code.
- (7) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.
- (8) "Labor" means any activity performed by a person that contributes to the direct installation of a product, component, or system, or that contributes to the direct removal of a product, component, or system.
- (9) "Public improvement contract" means any contract that is financed in whole or in part with money appropriated by the general assembly, or that is financed in any manner by a contracting authority, and that is awarded by a contracting authority for the construction, alteration, or repair of any public building, public highway, or other public improvement.
- (10) "State agency" means every organized body, office, or agency established by the laws of this state for the exercise of any function of state government.
- (B) A contracting authority shall not award a public improvement contract to a bidder, and a construction manager at risk or design-build firm shall not award a subcontract unless the contract or subcontract contains both of the following:
- (1) The statements described in division (E) of this section;
- (2) Terms that require the contractor or subcontractor to be enrolled in and be in good standing in the drug-free workplace program of the bureau of workers' compensation or a comparable program approved by the bureau that requires an employer to do all of the following:
- (a) Develop, implement, and provide to all employees a written substance use policy that conveys full and fair disclosure of the employer's expectations that no employee be at work with alcohol or drugs in the employee's system, and specifies the consequences for violating the policy.
- (b) Conduct drug and alcohol tests on employees in accordance with division (B)(2)(c) of this section and under the following conditions:
- (i) Prior to an individual's employment or during an employee's probationary period for employment, which shall not exceed one hundred twenty days after the probationary period begins;
- (ii) At random intervals while an employee provides labor or on-site supervision of labor for a public improvement contract. The employer shall use the neutral selection procedures required by the United States department of transportation to determine which employees to test and when to test those employees.
- (iii) After an accident at the site where labor is being performed pursuant to a public improvement contract. For purposes of this division, "accident" has the meaning established in rules the administrator

of workers' compensation adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on March 30, 2007.

(iv) When the employer, construction manager, construction manager at risk, or design-build firm has reasonable suspicion that prior to an accident an employee may be in violation of the employer's written substance use policy. For purposes of this division, "reasonable suspicion" has the meaning established in rules the administrator adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on March 30, 2007.

(v) Prior to an employee returning to a work site to provide labor for a public improvement contract after the employee tested positive for drugs or alcohol, and again after the employee returns to that site to provide labor under that contract, as required by either the employer, construction manager, construction manager at risk, or design-build firm, or conditions in the contract.

(c) Use the following types of tests when conducting a test on an employee under the conditions described in division (B)(2)(b) of this section:

(i) Drug and alcohol testing that uses the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program;

(ii) Testing to determine whether the concentration of alcohol on an employee's breath is equal to or in excess of the level specified in division (A)(1)(d) or (h) of section [4511.19](#) of the Revised Code, which is obtained through an evidentiary breath test conducted by a breath alcohol technician using breath testing equipment that meets standards established by the United States department of transportation, or, if such technician and equipment are unavailable, a blood test may be used to determine whether the concentration of alcohol in an employee's blood is equal to or in excess of the level specified in division (A)(1)(b) or (f) of section [4511.19](#) of the Revised Code.

(d) Require all employees to receive at least one hour of training that increases awareness of and attempts to deter substance abuse and supplies information about employee assistance to deal with substance abuse problems, and require all supervisors to receive one additional hour of training in skill building to teach a supervisor how to observe and document employee behavior and intervene when reasonable suspicion exists of substance use;

(e) Require all supervisors and employees to receive the training described in division (B)(2)(d) of this section before work for a public improvement contract commences or during the term of a public improvement contract;

(f) Require that the training described in division (B)(2)(d) of this section be provided using material prepared by an individual who has credentials or experience in substance abuse training;

(g) Assist employees by providing, at a minimum, a list of community resources from which an employee may obtain help with substance abuse problems, except that this requirement does not preclude an employer from having a policy that allows an employer to terminate an employee's employment the first time the employee tests positive for drugs or alcohol or if an employee refuses to be tested for drugs, alcohol, or both.

(C) Any time the United States department of health and human services changes the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program in a manner that allows additional or new products, protocols, procedures, and standards in the model, the administrator may adopt rules establishing standards to allow employers to use those additional or new products, protocols, procedures, or standards to satisfy the requirements of division (B)(2)(c) of this section, and the bureau may approve an employer's drug-free workplace program that meets the administrator's standards and the other requirements specified in division (B)(2) of this section.

(D) A contracting authority shall ensure that money appropriated by the general assembly for the contracting authority's public improvement contract or, in the case of a state institution of higher education, the institution's financing for the public improvement contract, is not expended unless the contractor for that contract is enrolled in and in good standing in a drug-free workplace program described in division (B) of this section. Prior to awarding a contract to a bidder, a contracting authority shall verify that the bidder is enrolled in and in good standing in such a program.

(E) A contracting authority shall include all of the following statements in the public improvement contract entered into between the contracting authority and a contractor for the public improvement:

(1) "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."

(2) "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement."

(3) "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

(4) "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

(F) In the event a construction manager, construction manager at risk, or design-build firm intends and is authorized to provide labor for a public improvement contract, a contracting authority shall verify, prior to awarding a contract for construction management services or design-build services, that the construction manager, construction manager at risk, or design-build firm was enrolled in and in good standing in a drug-free workplace program described in division (B) of this section prior to entering into the public improvement contract. The contracting authority shall not award a contract for construction manager services or design-build services if the construction manager, construction manager at risk, or design-build firm is not enrolled in or in good standing in such a program.

Effective Date: 03-30-2007; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.031 RC 153.03 requirements limited to state improvements.

The general assembly intends the drug-free workplace programs required by section [153.03](#) of the Revised Code to be limited to the constructing, altering, or repairing of public improvements of the state and to be of assistance in ensuring that such public improvements are constructed, altered, or repaired in a manner that protects the safety of the citizens of this state.

Effective Date: 03-30-2007

153.04 Forms for providing bidding information - life-cycle costs.

The plans, details, bills of material, specifications of work, estimates of cost in detail and in the aggregate, life-cycle cost analysis, form of bid, bid guaranty, and other data that may be required shall be prepared on such material and in such manner and form as are prescribed by the department of administrative services. The life-cycle costs shall be a primary consideration in the selection of a design. The same shall be deposited and safely kept in the office of the owner as defined in section [153.01](#) of the Revised Code as the property of the state.

Effective Date: 03-18-1999

153.05 Actions to enforce bond.

The bond required by section [153.08](#) of the Revised Code may be enforced against the person executing such bond, by any claimant for labor or material, and suit may be brought on such bond in the name of the state on relation of the claimant within one year from the date of delivering or furnishing such labor or material, in the court of common pleas of the county wherein such labor or material was furnished or delivered. Such bond shall not be released by the execution of any additional security, notes, retentions from estimates, or other instrument on account of such claim, or for any reason, except the full payment of such claim for labor or material.

Effective Date: 03-18-1999

153.06 Form of bids.

After the proceedings required by sections [153.01](#) and [153.04](#) of the Revised Code have been complied with, the owner referred to in section [153.01](#) of the Revised Code shall give public notice of the time and place when and where bids will be received for performing the labor and furnishing the materials of such construction, improvement, alteration, addition, or installation, and a contract awarded, except for materials manufactured by the state or labor supplied by a county department of job and family services that may enter into the same. The form of bid approved by the department of administrative services shall be used, and a bid shall be invalid and not considered unless such form is used without change, alteration, or addition. Bidders may be permitted to bid upon all the branches of work and materials to be furnished and supplied, or upon any thereof, or alternately upon all or any thereof.

Effective Date: 07-01-2000

153.07 Publishing notice of bids.

The notice provided for in section [153.06](#) of the Revised Code shall be published once each week for three consecutive weeks in a newspaper of general circulation, or as provided in section 7.16 of the Revised Code, in the county where the activity for which bids are submitted is to occur and in such other newspapers as ordered by the department of administrative services, the last publication to be at least eight days preceding the day for opening the bids, and in such form and with such phraseology as the department orders. Copies of the plans, details, bills of material, estimates of cost, and specifications shall be open to public inspection at all business hours between the day of the first publication and the day for opening the bids, at the office of the department where the bids are received, and such other place as may be designated in such notice.

Effective Date: 03-18-1999; 09-29-2011

153.08 Opening bids and awarding contract.

On the day and at the place named in the notice provided for in section [153.06](#) of the Revised Code, the owner referred to in section [153.01](#) of the Revised Code shall open the bids and shall publicly, with the assistance of the architect or engineer, immediately proceed to tabulate the bids upon duplicate sheets. The public bid opening may be broadcast by electronic means pursuant to rules established by the director of administrative services. A bid shall be invalid and not considered unless a bid guaranty meeting the requirements of section [153.54](#) of the Revised Code and in the form approved by the department of administrative services is filed with such bid. For a bid that is not filed electronically, the bid and bid guaranty shall be filed in one sealed envelope. If the bid and bid guaranty are filed electronically, they must be received electronically before the deadline published pursuant to section [153.06](#) of the Revised Code. For all bids filed electronically, the original, unaltered bid guaranty shall be made available to the public authority after the public bid opening. After investigation, which shall be completed within thirty days, the contract shall be awarded by such owner to the lowest responsive and responsible bidder in accordance with section [9.312](#) of the Revised Code.

No contract shall be entered into until the industrial commission has certified that the person so awarded the contract has complied with sections [4123.01](#) to [4123.94](#) of the Revised Code, until, if the bidder so awarded the contract is a foreign corporation, the secretary of state has certified that such corporation is authorized to do business in this state, until, if the bidder so awarded the contract is a person nonresident of this state, such person has filed with the secretary of state a power of attorney designating the secretary of state as its agent for the purpose of accepting service of summons in any action brought under section [153.05](#) of the Revised Code or under sections [4123.01](#) to [4123.94](#) of the Revised Code, and until the contract and bond, if any, are submitted to the attorney general and the attorney general's approval certified thereon.

No contract shall be entered into unless the bidder possesses a valid certificate of compliance with affirmative action programs issued pursuant to section [9.47](#) of the Revised Code and dated no earlier than one hundred eighty days prior to the date fixed for the opening of bids for a particular project.

Effective Date: 03-18-1999; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.09 New proposals when necessary - change in work or materials.

If in the opinion of the owner referred to in section [153.01](#) of the Revised Code, the award of a contract to the lowest responsive and responsible bidder is not in the best interests of the state, the owner may accept another bid so opened or reject all bids, and advertise for other bids. Such advertisement shall be for such time, in such form, and in such newspaper as the department directs. All contracts shall provide that such owner may make any change in work or materials on the conditions and in the manner provided in sections [153.10](#) and [153.11](#) of the Revised Code.

Effective Date: 03-18-1999

153.10 No change in plans without approval of owner.

After the plans, bills of material, specifications of work, estimates of cost in detail and in the aggregate, life-cycle cost analysis, form of bid, bid guaranty, and other data that may be required are approved and filed with the owner as defined in section [153.01](#) of the Revised Code, no change of plans, details, bills of material, or specifications shall be made or allowed unless the same are approved by the owner as defined in section [153.01](#) of the Revised Code. When so approved, the plans of the proposed change, with detail to scale and full size, specifications of work, and bills of material shall be filed with the original papers. If such change affects the price, the amount thereof shall likewise receive such approval.

Effective Date: 03-18-1999

153.11 Change of plans becomes part of original contract.

Whenever the change referred to in section [153.10](#) of the Revised Code is approved by the owner as defined in section [153.01](#) of the Revised Code, accepted in writing by the contractor, and filed, the same shall be considered as being a part of the original contract, and the bond theretofore executed shall be held to include and cover the same.

Effective Date: 03-18-1999

153.12 Awarding and executing contract.

(A) With respect to award of any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement made by the state, or any county, township, municipal corporation, school district, or other political subdivision, or any public board, commission, authority, instrumentality, or special purpose district of or in the state or a political subdivision or that is authorized by state law, the award, and execution of the contract, shall be made within sixty days after the date on which the bids are opened. The failure to award and execute the contract within sixty days invalidates the entire bid proceedings and all bids submitted, unless the time for awarding and executing the contract is extended by mutual consent of the owner or its representatives and the bidder whose bid the owner accepts and with respect to whom the owner subsequently awards and executes a contract. The public owners referred to in this section shall include, in the plans and specifications for the project for which bids are solicited, the estimate of cost. The bid for which the award is to be made shall be opened at the time and place named in the advertisement for bids, unless extended by the owner or its representative or unless, within seventy-two hours prior to the published time for the opening of bids, excluding Saturdays, Sundays, and legal holidays, any modification of the plans or specifications and estimates of cost for the project for which bids are solicited is issued and mailed or otherwise furnished to persons who have obtained plans or specifications for the project, for which the time for opening of bids shall be extended one week, with no further advertising of bids required. The contractor, upon request, is entitled to a notice to proceed with the work by the owner or its representative upon execution of the contract. No contract to which this section applies shall be entered into if the price of the contract, or, if the project involves multiple contracts where the total price of all contracts for the project, is in excess of ten per cent above the entire estimate thereof, nor shall the entire cost of the construction, reconstruction, repair, painting, decorating, improvement, alteration, addition, or installation, including changes and estimates of expenses for architects or engineers, exceed in the aggregate the amount authorized by law.

The unit or lump sum price stated in the contract shall be used in determining the amount to be paid and shall constitute full and final compensation for all the work.

Partial payment to the contractor for work performed under the lump sum price shall be based on a schedule prepared by the contractor and approved by the architect or engineer who shall apportion the lump sum price to the major components entering into or forming a part of the work under the lump sum price.

Partial payments to the contractor for labor performed under either a unit or lump sum price contract shall be made at the rate of ninety-two per cent of the estimates prepared by the contractor and approved by the architect or engineer. All labor performed after the job is fifty per cent completed shall be paid for at the rate of one hundred per cent of the estimates submitted by the contractor and approved by the architect or engineer.

The amounts and time of payments of any public improvements contract made by the state or any county, township, municipal corporation, school district, or other political subdivision, or any public board, commission, authority, instrumentality, or special purpose district of or in the state or a political subdivision or that is authorized by state law, except as provided in section [5525.19](#) of the Revised

Code, shall be governed by this section and sections [153.13](#) and [153.14](#) of the Revised Code. If the time for awarding the contract is extended by mutual consent, or if the owner or its representative fails to issue a timely notice to proceed as required by this section, the owner or its representative shall issue a change order authorizing delay costs to the contractor, which does not invalidate the contract. The amount of such a change order to the owner shall be determined in accordance with the provisions of the contract for change orders or force accounts or, if no such provision is set forth in the contract, the cost to the owner shall be the contractor's actual costs including wages, labor costs other than wages, wage taxes, materials, equipment costs and rentals, insurance, and subcontracts attributable to the delay, plus a reasonable sum for overhead. In the event of a dispute between the owner and the contractor concerning such change order, procedures shall be commenced under the applicable terms of the contract, or, if the contract contains no provision for resolving the dispute, it shall be resolved pursuant to the procedures for arbitration in Chapter 2711. of the Revised Code, except as provided in division (B) of this section. Nothing in this division shall be construed as a limitation upon the authority of the director of transportation granted in Chapter 5525. of the Revised Code.

(B) If a dispute arises between the state and a contractor concerning the terms of a public improvement contract let by the state or concerning a breach of the contract, and after administrative remedies provided for in such contract and any alternative dispute resolution procedures provided in accordance with guidelines established by the director of administrative services are exhausted, the contractor may bring an action to the court of claims in accordance with Chapter 2743. of the Revised Code. The state or the contractor may request the chief justice of the supreme court to appoint a referee or panel of referees in accordance with division (C)(3) of section [2743.03](#) of the Revised Code. As used in this division, "dispute" means a disagreement between the state and the contractor concerning a public improvement contract let by the state.

Effective Date: 03-18-1999

153.13 Estimates of labor and materials - funds in escrow account.

At the time named in the contract for payment to the person with whom it is made, the owner referred to in section [153.01](#) or [153.12](#) of the Revised Code shall approve a full, accurate, and detailed estimate of the various kinds of labor performed and material furnished under the contract, with the amount due for each kind of labor and material and the materials and amount due in the aggregate, which estimate shall be based upon actual measurement of such labor and materials, and shall give the amounts of the preceding estimate, and the amount of labor performed and materials furnished since the last estimate. From the date the contract is fifty per cent complete, as evidenced by payments in the amount of at least fifty per cent of the contract to the person with whom the owner has contracted, except in the case of contracts the total cost of which is less than fifteen thousand dollars, all funds retained pursuant to sections [153.12](#) and [153.14](#) of the Revised Code for the faithful performance of work shall be deposited in the escrow account designated in section [153.63](#) of the Revised Code. After the contract is fifty per cent complete, no further funds shall be retained. When the major portion of the project is substantially completed and occupied, or in use, or otherwise accepted, and there exists no other reason to withhold retainage, the retained percentages held in connection with such portion shall be released from escrow and paid to the contractor, withholding only that amount necessary to assure completion. Funds in the escrow account not heretofore paid, with accumulated interest, shall be paid to the person with whom the owner has contracted thirty days from the date of completion or either acceptance or occupancy by the owner. Such payments shall be in accordance with division (A)(2) of section [153.63](#) of the Revised Code. Nothing in this section shall be construed as a limitation upon the authority of the director of transportation granted in Chapter 5525. of the Revised Code.

Effective Date: 02-11-1982

153.14 Estimates to be filed with director - payment on materials delivered - payment procedure.

For the construction of those projects, improvements, and public buildings over which the director of administrative services has general supervision pursuant to section [123.01](#) of the Revised Code, the estimates referred to in section [153.13](#) of the Revised Code shall be filed with the director by the owner referred to in section [153.01](#) or [153.12](#) of the Revised Code. Upon completion of a project referred to in section [153.13](#) of the Revised Code or any divisible part thereof, the maintenance and repair of such project or divisible part shall be assumed by the owner referred to in section [153.01](#) or [153.12](#) of the Revised Code.

In addition to all other payments on account of work performed, there shall be allowed by the owner referred to in section [153.01](#) or [153.12](#) of the Revised Code and paid to the contractor a sum at the rate of ninety-two per cent of the invoice costs, not to exceed the bid price in a unit price contract, of material delivered on the site of the work, or a railroad station, siding, or other point in the vicinity of the work, or other approved storage site, provided such materials have been inspected and found to meet the specifications. The balance of such invoiced value shall be paid when such material is incorporated into and becomes a part of such building, construction, addition, improvement, alteration, or installation. When an estimate is allowed on account of material delivered on the site of the work or in the vicinity thereof or under the possession and control of the contractor but not yet incorporated therein, such material shall become the property of the owner under the contract, but if such material is stolen, destroyed, or damaged by casualty before being used, the contractor shall be required to replace it at his own expense.

When the rate of work and amounts involved are so large that it is considered advisable by the owner or contractor, estimates and payments shall be made twice each month.

Payment on approved estimates filed with the owner or its representative shall be made within thirty days. Upon the failure of the owner or its representative to make such payments within thirty days, or upon an unauthorized withholding of retainage, there shall be allowed to the contractor, in addition to any other remedies allowed by law, interest on such moneys not paid within thirty days. Interest on the unauthorized withholding of retainage shall be in addition to any interest earned in the escrow account set forth in section [153.13](#) of the Revised Code. The rate of such interest shall be the average of the prime rate established at the commercial banks in the city of over one hundred thousand population that is nearest the construction project. Nothing in this section shall be construed as a limitation upon the authority of the director of transportation granted in Chapter 5525. of the Revised Code.

Effective Date: 07-01-1985

153.15 Assessment of asbestos hazard.

(A) Whenever an asbestos hazard abatement activity is being performed in a building or structure supported in whole or in part by the state, an asbestos hazard evaluation specialist certified under Chapter 3710. of the Revised Code shall assess the hazard and determine appropriate response actions. Enclosure or encapsulation, rather than removal, shall be implemented if the asbestos hazard evaluation specialist determines that both of the following apply:

- (1) Enclosure or encapsulation would be an appropriate response action;
- (2) The cost of encapsulating or enclosing the asbestos hazard would be less than removing it.

(B) As used in this section, "enclosure" and "encapsulation" have the meanings given in section [3710.01](#) of the Revised Code.

(C) The requirements of this section do not apply to school districts.

Effective Date: 07-22-1994

153.16 Policy and procedure guidelines for contract documents in conjunction with administration of public works contracts.

(A) The director of administrative services shall establish policy and procedure guidelines for contract documents in conjunction with the administration of public works contracts that the state or any institution supported in whole or in part by the state enters into for any project subject to sections [153.01](#) to [153.11](#) of the Revised Code.

(B) Notwithstanding any contract provision to the contrary, any claim submitted under a public works contract that the state or any institution supported in whole or in part by the state enters into for any project subject to sections [153.01](#) to [153.11](#) of the Revised Code shall be resolved within one hundred twenty days. After the end of this one hundred twenty-day period, the contractor shall be deemed to have exhausted all administrative remedies for purposes of division (B) of section [153.12](#) of the Revised Code.

Effective Date: 03-18-1999

153.17 Requisition upon contractor for additional specific force or materials.

(A) When in the opinion of the owner referred to in section [153.01](#) of the Revised Code, the work under any contract made under any law of the state is neglected by the contractor or such work is not prosecuted with the diligence and force specified or intended in the contract, such owner may make requisition upon the contractor for such additional specific force or materials to be brought into the work under such contract or to remove improper materials from the grounds as in their judgment the contract and its faithful fulfillment requires.

Not less than five days' notice in writing of such action shall be served upon the contractor or the contractor's agent in charge of the work. If the contractor fails to comply with such requisition within fifteen days, such owner with the written consent of the department of administrative services, may employ upon the work the additional force, or supply the special materials or such part of either as is considered proper, and may remove improper materials from the grounds.

(B) When the original contractor has defaulted on a contract and the surety has declined to take over the project, the owner may contract with one or more takeover contractors to complete work that was not finished because of the default of the original contractor. The owner may enter into a contract with a takeover contractor without competitive bidding or controlling board approval. Upon execution of a takeover contract, the owner shall notify the director of budget and management.

When the owner has taken over a project after a default has occurred, any moneys that the owner receives from the surety as a settlement for completion of the project shall be deposited in the original fund from which the capital appropriation for the project was made. The director, without controlling board approval, may authorize specified additional uses for the moneys related to completion of the project and may increase the appropriation authority in the appropriation line item used to fund the project by an amount equal to the moneys received from the surety.

Effective Date: 03-18-1999

153.18 Certification of additional force or materials.

The owner referred to in section [153.01](#) of the Revised Code shall make separate estimates of all additional force or materials employed or supplied as provided by section [153.17](#) of the Revised Code,

and payment shall be provided for by the director of budget and management. The amount so paid shall be charged against the contractor and be deducted from his next or any subsequent estimate. The amount or any part thereof not so paid may be recovered by action from such contractor and his sureties.

Effective Date: 07-01-1985

153.19 Contract shall contain provision as to time of completion.

All contracts under sections [153.01](#) to [153.60](#), inclusive, of the Revised Code, shall contain provision in regard to the time when the whole or any specified portion of work contemplated therein shall be completed and that for each day it shall be delayed beyond the time so named the contractor shall forfeit to the state a sum to be fixed in the contract, which shall be deducted from any payment due or to become due to the contractor.

Effective Date: 10-01-1953

153.20 Duty of attorney general.

The attorney general shall have charge of and direct the proceedings necessary to enforce contracts authorized by sections [153.01](#) to [153.19](#), inclusive, of the Revised Code.

Effective Date: 10-01-1953

County Building Provisions

153.21 Building commission.

When the board of county commissioners has determined to erect a courthouse or other county building, or to make an addition to, or to make an improvement of any existing county owned building, the board may appoint four suitable and competent freehold electors of the county, who shall, together with the board, constitute a building commission and serve until the courthouse or other county building, or the addition thereto, or the improvements thereof are completed. Not more than two of such appointees shall be of the same political party.

Effective Date: 09-20-1965

153.22 Compensation of commissioners.

The persons appointed under section [153.21](#) of the Revised Code after August 22, 1951, shall receive a reasonable compensation for the time actually employed, to be fixed by the court of common pleas, and on its approval paid from the county treasury. Their compensation in the aggregate shall not exceed eight thousand dollars.

Effective Date: 10-01-1953

153.23 Expenses of building commission.

The necessary expenses for stationery, postage, correspondence, and travel out of the county required in the discharge of the duties of the building commission shall be paid from the county treasury on the order of the board of county commissioners and the warrant of the county auditor.

Effective Date: 10-01-1953

153.24 Oath and bond.

Before entering upon the discharge of their duties, the persons appointed to the building commission shall each take an oath of office and give bond for the faithful and honest discharge of his duties in the same amount as required of members of the board of county commissioners, with sureties approved by the judge of the court of common pleas. Such bond shall be delivered to the county treasurer and kept in his office.

Effective Date: 10-01-1953

153.25 Vacancies.

In case of the death, resignation, or removal of any member of the building commission, the vacancy shall be filled by appointment by the judge of the court of common pleas as provided in section [153.21](#) of the Revised Code.

Effective Date: 10-01-1953

153.26 Contracts.

After adopting plans, specifications, and estimates, the building commission shall invite bids and award contracts in accordance with sections [307.86](#) to [307.92](#), inclusive, of the Revised Code, for the building and for furnishing, heating, lighting, and ventilating it, and for the sewerage thereof. Until the building is completed and accepted by the commission, the commission may determine all questions connected therewith. The commission shall be governed by sections [153.01](#) to [153.60](#), inclusive, of the Revised Code, relating to the erection of public buildings of the county.

Effective Date: 12-09-1967

153.27 Architects - superintendents - employees.

The building commission may employ architects, superintendents, and other necessary employees during the construction of a courthouse or other county building and fix their compensation and bond.

Effective Date: 10-01-1953

153.28 Plans, drawings, and cost estimates filed with county auditor.

When approved by the building commission, the plans, drawings, representations, bills of material, specifications of work, and estimates of cost thereof shall be filed by the county auditor in his office and shall not be altered, unless such alteration is first drawn, specified, and estimated as required by law for the original plans and approved by the commission. No such change shall be made until the price to be paid therefor has been agreed upon in writing between the commission and the contractor.

Effective Date: 10-01-1953

153.29 Proceedings of building commission.

Resolutions for the adoption or alteration of plans or specifications, or for the award of contracts, hiring of architects, superintendent, or other employees and the fixing of their compensation, the approval of bonds or bid guaranties, and the allowance of estimates shall be in writing and shall require for their

adoption the votes of five members of the building commission, taken by yeas and nays recorded on the journal of the board of county commissioners. When signed by five members of the commission, the county auditor shall draw his warrant on the county treasurer for the payment of all bills and estimates of such commission.

Effective Date: 08-01-1980

153.30 Record of proceedings.

Full and accurate records of all proceedings of the building commission shall be kept by the county auditor upon the journal of the board of county commissioners. He shall carefully preserve in his office all plans, drawings, representations, bills of material, specifications of work, and estimates of costs in detail and in the aggregate pertaining to the building.

Effective Date: 10-01-1953

153.31 Plans and estimates for construction - construction project manager or consultants.

When it becomes necessary for the board of county commissioners of a county to erect or cause to be erected a public building, or a substructure for a bridge, or an addition to or alteration thereof, before entering into any contract therefor or repair thereof or for the supply of any materials therefor, they shall cause to be made by a registered architect or registered professional engineer the following:

- (A) Full and accurate plans showing all necessary details of the work and materials required, with working plans suitable for the use of mechanics or other builders in the construction thereof, drawn so as to be easily understood;
- (B) Accurate bills, showing the exact amount of the different kinds of material, necessary for the construction, to accompany the plans;
- (C) Full and complete specifications of the work to be performed showing the manner and style required to be done, with such directions as will enable a competent builder to carry them out, and which will afford to bidders all needful information;
- (D) A full and accurate estimate of each item of expense, and of the aggregate cost thereof.

In connection with the planning and construction of any public building project, the board may employ a construction project manager or consultants, and fix their compensation. Such construction project manager or consultants shall be expert and qualified in their respective fields. The cost of such services may be paid from the proceeds of bonds and notes issued to pay the cost of such project.

This section does not prevent the board from receiving from bidders on iron or reinforced concrete substructures for bridges the necessary plans and specifications therefor.

Effective Date: 10-24-1975

153.311 Construction of public building in stages.

Nothing contained in Chapter 153. of the Revised Code shall prevent a board of county commissioners from constructing a public building in stages and letting contracts from time to time for various portions of the work, so long as the total cost of construction of a project, which may include more than one building, is reasonably estimated by the board to exceed fifteen million dollars.

Effective Date: 09-13-1972

153.32 Contracts for erection and repair of superstructures.

When it becomes necessary to erect a bridge, the board of county commissioners shall determine the length and width of the superstructure, and whether it shall be single or double track, and it shall advertise for bids for performing the labor and furnishing the materials necessary to the erection thereof in accordance with sections [307.86](#) to [307.92](#) of the Revised Code.

Effective Date: 03-18-1999

153.33 Bids on other plans may be considered.

The board of county commissioners may also invite, receive, and consider bids on any other plan at the option of bidders, and shall require that any such plan together with specifications shall be filed in the office of the county auditor for a period of fifteen days prior to the date for receiving bids. Such plans and specifications shall show the number of spans, the length of each, the nature, quality, and size of the materials to be used, the length of the structure when completed, and whether there is any patent on the bid plan, or any part thereof, and if so, on what part thereof.

Effective Date: 03-18-1999

153.34 Contents of advertisement.

In its advertisement, the board of county commissioners shall invite bidders to make bids for furnishing all the materials and performing all the work, or for such parts thereof as bidders deem proper, and include such other matter as is required in section [307.87](#) of the Revised Code.

Effective Date: 03-18-1999

153.35 Plans shall be kept on file in county auditor's office.

The plans and specifications upon which the contracts are awarded, shall be kept on file in the office of the county auditor and made a part of the contract with the successful bidder. When it is necessary to alter, repair, or make an addition to a bridge, the board of county commissioners in making contracts therefor, shall conform to sections [153.01](#) to [153.60](#), inclusive, of the Revised Code, in relation to the erection of bridges as nearly as the nature of the case will permit.

Effective Date: 10-01-1953

153.36 Approval of plans for courthouse or jail.

If the plans, drawings, representations, bills of material, and specifications of work, and estimates of the cost thereof in detail and in the aggregate, required in sections [153.31](#) to [153.35](#), inclusive, of the Revised Code, relate to the building of a courthouse or jail, or an addition to or alteration, repair, or improvement thereof, they shall be submitted to the board of county commissioners, together with the clerk of the court of common pleas, the sheriff, and probate judge, and one person to be appointed by the judge of the court of common pleas, for their approval. If approved by a majority of them, a copy thereof shall be deposited with the county auditor and kept in his office.

Effective Date: 10-01-1953

153.37 Approval of plans for county home.

If the plans, drawings, representations, bills of material, and specifications of work and estimates of the cost thereof relate to the building, addition to, or alteration of a county home, they shall be submitted to the board of county commissioners. If approved by a majority of the board, a copy thereof shall be deposited in the office of the county auditor and kept for the inspection and use of parties interested.

Effective Date: 10-01-1953

153.38 Approval of plans for bridge.

If the plans, drawings, representations, bills of material, specifications of work, and estimates relate to the building of a bridge, they shall be submitted to the board of county commissioners, county auditor, and the county engineer. If approved by a majority of them, a copy thereof shall be deposited with the auditor and kept for the inspection of parties interested.

Effective Date: 10-01-1953

153.39 Approval of plans for children's home.

If the plans, drawings, representations, bills of material, specifications of work, and estimates relate to the building of a children's home, they shall be submitted to the board of county commissioners and three citizens of the county, to be appointed by a resident judge of the court of common pleas, or a judge residing in the same subdivision of the judicial district. If approved by a majority of them, a copy thereof shall be deposited with the county auditor and kept by the auditor for the inspection of interested parties. Before such plans are adopted, they shall be submitted to the department of job and family services for suggestions and criticism. The boards of counties composing a district for the purpose of establishing a district children's home, in letting contracts for the necessary buildings or the repair or alteration thereof, shall be governed by the law relating to letting contracts for erecting, repairing, or altering other public buildings.

Effective Date: 07-01-2000

153.44 Contracts submitted to prosecuting attorney.

Before work is done or material furnished, all contracts that exceed one thousand dollars in amount shall be submitted by the board of county commissioners to the prosecuting attorney of the county. If found by him to be in accordance with sections [153.01](#) to [153.60](#), inclusive, of the Revised Code, and his certificate to that effect is indorsed thereon, such contracts shall have full effect, otherwise they shall be void.

Effective Date: 10-01-1953

153.45 Commissioners may annul old and make new contracts.

If a contractor fails or refuses to proceed with the work specified in his contract in accordance with the plans, descriptions, and specifications attached to and made part thereof, the board of county commissioners may annul such contract, and shall proceed to make another contract for the completion thereof, in accordance with sections [153.01](#) to [153.60](#), inclusive, of the Revised Code.

Effective Date: 10-01-1953

153.49 Duty of county treasurer.

The county treasurer shall pay the warrants drawn for materials and labor furnished on county contracts pursuant to estimates prepared under section [153.14](#) of the Revised Code, place them on file and keep a register of the names of the persons to whom they are paid.

Effective Date: 08-27-1976

General Building Provisions

153.50 Separate bids for work and materials.

(A) As used in sections 153.50 to 153.52 of the Revised Code:

- (1) "Construction manager at risk" has the same meaning as in section 9.33 of the Revised Code.
- (2) "Design-assist services" means monitoring and assisting in the completion of the plans and specifications.
- (3) "Design-assist firm" means a person capable of providing design-assist services.
- (4) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.
- (5) "General contracting" means constructing and managing an entire public improvement project, including the branches or classes of work specified in division (B) of this section, under the award of a single aggregate lump sum contract.
- (6) "General contracting firm" means a person capable of performing general contracting.

(B) Except for contracts made with a construction manager at risk, with a design-build firm, or with a general contracting firm, an officer, board, or other authority of the state, a county, township, municipal corporation, or school district, or of any public institution belonging thereto, authorized to contract for the erection, repair, alteration, or rebuilding of a public building, institution, bridge, culvert, or improvement and required by law to advertise and receive bids for furnishing of materials and doing the work necessary for the erection thereof, shall require separate and distinct bids to be made for furnishing such materials or doing such work, or both, in their discretion, for each of the following branches or classes of work to be performed, and all work kindred thereto, entering into the improvement:

- (1) Plumbing and gas fitting;
- (2) Steam and hot-water heating, ventilating apparatus, and steam-power plant;
- (3) Electrical equipment.

Effective Date: 03-18-1999; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.501 [Public authority may approve subcontractors, design assist firms, and self performance of the work].

(A) A public authority may accept a subcontract awarded by a construction manager at risk, a design-build firm, or a general contracting firm, or may reject any such subcontract if the public authority determines that the bidder is not responsible.

(B) A public authority may authorize a construction manager at risk or design-build firm to utilize a design-assist firm on any public improvement project without transferring any design liability to the design-assist firm.

(C) If the construction manager at risk or design-build firm intends and is permitted by the public authority to self-perform a portion of the work to be performed, the construction manager at risk or design-build firm shall submit a sealed bid for the portion of the work prior to accepting and opening any bids for the same work.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.502 [Prequalification of bidders and awarding subcontracts].

(A) Each construction manager at risk and design-build firm shall establish criteria by which it will prequalify prospective bidders on subcontracts awarded for work to be performed under the construction management or design-build contract. The criteria established by a construction manager at risk or design-build firm shall be subject to the approval of the public authority involved in the project and shall be consistent with the rules adopted by the department of administrative services pursuant to section 153.503 of the Revised Code.

(B) For each subcontract to be awarded, the construction manager at risk or design-build firm shall identify at least three prospective bidders that are prequalified to bid on that subcontract, except that the construction manager at risk or design-build firm shall identify fewer than three if the construction manager at risk or design-build firm establishes to the satisfaction of the public authority that fewer than three prequalified bidders are available. The public authority shall verify that each prospective bidder meets the prequalification criteria and may eliminate any bidder it determines is not qualified.

(C) Once the prospective bidders are prequalified and found acceptable by the public authority, the construction manager at risk or design-build firm shall solicit proposals from each of those bidders. The solicitation and selection of a subcontractor shall be conducted under an open book pricing method. As used in this division, "open book pricing method" has the same meaning as in section 9.33 of the Revised Code, in the case of a construction manager at risk, and the same meaning as in section 153.65 of the Revised Code, in the case of a design-build firm.

(D) A construction manager at risk or design-build firm shall not be required to award a subcontract to a low bidder.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.503 [Administrative rules].

The department of administrative services, pursuant to Chapter 119. of the Revised Code and not later than June 30, 2012, shall adopt rules to do all of the following:

(A) Prescribe the procedures and criteria for determining the best value selection of a construction manager at risk or design-build firm;

(B) In consultation with the state architect's office, set forth standards to be followed by construction managers at risk and design-build firms when establishing prequalification criteria pursuant to section 153.502 of the Revised Code;

(C) Prescribe the form for the contract documents to be used by a construction manager at risk, design-build firm, or general contractor when entering into a subcontract;

(D) Prescribe the form for the contract documents to be used by a public authority when entering into a contract with a construction manager at risk or design-build firm.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.51 Separate contracts - single, aggregate contract.

(A) If separate and distinct bids are required pursuant to section [153.50](#) of the Revised Code, no contract for the entire job, or for a greater portion thereof than is embraced in one such branch or class of work may be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids in the aggregate.

(B)(1) If the public authority awards a single, aggregate contract for the entire project pursuant to division (A) of this section, the award shall be made to the bidder who is the lowest responsive and responsible bidder or the lowest and best bidder, as applicable, as specified in section [153.52](#) of the Revised Code.

(2) The public authority referred to in section [153.50](#) of the Revised Code may assign all or any portion of its interest in the contract of the lowest responsive and responsible bidder or the lowest and best bidder, as applicable, to another successful bidder as an agreed condition for an award of the contract for the amount of its respective bid. Such assignment may include, but is not limited to, the duty to schedule, coordinate, and administer the contracts.

Effective Date: 04-09-1996; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.52 Awarding of contracts to separate bidders.

A contract for general contracting or for doing the work belonging to each separate branch or class of work specified in division (B) of section [153.50](#) of the Revised Code, or for the furnishing of materials therefor, shall be awarded by the public authority referred to in section [153.50](#) of the Revised Code, in its discretion, to the lowest responsive and responsible separate bidder therefor, in accordance with section [9.312](#) of the Revised Code in the case of any public authority of the state or any public institution belonging thereto, and to the lowest and best separate bidder in the case of a county, township, or municipal corporation, or any public institution belonging thereto, and to the lowest responsive and responsible bidder in the case of a school district, and shall be made directly with the bidder in the manner and upon the terms, conditions, and limitations as to giving bond or bid guaranties as prescribed by law.

Effective Date: 04-09-1996; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.53 [Adjustment for inflation].

(A) As used in this section, "rate of inflation" has the same meaning as in section 107.032 of the Revised Code.

(B) Five years after the effective date of this section and every five years thereafter, the director of administrative services shall evaluate the monetary threshold specified in section 153.01 of the Revised Code and adopt rules adjusting that amount based on the average rate of inflation during each of the previous five years immediately preceding such adjustment.

Effective Date: 08-01-1980; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.54 Bid guaranty to be filed with bid.

(A) Except with respect to a contract described in section 9.334 or 153.693 of the Revised Code, each person bidding for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the department of transportation, for any public improvement shall file with the bid, a bid guaranty in the form of either:

(1) A bond in accordance with division (B) of this section for the full amount of the bid;

(2) A certified check, cashier's check, or letter of credit pursuant to Chapter 1305. of the Revised Code, in accordance with division (C) of this section. Any such letter of credit is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency. The amount of the certified check, cashier's check, or letter of credit shall be equal to ten per cent of the bid.

(B) A bid guaranty filed pursuant to division (A)(1) of this section shall be conditioned to:

(1) Provide that, if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the contracting authority designates, will enter into a proper contract in accordance with the bid, plans, details, and specifications. If for any reason, other than as authorized by section [9.31](#) of the Revised Code or division (G) of this section, the bidder fails to enter into the contract, and the contracting authority awards the contract to the next lowest bidder, the bidder and the surety on the bidder's bond are liable to the state, political subdivision, district, institution, or agency for the difference between the bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bond, whichever is less. If the state, political subdivision, district, institution, or agency does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract and the surety on the bidder's bond, except as provided in division (G) of this section, are liable to the state, political subdivision, district, institution, or agency for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less.

(2) Indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, and specifications therefor and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor, material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

(C)(1) A bid guaranty filed pursuant to division (A)(2) of this section shall be conditioned to provide that if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the contracting authority designates, will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material. If for any reason, other than as authorized by section [9.31](#) of the Revised Code or division (G) of this section, the bidder fails to enter into the contract, and the contracting authority awards the contract to the next lowest bidder, the bidder is liable to the state, political subdivision, district, institution, or agency for the difference between the bidder's bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bid, whichever is less. If the state, political subdivision, district, institution, or agency does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract, except as provided in division (G) of this section, is liable to the state, political subdivision, district, institution, or agency for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less.

If the bidder enters into the contract, the bidder, at the time the contract is entered to, shall file a bond for the amount of the contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in

accordance with the plans, details, and specifications therefor and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor, material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

(2) A construction manager who enters into a contract pursuant to sections [9.33](#) to [9.333](#) of the Revised Code, if required by the public authority at the time the construction manager enters into the contract, shall file a letter of credit pursuant to Chapter 1305. of the Revised Code, bond, certified check, or cashier's check, for the value of the construction management contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by the construction manager's failure to perform the contract according to its provisions, and shall agree and assent that this undertaking is for the benefit of the state, political subdivision, district, institution, or agency. A letter of credit provided by the construction manager is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency.

(D) Where the state, political subdivision, district, institution, or agency accepts a bid but the bidder fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after the awarding of the contract, the bidder and the surety on any bond, except as provided in division (G) of this section, are liable for the amount of the difference between the bidder's bid and that of the next lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Where the state, political subdivision, district, institution, or agency then awards the bid to such next lowest bidder and such next lowest bidder also fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after the awarding of the contract, the liability of such next lowest bidder, except as provided in division (G) of this section, is the amount of the difference between the bids of such next lowest bidder and the third lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Liability on account of an award to any lowest bidder beyond the third lowest bidder shall be determined in like manner.

(E) Notwithstanding division (C) of this section, where the state, political subdivision, district, institution, or agency resubmits the project for bidding, each bidder whose bid was accepted but who failed or refused to enter into a proper contract, except as provided in division (G) of this section, is liable for an equal share of a penal sum in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, but no bidder's liability shall exceed the amount of the bidder's bid guaranty.

(F) All bid guaranties filed pursuant to this section shall be payable to the state, political subdivision, district, institution, or agency, be for the benefit of the state, political subdivision, district, institution, or agency or any person having a right of action thereon, and be deposited with, and held by, the board, officer, or agent contracting on behalf of the state, political subdivision, district, institution, or agency. All bonds filed pursuant to this section shall be issued by a surety company authorized to do business in this state as surety approved by the board, officer, or agent awarding the contract on behalf of the state, political subdivision, district, institution, or agency.

(G) A bidder for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the Ohio department of transportation, for a public improvement costing less than one-half million dollars may withdraw the bid from consideration if the bidder's bid for some other contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the department of transportation, for the public improvement costing less than one-half million dollars has already been accepted, if the bidder certifies in good faith that the total amount of all the bidder's current contracts is less than one-half million dollars, and if the surety certifies in good faith that the bidder is unable to perform the subsequent contract because to do so would exceed the bidder's bonding capacity. If a bid is withdrawn under authority of this division, the contracting authority may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding, and neither the bidder nor the surety on the bidder's bond are liable for the difference between the bidder's bid and that of the next lowest bidder, for a penal sum, or for the costs of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders.

(H) Bid guaranties filed pursuant to division (A) of this section shall be returned to all unsuccessful bidders immediately after the contract is executed. The bid guaranty filed pursuant to division (A)(2) of this section shall be returned to the successful bidder upon filing of the bond required in division (C) of this section.

(I) For the purposes of this section, "next lowest bidder" means, in the case of a political subdivision that has adopted the model Ohio and United States preference requirements promulgated pursuant to division (E) of section [125.11](#) of the Revised Code, the next lowest bidder that qualifies under those preference requirements.

(J) For the purposes of this section and sections [153.56](#), [153.57](#), and [153.571](#) of the Revised Code, "public improvement," "subcontractor," "material supplier," "laborer," and "materials" have the same meanings as in section [1311.25](#) of the Revised Code.

Effective Date: 11-24-1995; 03-30-2007; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.55 [Subdivision of project prohibited].

(A) For purposes of calculating the amount of a public improvement project to determine whether it is subject to section 153.01 of the Revised Code, no officer, board, or other authority of the state or any institution supported by the state shall subdivide a public improvement project into component parts or separate projects in order to avoid the threshold of that section, unless the component parts or separate projects thus created are conceptually separate and unrelated to each other, or encompass independent or unrelated needs.

(B) In calculating the project amount for purposes of the threshold in section 153.01 of the Revised Code, the following expenses shall be included as costs of the project:

- (1) Professional fees and expenses for services associated with the preparation of plans;
- (2) Permit costs, testing costs, and other fees associated with the work;
- (3) Project construction costs;
- (4) A contingency reserve fund.

Effective Date: 08-01-1980; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.56 Creditor shall furnish statement of amount due - service of notice of furnishing.

(A) Any person to whom any money is due for labor or work performed or materials furnished in a public improvement as provided in section [153.54](#) of the Revised Code, at any time after performing the labor or work or furnishing the materials, but not later than ninety days after the completion of the contract by the principal contractor or design-build firm and the acceptance of the public improvement for which the bond was provided by the duly authorized board or officer, shall furnish the sureties on the bond, a statement of the amount due to the person.

(B) A suit shall not be brought against sureties on the bond until after sixty days after the furnishing of the statement described in division (A) of this section. If the indebtedness is not paid in full at the expiration of that sixty days, and if the person complies with division (C) of this section, the person may bring an action in the person's own name upon the bond, as provided in sections [2307.06](#) and [2307.07](#) of the Revised Code, that action to be commenced, notwithstanding section [2305.12](#) of the Revised Code, not later than one year from the date of acceptance of the public improvement for which the bond was provided.

(C) To exercise rights under this section, a subcontractor or materials supplier supplying labor or materials that cost more than thirty thousand dollars, who is not in direct privity of contract with the principal contractor or design-build firm for the public improvement, shall serve a notice of furnishing upon the principal contractor or design-build firm in the form provided in section [1311.261](#) of the Revised Code.

(D) A subcontractor or materials supplier who serves a notice of furnishing under division (C) of this section as required to exercise rights under this section has the right of recovery only as to amounts owed for labor and work performed and materials furnished during and after the twenty-one days immediately preceding service of the notice of furnishing.

(E) For purposes of this section:

(1) "Design-build firm" has the same meaning as in section 153.65 of the Revised Code.

(2) "Principal contractor" has the same meaning as in section [1311.25](#) of the Revised Code, and may include a "construction manager" and a "construction manager at risk" as defined in section 9.33 of the Revised Code.

Effective Date: 02-12-2001; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.57 Form of bond.

(A) The bond provided for in division (C)(1) of section [153.54](#) of the Revised Code shall be in substantially the following form, and recovery of any claimant thereunder shall be subject to sections [153.01](#) to [153.60](#) of the Revised Code, to the same extent as if the provisions of those sections were fully incorporated in the bond form:

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned as principal and as sureties, are hereby held and firmly bound unto in the penal sum of dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this day of

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the day of, enter into a contract with, which said contract is made a part of this bond the same as though set forth herein;

Now, if the said shall well and faithfully do and perform the things agreed by to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, material suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond."

(B) The bond provided for in division (C)(2) of section [153.54](#) of the Revised Code shall be in substantially the following form:

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned as principal and as sureties, are hereby held and firmly bound unto in the penal sum of dollars, for the payment of which well and truly be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this day of,

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the day of,, entered into a contract with which said contract is made a part of this bond the same as though set forth herein;

Now, if the said shall well and faithfully do and perform the things agreed by to be done and performed according to the terms of the said contract; we agreeing and assenting that this undertaking shall be for the benefit of the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of the obligation as herein stated.

The surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the contract shall in any way affect the obligation of the surety on its bond."

Effective Date: 11-24-1995; 03-30-2007

153.571 Form of bond.

The bond provided for in division (B) of section [153.54](#) of the Revised Code shall be in substantially the following form, and recovery of any claimant thereunder shall be subject to sections [153.01](#) to [153.60](#) of the Revised Code, to the same extent as if the provisions of such sections were fully incorporated in the bond form:

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned as principal and as sureties, are hereby held and firmly bound unto as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on to undertake the project known as The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate bids made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of dollars. (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this day of, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the

bid of the principal and the principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein;

Now also, if the said shall well and faithfully do and perform the things agreed by to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materials suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materials suppliers or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond."

Effective Date: 05-09-2000

153.58 Prohibition.

No officers shall violate sections [153.01](#) to [153.57](#), inclusive, of the Revised Code.

Effective Date: 10-01-1953

153.581 Contracts for construction definitions.

As used in sections 153.581 and [153.591](#) of the Revised Code:

(A) "Public works contract" means any contract awarded by a contracting authority for the construction, engineering, alteration, or repair of any public building, public highway, or other public work.

(B) "Contracting authority" means the state, any township, county, municipal corporation, school board, or other governmental entity empowered to award a public works contract and any construction manager at risk as defined in section 9.33 of the Revised Code or design-build firm as defined in section 153.65 of the Revised Code awarding a subcontract.

(C) "Contractor" means any person, partnership, corporation, or association that has been awarded a public works contract.

Effective Date: 06-01-1967; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.59 Discrimination and intimidation on account of race, religion, sex, disability, national origin or ancestry.

Every contract for or on behalf of the state, or any township, county, or municipal corporation of the state, for the construction, alteration, or repair of any public building or public work in the state shall contain provisions by which the contractor agrees to both of the following:

(A) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section [4112.01](#) of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates;

(B) That no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section [4112.01](#) of the Revised Code, or color.

The department of administrative services shall ensure that no capital moneys appropriated by the general assembly for any purpose shall be expended unless the project for which those moneys are appropriated provides for an affirmative action program for the employment and effective utilization of disadvantaged persons whose disadvantage may arise from cultural, racial, or ethnic background, or other similar cause, including, but not limited to, race, religion, sex, disability or military status as defined in section [4112.01](#) of the Revised Code, national origin, or ancestry.

In awarding contracts for capital improvement projects, the department shall ensure that equal consideration be given to contractors, subcontractors, or joint venturers who qualify as a minority business enterprise. As used in this section, "minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons who are residents of this state. "Socially or economically disadvantaged persons" means persons, regardless of marital status, who are members of groups whose disadvantage may arise from discrimination on the basis of race, religion, sex, disability or military status as defined in section [4112.01](#) of the Revised Code, national origin, ancestry, or other similar cause.

Effective Date: 05-04-2004; 2007 HB372 03-24-2008

153.591 Hiring hall contract or agreement.

Any provision of a hiring hall contract or agreement which obligates a contractor to hire, if available, only employees referred to the contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public works contract unless at the date of execution of the hiring hall contract or agreement, or within thirty days thereafter, the labor organization has in effect procedures for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in section [4112.01](#) of the Revised Code, or ancestry and unless the labor organization includes in its apprentice and journey person's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

Effective Date: 05-04-2004; 2007 HB372 03-24-2008

153.60 Forfeiture.

The contract referred to in section [153.59](#) of the Revised Code shall provide as a forfeiture for any breach of the provisions against discrimination:

(A) That there shall be deducted from the amount payable to the contractor by the state or by any township, county, or municipal corporation thereof, under this contract, a forfeiture of twenty-five dollars for each person who is discriminated against or intimidated in violation of this contract;

(B) That the contract shall be canceled or terminated by the state or by any township, county, or municipal corporation thereof, and all money to become due hereunder may be forfeited, for a second or subsequent violation of the terms of this section of the contract.

Effective Date: 10-01-1953

153.61 Agreement for joint construction and management.

Any county or counties and any municipal corporation or municipal corporations may enter into an agreement providing for the joint construction, acquisition, or improvement of any public work, public building, or other permanent improvement benefiting the parties thereto and providing for the joint management, occupancy, maintenance, and repair thereof. Any such agreement shall be approved by resolution or ordinance passed by the legislative authority of each of the parties to such agreement, which resolution or ordinance shall set forth the agreement in full and shall authorize the execution thereof by designated official or officials of each of such parties, and such agreement, when so approved and executed, shall be in full force and effect.

Any agreement entered into under authority of this section shall contain the following provisions:

(A) The method by which the work, building, or improvement, to be specified therein, shall be constructed, acquired, or improved, and specifically a designation of one of the parties to take and have exclusive charge of any and all details of construction, acquisition, or improvement, including any advertising for bids and the award of any construction or improvement contract. Except as otherwise provided in this division, the procedure generally applicable to the party so designated shall be followed in the use of force account or the advertising for bids and awarding of a contract. section [153.36](#) of the Revised Code does not apply to the building or the addition to or alteration, repair, or improvement of a jail undertaken pursuant to a joint agreement provided for in this section.

(B) The manner in which the title to the public work, building, or improvement including the site and interests in real estate necessary therefor, is to be held;

(C) The manner in which the public work, building, or improvement is to be managed, occupied, maintained, and repaired, and specifically a designation of the person, officer, or body to be responsible for such management, maintenance, and repair. If the public work, building, or improvement involves only a multicounty, municipal-county, or multicounty-municipal jail, workhouse, or correctional facility, the agreement may delegate management, maintenance, and repair responsibilities to a corrections commission established pursuant to section [307.93](#) of the Revised Code.

(D) An apportionment among the parties of the cost of jointly constructing, acquiring, or improving such work, building, or improvement and of jointly managing, maintaining, and repairing it.

Each party to such an agreement may issue securities for its portion of the cost of such construction, acquisition, or improvement if Chapter 133. or other provisions of the Revised Code would authorize the issuance of such securities by such party alone for the purpose for which it then intends to use the work, building, or improvement.

As used in this section, "construction, acquisition, or improvement" includes acquisition of real estate and interests in real estate therefor, site improvements, and furniture, furnishings, and equipment therefor.

The authority granted under this section shall not extend to the construction, acquisition, improvement, or management of any public utility facility.

Public works, public buildings, or improvements constructed, acquired, or improved under this section may be used for any lawful purpose by each party so long as the use thereof is an authorized proper use for that party.

Effective Date: 10-30-1989

153.62 Issuing change order for additional work.

All contracts for the erection, construction, repair, or alteration of any building, highway, or other work or improvement of any nature by an officer, board, or other authority of the state, a county, township, municipal corporation, school district, or any political subdivision, or any public institution belonging thereto, are subject to all applicable federal, state, and local statutes, ordinances, and regulations, including, but not limited to, those dealing with the prevention of environmental pollution that affect or are affected by such contracts. If the bidder to whom the work is awarded must undertake additional work due to the enactment or amendment of statutes or rules occurring after the submission of the successful bid, the awarding body shall issue a change order setting forth the additional work that must be undertaken and authorizing additional cost to the contractor, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders or force accounts or, if no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's actual costs including wages, labor costs other than wages, wage taxes, materials, equipment costs and rentals, insurance, and subcontracts attributable to the additional activity, plus a reasonable sum for overhead. Such additional costs to undertake work not specified in the invitation for bids shall not be approved unless written authorization is given the successful bidder prior to the successful bidder's undertaking such additional activity. If a dispute arises between the awarding agency and the successful bidder, procedures shall be commenced under the applicable terms of the construction contract, or, if the contract contains no provision for resolving the dispute, it shall be resolved pursuant to the procedures for arbitration in Chapter 2711. of the Revised Code.

Effective Date: 03-18-1999

153.63 Agreement for escrow account for contractor.

(A) Any money which is due from the public owner referred to in section [153.12](#) of the Revised Code under a contract entered into under this chapter or entered into under other applicable sections of the Revised Code for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement shall, on the day it is due, be paid to the contractor or deposited in an escrow account, whichever is applicable, with one or more banks or building and loan associations in the state selected by mutual agreement between the contractor and the public owner. The agreement shall contain the following provisions:

(1) The money shall be deposited in a savings account or the escrow agent shall promptly invest all of the escrowed principal in obligations selected by the escrow agent, as stipulated in the agreement.

(2) The escrow agent shall hold the escrowed principal and income until receipt of notice from the public owner and the contractor, or until receipt of an arbitration order or an order of the court of claims specifying the amount of the escrowed principal to be released and the person to whom it is to be released. Upon receipt of the notice or order, the agent shall promptly pay such amount of principal and a proportionate amount of the escrowed income to the person indicated.

(3) The escrow agent shall be compensated for its services as agreed to by the public owner and the contractor from the income from the escrow account.

The agreement may include other provisions not inconsistent with this section, including, but not limited to granting authority for the escrow agent to commingle the escrowed funds with funds held pursuant to other escrow agreements and limiting the liability of the escrow agent.

(B) When the public owner, as defined in division (B) of section [2743.01](#) of the Revised Code, and the contractor disagree as to the conditions under which money is to be paid under this section, the parties shall apply for a decision by arbitration under the procedures of Chapter 2711. of the Revised Code. When an application is made, neither party shall initiate, and no court shall permit the maintenance of, an action in court for decision of the same issues sought to be determined in the arbitration application.

The award made by the arbitrator may include the costs of arbitration. The arbitration shall be binding on all parties.

(C) When the public owner, as defined in division (A) of section [2743.01](#) of the Revised Code, and the contractor disagree as to the conditions under which money is to be paid under this section the contractor shall file an action in the court of claims.

(D) If the money required to be paid or deposited under division (A) of this section is not paid or deposited, the governmental entity shall pay to the contractor an amount equal to eight per cent annual interest compounded daily.

Effective Date: 02-11-1982

153.64 Protecting underground utility facilities during construction of public improvement.

(A) As used in this section:

(1) "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and all other structures or works of any nature by a public authority.

(2) "Public authority" includes the state, or a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision.

(3) "Underground utility facilities" includes any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of water or sewage; or electronic, telephonic, or telegraphic communications; electricity; electric energy; petroleum products; manufactured, mixed, or natural gas; synthetic or liquified natural gas; propane gas; or other substances. "Underground utility facilities" includes, but is not limited to, all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, manholes, and attachments, whether owned by any public or private or profit or nonprofit person, firm, partnership, company, corporation, joint stock association, joint venture, or voluntary association, wherever organized or incorporated, except for a private septic system in a single- or double-family dwelling utilized only for that dwelling and not connected to any other system.

(4) "Underground utility protection service" means a notification center not an owner of an underground utility facility, existing for the purpose of receiving notice from public authorities and from other persons that plan to prepare plans and specifications for, or engage in, public improvements involving digging, blasting, excavating, or other underground construction activities and distributing this information to its members. "Registered underground utility protection service" means an underground utility protection service registered with the secretary of state and the public utilities commission of Ohio pursuant to division (F) of this section.

(5) "Owner of underground utility facility" does not include telephone companies classified as medium or small under rule 4901-7-01 of the Ohio Administrative Code, owners of pipelines that conduct liquid petroleum products, or cable television companies to the extent that it requires membership in an underground utility protection service.

(6) "Construction area" means the area delineated on the plans and specifications for the public improvement within which the work provided for in the contract will be performed.

(B) In any public improvement which may involve underground utility facilities, the public authority, prior to preparing plans and specifications, shall contact the registered underground utility protection services and the owners of underground utility facilities that are not members of a registered underground utility protection service for the existence and location of all underground utility facilities within the construction area. The public authority shall include, in the plans and specifications for such improvement, the identity and location of the existing underground utility facilities located in the construction area as provided to the public authority by the owner of the underground utility facility and the name, address, and telephone number of each owner of any underground utility facilities in the construction area that does not subscribe to a registered underground utility protection service. Any anticipated temporary or permanent relocation of underground utility facilities deemed necessary by the public authority shall be negotiated or arranged by the public authority with the owners of the underground utility facilities prior to the start of construction. If a temporary or permanent relocation of utility facilities is necessary, the owner of the underground utility facility shall be given a reasonable time to move such utility facilities unless the contractor to whom the contract for a public improvement is awarded or its subcontractor agrees with the owner of the underground utility facility to coordinate relocation with construction operations. The public authority, within ten calendar days after award of a contract for a public improvement, shall notify in writing all owners of underground utility facilities known to be located in the construction area of the public improvement of the name and address of the contractor to whom the contract for the public improvement was awarded. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice.

(C) The contractor to whom a contract for a public improvement is awarded or its subcontractor, at least two working days, excluding Saturdays, Sundays, and legal holidays, prior to commencing construction operations in the construction area which may involve underground utility facilities, shall cause notice to be given to the registered underground utility protection services and the owners of underground utility facilities shown on the plans and specifications who are not members of a registered underground utility protection service, in writing, by telephone, or in person. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice. The owner of the underground utility facility, within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, after notice is received, shall stake, mark, or otherwise designate the location of the underground utility facilities in the construction area in such a manner as to indicate their course together with the approximate depth at which they were installed. The marking or locating shall be coordinated to stay approximately two days ahead of the planned construction.

(D) If the public authority fails to comply with the requirements of division (B) of this section, the contractor to whom the work is awarded or its subcontractor complies with the requirements of division (C) of this section, and the contractor or its subcontractor encounters underground utility facilities in the construction area that would have been shown on the plans and specifications for such improvement had the registered underground utility protection service or owner of the underground utility facility who is not a member of a registered underground utility protection service whose name, address, and telephone number is provided by the public authority been contacted, then the contractor, upon notification to the public authority, is entitled to an increase to the contract price for itself or its subcontractor for any additional work that must be undertaken or additional time that will be required and is entitled to an extension of the completion date of the contract for the period of time of any delays to the construction of the public improvement.

In the event of a dispute as to the application of this section, procedures may be commenced under the applicable terms of the construction contract, or if the contract contains no provision for final resolution of the dispute, pursuant to the procedures for arbitration in Chapter 2711. of the Revised Code.

This section does not affect rights between the contractors and the public authority for any increase in contract price or additional time to perform the contract when the public authority complies with division (B) of this section.

Any public authority who complies with the requirements of division (B) of this section and any contractor or its subcontractor who complies with the requirements of division (C) of this section shall not be responsible to the owner of the underground utility facility if underground utility lines are

encountered not as marked in accordance with the provisions of division (C) of this section by the owner of the underground utility facility, unless the contractor or its subcontractor has actual notice of the underground utility facility. Except as noted in this division, this section does not affect rights between the contractor or its subcontractor and the owner of the underground utility facility for failure to mark or erroneously marking utility lines. The public authority shall not make as a requirement of any contract for public improvement any change in responsibilities between the public authority and the owners of the underground utility facilities in connection with damage, injury, or loss to any property in connection with underground utility facilities.

The contractor or its subcontractor shall alert immediately the occupants of nearby premises as to any emergency that the contractor or subcontractor may create or discover at or near such premises. The contractor or its subcontractor shall report immediately to the owner or operator of the underground facility any break or leak on its lines or any dent, gouge, groove, or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of their excavation.

(E) This section does not affect rights between the public authority and the owners of the underground utility facilities for responsibility for costs involving removal, relocation, or protection of existing underground utility facilities, or for costs for delays occasioned thereby.

(F) An underground utility protection service shall register with the secretary of state and the public utilities commission of Ohio, identifying its name, address, telephone number, membership, and other pertinent information. The secretary of state and commission shall establish procedures for accepting such registrations and providing information about registrants to public authorities on request.

Effective Date: 01-08-1993; 2007 SB117 09-24-2007

153.65 Professional design services [and design-build services] definitions.

As used in sections 153.65 to 153.73 of the Revised Code:

(A)(1) "Public authority" means the state, a state institution of higher education as defined in section 3345.011 of the Revised Code, a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision.

(2) "Public authority" does not include the Ohio turnpike commission.

(B) "Professional design firm" means any person legally engaged in rendering professional design services.

(C) "Professional design services" means services within the scope of practice of an architect or landscape architect registered under Chapter 4703. of the Revised Code or a professional engineer or surveyor registered under Chapter 4733. of the Revised Code.

(D) "Qualifications" means all of the following:

(1)(a) For a professional design firm, competence to perform the required professional design services as indicated by the technical training, education, and experience of the firm's personnel, especially the technical training, education, and experience of the employees within the firm who would be assigned to perform the services;

(b) For a design-build firm, competence to perform the required design-build services as indicated by the technical training, education, and experience of the design-build firm's personnel and key consultants, especially the technical training, education, and experience of the employees and

consultants of the design-build firm who would be assigned to perform the services, including the proposed architect or engineer of record.

(2) Ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services or design-build services competently and expeditiously;

(3) Past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines;

(4) Any other relevant factors as determined by the public authority;

(5) With respect to a design-build firm, compliance with sections 4703.182, 4703.332, and 4733.16 of the Revised Code, including the use of a licensed design professional for all design services.

(E) "Design-build contract" means a contract between a public authority and another person that obligates the person to provide design-build services.

(F) "Design-build firm" means a person capable of providing design-build services.

(G) "Design-build services" means services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair, or reconstruction of a public improvement.

(H) "Architect or engineer of record" means the architect or engineer that serves as the final signatory on the plans and specifications for the design-build project.

(I) "Criteria architect or engineer" means the architect or engineer retained by a public authority to prepare conceptual plans and specifications, to assist the public authority in connection with the establishment of the design criteria for a design-build project, and, if requested by the public authority, to serve as the representative of the public authority and provide, during the design-build project, other design and construction administration services on behalf of the public authority, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package.

(J) "Open book pricing method" means a method in which a design-build firm provides the public authority, at the public authority's request, all books, records, documents, contracts, subcontracts, purchase orders, and other data in its possession pertaining to the bidding, pricing, or performance of a contract for design-build services awarded to the design-build firm.

Effective Date: 09-26-2003; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.66 Submitting statement of qualifications.

(A) Each public authority planning to contract for professional design services shall encourage professional design firms to submit a statement of qualifications and update the statements at regular intervals.

(B) Notwithstanding any contrary requirements in sections 153.65 to 153.70 of the Revised Code, for every design-build contract, each public authority planning to contract for design-build services shall evaluate the statements of qualifications submitted by design-build firms for the project, including the qualifications of the design-build firm's proposed architect or engineer of record, in consultation with the criteria architect or engineer before selecting a design-build firm pursuant to section 153.693 of the Revised Code.

153.67 Announcing contracts available for professional design services [and design-build services].

Each public authority planning to contract for professional design services or design-build services shall publicly announce all contracts available from it for such services. The announcements shall:

(A) Be made in a uniform and consistent manner and shall be made sufficiently in advance of the time that responses must be received from qualified professional design firms or design-build firms for the firms to have an adequate opportunity to submit a statement of interest in the project;

(B) Include a general description of the project, a statement of the specific professional design services or design-build services required, and a description of the qualifications required for the project;

(C) Indicate how qualified professional design firms or design-build services may submit statements of qualifications in order to be considered for a contract to design the project;

(D) Be sent to any of the following that the public authority considers appropriate:

(1) Design-build firms, including contractors or other entities that seek to perform the work as a design-build firm;

(2) Architect, landscape architect, engineer, and surveyor associations;

(3) The news media;

(4) Any publications or other public media, including electronic media.

153.68 Instituting prequalification requirements.

Any public authority planning to contract for professional design services may institute prequalification requirements for professional design firms seeking to provide services to the public authority and may require that each prequalified firm maintain a current statement of qualifications on file with the public authority. The prequalification requirements shall be based on factors such as those set out in division (D) of section [153.65](#) of the Revised Code.

153.69 Evaluating and selecting [professional design] firms.

For every professional design services contract, each public authority planning to contract for professional design services shall evaluate the statements of qualifications submitted by professional design firms specifically regarding the project, and may hold discussions with individual firms to explore further the firms' statements of qualifications, the scope and nature of the services the firms would provide, and the various technical approaches the firms may take toward the project. Following this evaluation, the public authority shall:

(A) Select and rank no fewer than three firms which it considers to be the most qualified to provide the required professional design services, except when the public authority determines in writing that fewer

than three qualified firms are available in which case the public authority shall select and rank those firms;

(B) Negotiate a contract with the firm ranked most qualified to perform the required services at a compensation determined in writing to be fair and reasonable to the public authority. Contract negotiations shall be directed toward:

(1) Ensuring that the professional design firm and the agency have a mutual understanding of the essential requirements involved in providing the required services;

(2) Determining that the firm will make available the necessary personnel, equipment, and facilities to perform the services within the required time;

(3) Agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the services.

(C) If a contract is negotiated with the firm ranked to perform the required services most qualified, the public authority shall, if applicable under section [127.16](#) of the Revised Code, request approval of the board to make expenditures under the contract.

(D) Upon failure to negotiate a contract with the firm ranked most qualified, the public authority shall inform the firm in writing of the termination of negotiations and may enter into negotiations with the firm ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified firm selected and ranked pursuant to division (A) of this section, in order of ranking, until a contract is negotiated.

(E) Should the public authority fail to negotiate a contract with any of the firms selected pursuant to division (A) of this section, the public authority may select and rank additional firms, based on their qualifications, and negotiations may continue as with the firms selected and ranked initially until a contract is negotiated.

(F) Nothing in this section affects a public authority's right to accept or reject any or all proposals in whole or in part.

Effective Date: 11-24-1995; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.691 No fee estimate on contract for professional design services.

No public authority planning to contract for professional design services under section [153.69](#) of the Revised Code shall require any form of fee estimate, fee proposal, or other estimate or measure of compensation prior to selecting and ranking professional design firms, except in instances when firms are selected and ranked by a state agency from a list of prequalified firms created under section [153.68](#) of the Revised Code and the state agency's payment of funds for the professional design services has been preapproved by the controlling board.

Effective Date: 09-26-2003

153.692 [Criteria architect or engineer services].

For every design-build contract, the public authority planning to contract for design-build services shall first obtain the services of a criteria architect or engineer by doing either of the following:

(A) Contracting for the services consistent with sections 153.65 to 153.70 of the Revised Code;

(B) Obtaining the services through an architect or engineer who is an employee of the public authority and notifying the department of administrative services before the services are performed.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.693 [Evaluating and selecting design-build firms].

(A) For every design-build contract, the public authority planning to contract for design-build services, in consultation with the criteria architect or engineer, shall evaluate the statements of qualifications submitted by design-build firms specifically regarding the project, including the design-build firm's proposed architect or engineer of record. Following this evaluation, the public authority shall:

(1) Select and rank not fewer than three firms which it considers to be the most qualified to provide the required design-build services, except that the public authority shall select and rank fewer than three firms when the public authority determines in writing that fewer than three qualified firms are available;

(2) Provide each selected design-build firm with all of the following:

(a) A description of the project and project delivery;

(b) The design criteria produced by the criteria architect or engineer under section 153.692 of the Revised Code;

(c) A preliminary project schedule;

(d) A description of any preconstruction services;

(e) A description of the proposed design services;

(f) A description of a guaranteed maximum price, including the estimated level of design on which such guaranteed maximum price is based;

(g) The form of the design-build services contract;

(h) A request for a pricing proposal that shall be divided into a design services fee and a preconstruction and design-build services fee. The pricing proposal of each design-build firm shall include at least all of the following:

(i) A list of key personnel and consultants for the project;

(ii) Design concepts adhering to the design criteria produced by the criteria architect or engineer under section 153.692 of the Revised Code;

(iii) The design-build firm's statement of general conditions and estimated contingency requirements;

(iv) A preliminary project schedule.

(3) Evaluate the pricing proposal submitted by each selected firm and, at its discretion, hold discussions with each firm to further investigate its pricing proposal, including the scope and nature of the firm's proposed services and potential technical approaches;

(4) Rank the selected firms based on the public authority's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed costs and qualifications;

(5) Enter into contract negotiations for design-build services with the design-build firm whose pricing proposal the public authority determines to be the best value under this section.

(B) In complying with division (A)(5) of this section, contract negotiations shall be directed toward:

(1) Ensuring that the design-build firm and the public authority mutually understand the essential requirements involved in providing the required design-build services, the provisions for the use of contingency funds, and the terms of the contract, including terms related to the possible distribution of savings in the final costs of the project;

(2) Ensuring that the design-build firm shall be able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the design-build construction contract;

(3) Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the public authority to the design-build firm for the project and that shall include the costs of all work, the cost of its general conditions, the contingency, and the fee payable to the design-build firm.

(C) If the public authority fails to negotiate a contract with the design-build firm whose pricing proposal the public authority determines to be the best value as determined under this section, the public authority shall inform the design-build firm in writing of the termination of negotiations. The public authority may then do the following:

(1) Negotiate a contract with a design-build firm ranked next highest under this section following the negotiation procedure described in this section;

(2) If negotiations fail with the design-build firm under division (C)(1) of this section, negotiate a contract with the design-build firm ranked next highest under this section following the negotiation procedure described in this section and continue negotiating with the design-build firms selected under this section in the order of their ranking until a contract is negotiated.

(D) If the public authority fails to negotiate a contract with a design-build firm whose pricing proposal the public authority determines to be the best value as determined under this section, it may select additional design-build firms to provide pricing proposals to the public authority pursuant to this section or may select an alternative delivery method for the project.

(E) The public authority may provide a stipend for pricing proposals received from design-build firms.

(F) Nothing in this section affects a public authority's right to accept or reject any or all proposals in whole or in part.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.694 [Criteria architect or engineer shall not provide design-build services].

If a professional design firm selected as the criteria architect or engineer creates the preliminary criteria and design criteria for a project and provides professional design services to a public authority to assist that public authority in evaluating the design-build requirements provided to the public authority by a design-build firm pursuant to section 153.692 of the Revised Code, that professional design firm shall not provide any design-build services pursuant to the design-build contract under section 153.693 of the Revised Code for the project for which the professional design firm was selected as the criteria architect or engineer.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.70 Requiring professional liability insurance.

(A) Except for any person providing professional design services of a research or training nature, any person rendering professional design services to a public authority or to a design-build firm, including a criteria architect or engineer and person performing architect or engineer of record services, shall have and maintain, or be covered by, during the period the services are rendered, a professional liability insurance policy or policies with a company or companies that are authorized to do business in this state and that afford professional liability coverage for the professional design services rendered. The insurance shall be in amount considered sufficient by the public authority. At the public authority's discretion, the design-build firm shall carry contractor's professional liability insurance and any other insurance the public authority considers appropriate.

(B) The requirement for professional liability insurance set forth in division (A) of this section may be waived by the public authority for good cause, or the public authority may allow the person providing the professional design services to provide other assurances of financial responsibility.

(C) Before construction begins pursuant to a contract for design-build services with a design-build firm, the design-build firm shall provide a surety bond to the public authority in accordance with rules adopted by the director of administrative services under Chapter 119. of the Revised Code.

Effective Date: 11-24-1995; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.71 Administrative rules.

Any public authority planning to contract for professional design services or design-build services may adopt, amend, or rescind rules, in accordance with Chapter 119. of the Revised Code, to implement sections [153.66](#) to [153.70](#) of the Revised Code. Sections [153.66](#) to [153.70](#) of the Revised Code do not apply to either of the following:

(A) Any project with an estimated professional design fee of less than fifty thousand dollars if both of the following requirements are met:

(1) The public authority selects a single design professional or firm from among those that have submitted a current statement of qualifications within the immediately preceding year, as provided under section 153.68 of the Revised Code, 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;

(2) The public authority and the selected design professional or firm comply with division (B) of section 153.69 of the Revised Code with respect to the negotiation of a contract.

(B) Any project determined in writing by the public authority head to be an emergency requiring immediate action including, but not limited to, any projects requiring multiple contracts let as part of a program requiring a large number of professional design firms of the same type.

Effective Date: 11-24-1995; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.72 [Scope of design-build services].

A design-build firm contracted for design-build services by a public authority may do either of the following:

(A) Perform design, construction, demolition, alteration, repair, or reconstruction work pursuant to such contract;

(B) Perform professional design services when contracted by a public authority for design-build services even if the design-build firm is not a professional design firm.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.73 [Precedence of Revised Code provisions].

The requirements set forth in sections 153.65 to 153.72 of the Revised Code for the bidding, selection, and award of a contract for professional design services or design-build services by a public authority prevail in the event of any conflict with any other provision of this chapter.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.80 Reducing bond.

(A) A contract for the construction, demolition, alteration, repair, or reconstruction of a public improvement entered into on or after April 16, 1993 shall be deemed to include the provisions contained in division (B) of this section.

(B)(1) In regard to any bond filed by the contractor for the work contracted, the contracting authority, in its sole discretion, may reduce the bond required by twenty-five per cent of the total amount of the bond after at least fifty per cent of the work contracted for has been completed and by fifty per cent after at least seventy-five per cent of the work contracted for has been completed provided that all of the following conditions are met:

(a) The contracting authority determines that the percentage of the work that has been completed at the time of determination has been satisfactorily performed and meets the terms of the contract, including a provision in regard to the time when the whole or any specified portion of work contemplated in the contract must be completed;

(b) The contracting authority determines that no disputed claim caused by the contractor exists or remains unresolved;

(c) The successful bid upon which the contract is based was not more than ten per cent below the next lowest bid or not more than ten per cent below a cost estimate for the work as published by the contracting authority.

(2) In regard to the amount of any funds retained, the contracting authority, in its sole discretion, may reduce the amount of funds retained pursuant to sections [153.12](#) and [153.14](#) of the Revised Code for the faithful performance of work by fifty per cent of the amount of funds required to be retained pursuant to those sections, provided that the surety on the bond remains liable for all of the following that are caused due to default by the contractor:

(a) Completion of the job;

(b) All delay claims;

(c) All liquidated damages;

(d) All additional expenses incurred by the contracting authority.

(C) As used in this section:

(1) "Contracting authority" means an officer, board, or other authority of the state, a county, township, municipal corporation, or school district, or of any other political subdivision of the state, authorized to contract for the construction, demolition, alteration, repair, or reconstruction of a public improvement, and any construction manager at risk as defined in section 9.33 of the Revised Code or design-build firm as defined in section 153.65 of the Revised Code awarding a subcontract, but does not include an officer, board, or other authority of the department of transportation.

(2) "Delay claim" means a claim that arises due to default on provisions in a contract in regard to the time when the whole or any specified portion of work contemplated in the contract must be completed.

Effective Date: 04-16-1993; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

153.99 Penalty.

(A) Whoever violates section [153.58](#) of the Revised Code shall be fined not more than one thousand dollars.

(B) A person who purchases or provides steel products in violation of division (A) of section [153.011](#) of the Revised Code shall pay a civil penalty equal to one and one-half times the purchase price of the steel products purchased or provided in violation of that section.

Effective Date: 03-29-2001

Chapter 154: FINANCING FOR CERTAIN CAPITAL FACILITIES

154.24 [Capital facilities building funds].

(A) In addition to the definitions provided in section 154.01 of the Revised Code:

(1) "Capital facilities" includes, for purposes of this section, storage and parking facilities related to such capital facilities.

(2) "Costs of capital facilities" includes, for purposes of this section, the costs of assessing, planning, and altering capital facilities, and the financing thereof, all related direct administrative expenses and allocable portions of direct costs of lessee state agencies, and all other expenses necessary or incident to the assessment, planning, alteration, maintenance, equipment, or furnishing of capital facilities and the placing of the same in use and operation, including any one, part of, or combination of such classes of costs and expenses.

(3) "Governmental agency" includes, for purposes of this section, any state of the United States or any department, division, or agency of any state.

(4) "State agency" includes, for purposes of this section, branches, authorities, courts, the general assembly, counties, municipal corporations, and any other governmental entities of this state that enter into leases with the commission pursuant to this section or that are designated by law as state agencies for the purpose of performing a state function that is to be housed by a capital facility for which the issuing authority is authorized to issue revenue obligations pursuant to this section.

(B) Subject to authorization by the general assembly under section 154.02 of the Revised Code, the issuing authority may issue obligations pursuant to this chapter to pay costs of capital facilities for housing branches and agencies of state government, including capital facilities for the purpose of

housing personnel, equipment, or functions, or any combination thereof that a state agency is responsible for housing, including obligations to pay the costs of capital facilities described in section 307.021 of the Revised Code, and the costs of capital facilities in which one or more state agencies are participating with the federal government, municipal corporations, counties, or other governmental entities, or any one or more of them, and in which that portion of the facility allocated to the participating state agencies is to be used for the purpose of housing branches and agencies of state government including housing personnel, equipment, or functions, or any combination thereof. Such participation may be by grants, loans, or contributions to other participating governmental agencies for any of those capital facilities.

(C) The commission may lease any capital facilities for housing branches and agencies of state government to, and make or provide for other agreements with respect to the use or purchase of such capital facilities with, any state agency or governmental agency having authority under law to operate such capital facilities.

(D)(1) For purposes of this division, "available receipts" means fees, charges, revenues, grants, subsidies, income from the investment of moneys, proceeds from the sale of goods or services, and all other revenues or receipts derived from the operation, leasing, or other disposition of capital facilities financed with obligations issued under this section or received by or on behalf of any state agency for which capital facilities are financed with obligations issued under this section or any state agency participating in or by which the capital facilities are constructed or financed; the proceeds of obligations issued under this section and sections 154.11 or 154.12 of the Revised Code; and any moneys appropriated by a governmental agency, and gifts, grants, donations, and pledges, and receipts therefrom, available for the payment of bond service charges on such obligations.

(2) The issuing authority may pledge all, or such portion as it determines, of the available receipts to the payment of bond service charges on obligations issued under this section and section 154.11 or 154.12 of the Revised Code and for the establishment and maintenance of any reserves, as provided in the bond proceedings, and make other provisions therein with respect to such available receipts as authorized by this chapter, which provisions shall be controlling notwithstanding any other provision of law pertaining thereto.

(E) There are hereby created in the custody of the treasurer of state, but separate and apart from and not a part of the state treasury, the administrative facilities bond service trust fund, the adult correctional facilities bond service trust fund, the juvenile correctional facilities bond service trust fund, and the public safety bond service trust fund. All money received by or on account of the issuing authority or the commission and required by the applicable bond proceedings to be deposited, transferred, or credited to any of these funds, and all other money transferred or allocated to or received for the purposes of any of these funds, shall be deposited with the treasurer of state and credited to such fund, subject to applicable provisions of the bond proceedings, but without necessity for any act or appropriation. These bond service funds are trust funds and are hereby pledged to the payment of bond service charges on the applicable obligations issued pursuant to this section and section 154.11 or 154.12 of the Revised Code to the extent provided in the applicable bond proceedings, and payment thereof from such funds shall be made or provided for by the treasurer of state in accordance with such bond proceedings without necessity for any act or appropriation.

(F) There are hereby created in the state treasury the administrative building fund, the adult correctional building fund, the juvenile correctional building fund, and the public safety building fund. Subject to the bond proceedings therefor, the proceeds of the sale of obligations pursuant to this section shall be credited to the appropriate fund, except that any accrued interest shall be credited to the appropriate bond service trust fund created pursuant to this section. These funds may also consist of gifts, grants, appropriated money, and other sums and securities received to the credit of such fund. All investment earnings of each fund shall be credited to the fund. The funds shall be applied to pay the costs of capital facilities as defined in this section and set forth in the bond proceedings.

(G) This section is to be applied with other applicable provisions of this chapter.

Chapter 156: ENERGY CONSERVATION MEASURES

156.01 Energy conservation measure and energy saving measure definitions.

As used in sections 156.01 to [156.05](#) of the Revised Code:

(A) "Avoided capital costs" means a measured reduction in the cost of future equipment or other capital purchases that results from implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such cost.

(B) "Energy conservation measure" means an installation or modification of an installation in, or a remodeling of, an existing building in order to reduce energy consumption and operating costs. The term includes any of the following:

- (1) Installation or modification of insulation in the building structure and systems within the building;
- (2) Installation or modification of storm windows and doors, multiglazed windows and doors, and heat absorbing or heat reflective glazed and coated window and door systems; installation of additional glazing; reductions in glass area; and other window and door system modifications that reduce energy consumption and operating costs;
- (3) Installation or modification of automatic energy control systems;
- (4) Replacement or modification of heating, ventilating, or air conditioning systems;
- (5) Application of caulking and weather stripping;
- (6) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a building unless the increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;
- (7) Installation or modification of energy recovery systems;
- (8) Installation or modification of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (9) Any other modification, installation, or remodeling approved by the director of administrative services as an energy conservation measure for one or more buildings owned by the state.

(C) "Energy saving measure" means the acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of an energy conservation measure and any attendant architectural and engineering consulting services.

(D) "Energy, water, or wastewater cost savings" means a measured reduction in, as applicable, the cost of fuel, energy or water consumption, wastewater production, or stipulated operation or maintenance resulting from the implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such costs, respectively.

(E) "Operating cost savings" means a measured reduction in the cost of stipulated operation or maintenance created by the installation of new equipment or implementation of a new service, when compared with an established baseline for previous such stipulated costs.

(F) "Water conservation measure" means an installation or modification of an installation in, or a remodeling of, an existing building or the surrounding grounds in order to reduce water consumption. The term includes any of the following:

- (1) Water-conserving fixture, appliance, or equipment, or the substitution of a nonwater-using fixture, appliance, or equipment;
- (2) Water-conserving, landscape irrigation equipment;
- (3) Landscaping measure that reduces storm water runoff demand and capture and hold applied water and rainfall, including landscape contouring such as the use of a berm, swale, or terrace and including the use of a soil amendment, including compost, that increases the water-holding capacity of the soil;
- (4) Rainwater harvesting equipment or equipment to make use of water collected as part of a storm water system installed for water quality control;
- (5) Equipment for recycling or reuse of water originating on the premises or from another source, including treated, municipal effluent;
- (6) Equipment needed to capture water for nonpotable uses from any nonconventional, alternate source, including air conditioning condensate or gray water;
- (7) Any other modification, installation, or remodeling approved by the board of trustees of a state institution of higher education as defined in section [3345.011](#) of the Revised Code as a water conservation measure for one or more buildings or the surrounding grounds owned by the institution.

(G) "Water saving measure" means the acquisition and installation, by the purchase, lease, lease-purchase, lease with an option to buy, or installment purchases of a water conservation measure and any attendant architectural and engineering consulting services.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

156.02 Report containing analysis and recommendations pertaining to implementation of energy conservation measures.

(A) The director of administrative services may contract with an energy services company, contractor, architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures for a report containing an analysis and recommendations pertaining to the implementation of energy conservation measures that would significantly reduce energy consumption and operating costs in any buildings owned by the state. The report shall include estimates of all costs of such measures, including the costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of the amounts by which energy consumption and operating costs would be reduced.

(B) Upon the request of the board of trustees or managing authority of a state institution of higher education as defined in section [3345.011](#) of the Revised Code, the director may contract with a water services company, architect, professional engineer, contractor, or other person experienced in the design and implementation of energy or water conservation measures for a report containing an analysis and recommendations pertaining to the implementation of energy or water conservation measures that result in energy, water, or wastewater cost savings, operating cost savings, or avoided capital costs for the institution. The report shall include estimates of all costs of such installations, including the costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of the energy, water, or wastewater cost savings, operating cost savings, and avoided capital costs created.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994; 2007 HB119 09-29-2007; 2008 HB562 09-22-2008

156.03 Implementing energy saving measures.

(A) If the director of administrative services wishes to enter into an installment payment contract pursuant to section [156.04](#) of the Revised Code or any other contract to implement one or more energy saving measures or, in the case of a state institution of higher education pursuant to division (B) of section [156.02](#) of the Revised Code, energy or water saving measures, the director may proceed under Chapter 153. of the Revised Code, or, alternatively, the director may request the controlling board to exempt the contract from Chapter 153. of the Revised Code.

If the controlling board by a majority vote approves an exemption, that chapter shall not apply to the contract and instead the director shall request proposals from at least three parties for the implementation of the energy or water saving measures. Prior to providing any interested party a copy of any such request, the director shall advertise, in a newspaper of general circulation in the county where the contract is to be performed, the director's intent to request proposals for the implementation of the energy or water saving measures. The notice shall invite interested parties to submit proposals for consideration and shall be published at least thirty days prior to the date for accepting proposals.

(B) Upon receiving the proposals, the director shall analyze them and, after considering the cost estimates of each proposal and the availability of funds to pay for each with current appropriations or by financing the cost of each through an installment payment contract under section [156.04](#) of the Revised Code, may select one or more proposals or reject all proposals. In selecting proposals, the director shall select the one or more proposals most likely to result in the greatest savings when the cost of the proposal is compared to the reduced energy and operating costs that will result from implementing the proposal. However, in the case of a state institution of higher education pursuant to division (B) of section [156.02](#) of the Revised Code, the director shall select the one or more proposals most likely to result in the greatest energy, water, or wastewater savings, operating costs savings, and avoided capital costs created.

(C)(1) No contract shall be awarded to implement energy saving measures under this section, other than in the case of a state institution of higher education, unless the director finds that one or both of the following circumstances exists, as applicable:

(a) In the case of a contract for a cogeneration system described in division (H) of section [156.01](#) of the Revised Code, the cost of the contract is not likely to exceed the amount of money that would be saved in energy and operating costs over no more than five years;

(b) In the case of any contract for any energy saving measure other than a cogeneration system, the cost of the contract is not likely to exceed the amount of money that would be saved in energy and operating costs over no more than ten years.

(2) In the case of a state institution of higher education pursuant to division (B) of section [156.02](#) of the Revised Code, no contract shall be awarded to implement energy or water saving measures for the institution under this section unless the director finds that both of the following circumstances exists:

(a) Not less than one-fifteenth of the costs of the contract shall be paid within two years from the date of purchase;

(b) The remaining balance of the cost of the contract shall be paid within fifteen years from the date of purchase.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

156.04 Installment payment contract for implementation of one or more energy saving measures.

(A) In accordance with this section and section [156.03](#) of the Revised Code, the director of administrative services may enter into an installment payment contract for the implementation of one or more energy or water saving measures. If the director wishes an installment payment contract to be exempted from Chapter 153. of the Revised Code, the director shall proceed pursuant to section [156.03](#) of the Revised Code.

(B)(1) Any installment payment contract under this section, other than in the case of a state institution of higher education, for one or more energy saving measures shall provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, are to be a stated percentage of calculated savings of energy and operating costs attributable to the one or more measures over a defined period of time and are to be made only to the extent that those savings actually occur. No such contract shall contain any of the following:

(a) A requirement of any additional capital investment or contribution of funds, other than funds available from state or federal grants;

(b) In the case of a contract for an energy saving measure that is a cogeneration system described in division (H) of section [156.01](#) of the Revised Code, a payment term longer than five years;

(c) In the case of a contract for any energy saving measure that is not a cogeneration system, a payment term longer than ten years.

(2) Any installment payment contract under this section for one or more energy or water saving measures for a state institution of higher education pursuant to division (B) of section [156.02](#) of the Revised Code, shall provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, are to be a stated percentage of calculated energy, water, or wastewater cost savings, operating costs, and avoided capital costs attributable to the one or more measures over a defined period of time and are to be made only to the extent that those calculated amounts actually occur. No such contract shall contain either of the following:

(a) A requirement of any additional capital investment or contribution of funds, other than funds available from state or federal grants;

(b) A payment term longer than fifteen years.

(C) Any installment payment contract entered into under this section shall terminate no later than the last day of the fiscal biennium for which funds have been appropriated to the department of administrative services by the general assembly and shall be renewed in each succeeding fiscal biennium in which any balance of the contract remains unpaid, provided that both an appropriation for that succeeding fiscal biennium and the certification required by section [126.07](#) of the Revised Code are made.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 03-30-1999

156.05 Administrative rules.

In accordance with Chapter 119. of the Revised Code, the director of administrative services shall adopt, and enforce rules necessary to administer sections [156.01](#) to [156.04](#) of the Revised Code. Rules adopted

under this section shall establish procedures by which the director may authorize in his stead the manager of any building owned by the state to enter into contracts authorized under sections [156.01](#) to [156.04](#) of the Revised Code.

Effective Date: 10-12-1994

Chapter 1311: LIENS

1311.01 Lien definitions.

As used in sections 1311.01 to [1311.22](#) of the Revised Code:

(A) "Owner," "part owner," or "lessee" includes all the interests either legal or equitable, which such person may have in the real estate upon which the improvements are made, including the interests held by any person under contracts of purchase, whether in writing or otherwise.

(B) "Material supplier" includes any person by whom any materials are furnished in furtherance of an improvement.

(C) "Laborer" includes any mechanic, worker, artisan, or other individual who performs labor or work in furtherance of any improvement.

(D) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with any person other than the owner, part owner, or lessee.

(E) "Original contractor," except as otherwise provided in section [1311.011](#) of the Revised Code, includes a construction manager and any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with an owner, part owner, or lessee.

(F) "Construction manager" means a person with substantial discretion and authority to manage or direct an improvement, provided that the person is in direct privity of contract with the owner, part owner, or lessee of the improvement.

(G) "Notice of commencement" means the notice specified in section [1311.04](#) of the Revised Code.

(H) "Notice of furnishing" means the notice specified in section [1311.05](#) of the Revised Code.

(I) "Materials" means all products and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of an improvement.

(J) "Improvement" means constructing, erecting, altering, repairing, demolishing, or removing any building or appurtenance thereto, fixture, bridge, or other structure, and any gas pipeline or well including, but not limited to, a well drilled or constructed for the production of oil or gas; the furnishing of tile for the drainage of any lot or land; the excavation, cleanup, or removal of hazardous material or waste from real property; the enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any shrubs, trees, plants, vines, small fruits, flowers, or nursery stock of any kind; and the grading or filling to establish a grade.

(K) "Wages" means the basic hourly rate of pay and all other contractually owed benefits.

Effective Date: 03-14-2003; 03-30-2007

1311.25 Public improvement definitions.

As used in sections 1311.25 to [1311.32](#) of the Revised Code:

(A) "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and any other structure or work of any nature by a public authority.

(B) "Public authority" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof.

(C) "Material supplier" includes any person by whom any materials are furnished in furtherance of a public improvement.

(D) "Laborer" includes any mechanic, worker, artisan, or other individual who performs labor or work in furtherance of any public improvement.

(E) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with any person other than the public authority.

(F) "Principal contractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with a public authority.

(G) "Materials" means all products and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of a public improvement.

(H) "Wages" has the same meaning as "prevailing wage" in division (E) of section [4115.03](#) of the Revised Code.

(I) "Notice of commencement" means the notice specified in section [1311.252](#) of the Revised Code.

(J) "Notice of furnishing" means the notice specified in section [1311.261](#) of the Revised Code.

Effective Date: 03-14-2003; 03-30-2007

1311.251 Claim for furnishing materials.

(A) A claim for furnishing materials arises under sections [1311.25](#) to [1311.32](#) of the Revised Code only if the materials are:

(1) Furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site by the claimant or at the claimant's direction, or by other evidence, that the materials be used in the course of the public improvement with which the claim arises;

(2) Incorporated in the public improvement or consumed as normal wastage in the public improvement operations;

(3) Specifically fabricated for incorporation in the public improvement and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the public improvement;

(4) Used for the public improvement or for the operation of machinery or equipment used in the course of the public improvement and not remaining in the public improvement, subject to diminution by the salvage of those materials; or

(5) Tools or machinery used on the particular public improvement, subject to division (C) of this section.

(B) The delivery of materials to the site of the public improvement, whether or not by the claimant, creates a conclusive presumption that the materials were used in the course of the public improvement or were incorporated into the public improvement.

(C) A claim for furnishing tools or machinery which arises under division (A)(5) of this section is limited to either of the following:

(1) If the tools or machinery are rented, the claim is for the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract.

(2) If the tools or machinery are purchased, the claim is for the price, but the claim only arises if the tools or machinery were purchased for use in the course of the particular public improvement and have no substantial value to the purchaser after the completion of the public improvement on which they were used.

(D) All of the deliveries or the sales, or both, by a claimant of materials, including tools and machinery to or for an improvement, give rise to one claim for the unpaid portion of the sales.

Effective Date: 04-10-1991

1311.252 Notice of commencement - affidavit.

(A) Prior to the performance of any labor or work or the furnishing of any materials in furtherance of a public improvement, the public authority shall prepare a notice of commencement in substantially the form specified in division (B) of this section which shall be made readily available to the public upon request.

(B) The notice of commencement required under division (A) of this section shall contain in affidavit form all of the following information:

(1) The name, location, and a number, if any, used by the public authority to identify the public improvement sufficient to permit the public improvement to be identified;

(2) The name and address of the public authority;

(3) The name, address, and trade of all principal contractors;

(4) The date the public authority first executed a contract with a principal contractor for the public improvement;

(5) The name and address of the sureties for all principal contractors;

(6) The name and address of the representative of the public authority upon whom service shall be made for the purposes of serving an affidavit pursuant to section [1311.26](#) of the Revised Code.

(C) If the notice of commencement is not made available to the public prior to the commencement of work on the public improvement or if the notice of commencement furnished by the public authority contains incorrect information which the claimant relies upon to his detriment, the unavailability of the notice or the incorrect notice shall not adversely affect the rights of any claimant under sections [1311.25](#) to [1311.32](#) of the Revised Code.

Effective Date: 04-16-1993

1311.26 Subcontractor, materialman or laborer may serve affidavit on public authority.

Any subcontractor, material supplier, or laborer who is performing or has performed labor or work or is furnishing or has furnished material for any public improvement provided for in a contract between the public authority and a principal contractor, and under a contract between the subcontractor, material supplier, or laborer and a principal contractor or subcontractor, at any time, not to exceed one hundred twenty days from the performance of the last labor or work or furnishing of the last material, may serve the public authority an affidavit stating the amount due and unpaid for the labor and work performed and material furnished, when the last of the labor or work was performed and when the last of the material was furnished with all credits and setoffs thereon, and the post-office address of the claimant. If a claimant serves an affidavit under this section, the claimant shall serve the affidavit to the representative of the public authority named in the notice of commencement.

One or more laborers may authorize an agent to prepare, execute, file, and serve the affidavit required by this section. The affidavit may set forth the claims of one or more laborers, provided that the affidavit separately itemizes the claim of each laborer and may set forth claims for wages that are contractually due but are unpaid.

Effective Date: 04-16-1993; 03-30-2007

1311.261 Notice of furnishing.

(A)(1) Every subcontractor and material supplier who wishes to exercise the subcontractor's or material supplier's rights under sections [1311.25](#) to [1311.32](#) of the Revised Code regarding claims for labor or work performed or materials furnished in furtherance of a public improvement shall serve a notice of furnishing, in accordance with division (B) of this section, on the principal contractor whose contract with the public authority is the contract under which the subcontractor or material supplier is performing labor or work or furnishing materials within twenty-one days after the date that the subcontractor or material supplier first performed labor or work or furnished materials on the site of the public improvement, except that no subcontractor or material supplier who is in direct privity of contract with the principal contractor need provide the notice.

(2) A subcontractor or material supplier may serve the principal contractor with a notice of furnishing pursuant to this section more than twenty-one days after the subcontractor or material supplier first performed labor or work or furnished materials on the site of the public improvement. If a subcontractor or material supplier serves the notice, the subcontractor or material supplier shall have the rights of sections [1311.25](#) to [1311.32](#) of the Revised Code with regard to only amounts owed for labor and work performed and materials furnished during and after the twenty-one days immediately preceding service of the notice of furnishing.

(B) The notice of furnishing shall be in substantially the following form:

"Notice of Furnishing

(For use in connection with public improvements)

To:

(Name of principal contractor)

.....

Address of principal contractor)

The undersigned notifies you that the undersigned has furnished or performed or will furnish or perform (describe labor, work, or materials) for the improvement of real property identified as (property description or address) under order given by (name of subcontractor or material supplier). The labor, work, or materials were first furnished or performed or will be furnished or performed on (date).

.....

(Signature of subcontractor or material supplier)

.....

(Address of subcontractor or material supplier)

.....

(Date)."

(C) Each principal contractor and each subcontractor, on the date of entering into any agreement with a subcontractor or material supplier, shall provide, in writing, to the subcontractor or material supplier, the name and address of the public authority.

(D) Each principal contractor and each subcontractor, on the date of entering into any agreement with a subcontractor or material supplier, shall provide, in writing, to the subcontractor or material supplier, the name and address of the principal contractor.

(E) If the principal contractor or subcontractor fails to provide the name and address of the public authority or the principal contractor to those in direct privity of contract and that failure results in the loss of rights under this section, the affected person may bring an action in any court of common pleas which would otherwise have jurisdiction over the action against the person who failed to furnish the information for any damages resulting from the loss of rights under this section.

(F) No laborer must serve a notice in accordance with this section to preserve lien rights under sections [1311.25](#) to [1311.32](#) of the Revised Code.

Effective Date: 04-16-1993; 03-30-2007

1311.28 Public authority to detain funds upon receipt of affidavit - escrow account.

Upon receiving the affidavit required by section [1311.26](#) of the Revised Code, the public authority shall detain from the principal contractor or from the balance of the funds remaining in the contract with the principal contractor, an amount, up to the balance remaining in the contract, that does not in the aggregate exceed the claim or claims.

The public authority shall not detain any amount requested by a claimant who is required by section [1311.261](#) of the Revised Code to serve a notice of furnishing, unless the claimant has provided to the

public authority a copy of the notice of furnishing and a sworn statement as to the date the notice of furnishing was served to the principal contractor, or by a claimant who is a laborer, unless the laborer serves an affidavit upon the public authority pursuant to section [1311.26](#) of the Revised Code.

The public authority shall place any detained funds in an escrow account as provided for under section [153.63](#) of the Revised Code, to be released at the times, in the amounts, and to the persons ordered by a court of competent jurisdiction or by agreement of the principal contractor and the subcontractor, material supplier, or laborer who filed the affidavit provided for in section [1311.26](#) of the Revised Code or upon a failure to commence suit as provided in section [1311.311](#) of the Revised Code.

Effective Date: 04-16-1993; 03-30-2007

1311.29 Copy of affidavit to be filed with county recorder to notify other subcontractors, materialmen, and laborers - priority of claims.

A subcontractor, material supplier, laborer, or person who serves the affidavit pursuant to section [1311.26](#) of the Revised Code, in order to notify other subcontractors, material suppliers, and laborers, within thirty days thereafter, shall file for record a copy of the affidavit with the county recorder of the county where the public improvement is situated or with the county recorder of each of the counties where the public improvement is situated if the public improvement is situated in more than one county. The filing for record of the affidavit with the county recorders gives such subcontractor, material supplier, laborer, or person filing the affidavit as provided in section [1311.26](#) of the Revised Code, a preference, as to payments subsequently due from the public authority, over such of the other subcontractors, material suppliers, and laborers who have failed, prior to the date any such payment is due, to file the affidavit provided for in section [1311.26](#) of the Revised Code, and to file for record the copy thereof with the county recorders as provided in this section. On detained funds, such claimants have no priority among themselves, but payment thereon shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each. The failure of any claimant to file for record a copy of the affidavit with the county recorders does not affect the validity of the claimant's amount claimed with respect to persons other than such of the claimant's other subcontractors, material suppliers, and laborers who have filed for record copies of their affidavits with the county recorders, and, against detained funds, such claimants who have failed to make such filing for record with the county recorders have no priority among themselves, but, after all claims having preference over theirs have been paid, payment shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each.

The recorder shall endorse upon every affidavit the date and hour of its filing, and record every affidavit filed for record. For recording or making a copy of the affidavit or certificate of the date of such filing for record, the recorder is entitled to the same fees as are provided for in section [317.32](#) of the Revised Code.

Effective Date: 04-10-1991; 03-30-2007

1311.31 Action by claimant to enforce payment.

The public authority, upon the receipt of the affidavit referred to in section [1311.26](#) of the Revised Code shall, or the claimant or his agent, in the name of the public authority, may serve the principal contractor with a copy thereof, within five days after the public authority receives it, together with a notice that the principal contractor must give notice of his intention to dispute the claim within twenty days. If the claimant is not in privity of contract with the principal contractor, the notice of intention to dispute may state that the claimant failed to serve a notice of furnishing as required by division (A)(1) of section [1311.261](#) of the Revised Code. If the claimant performed the labor or work or furnished the material to a subcontractor of the principal contractor, the claimant shall, within twenty days after serving the affidavit to the public authority, furnish a copy of it to the subcontractor. If the claimant fails

to furnish the copy to the subcontractor, the claimant forfeits his rights to a claim under sections [1311.25](#) to [1311.32](#) of the Revised Code. If the principal contractor fails within twenty days after receipt of the affidavit to serve to the public authority written notice of his intention to dispute the claim, he has assented to its correctness, provided that within twenty days after receipt by any subcontractor of a copy of the affidavit, the subcontractor may serve the notice of intention to dispute on behalf of the principal contractor. Thereupon, provided all affidavits filed on the same public improvement have been assented to, the amount detained from the principal contractor shall be applied by and payment made by the public authority, in the order of preference provided in section [1311.29](#) of the Revised Code, pro rata, upon the claims on which affidavits have been filed. Where more than one affidavit has been filed with respect to the same public improvement, and one or more of the affidavits has not been assented to, then the amount detained shall be applied pro rata among all the claimants in the order of preference prescribed in section [1311.29](#) of the Revised Code, payment being made in the amount of their pro rata shares to all claimants whose affidavits have been assented to, and the pro rata shares of claimants whose affidavits have not been assented to shall be detained by the public authority until the dispute with respect to any affidavit has been resolved in any manner provided by law, whereupon payment in whole or in part shall be made to claimants in whose favor the dispute is resolved and any remaining part of the pro rata shares shall be applied pro rata among and payment made to all claimants as provided in this section. Each subsequent payment falling due shall be applied among and payment made to the claimants as provided in this section.

Effective Date: 04-16-1993

1311.311 Notice to commence suit.

Any public authority or any principal contractor or subcontractor who receives a copy of the affidavit required by section [1311.26](#) of the Revised Code, as provided in section [1311.31](#) of the Revised Code, may notify the claimant or his agent, to commence suit. Proof that this notice was served in accordance with section [1311.19](#) of the Revised Code, may be made by affidavit filed with the public authority or clerk or agent thereof. If the claimant fails to commence suit within sixty days after the date of the service of the notice, the affidavit filed pursuant to section [1311.26](#) of the Revised Code is void and the funds are to be released to the principal contractor. This section does not preclude the collection of the claim in any manner in which any claim may otherwise be collected.

An affidavit filed pursuant to section [1311.26](#) of the Revised Code is void and the funds upon which it is sought to be imposed wholly discharged from the affidavit filed pursuant to section [1311.26](#) of the Revised Code if the principal contractor or any subcontractor or interested party acting in his name gives the notice to commence suit and files with the public authority, a bond in the amount equal to one and one-half of the claim in favor of the claimant, executed by sufficient surety, approved in writing by the public authority, and conditioned upon the payment of any judgment upon the claim, plus costs.

If the public authority fails to discharge the affidavit filed pursuant to section [1311.26](#) of the Revised Code and make payment, the principal contractor or subcontractor may file an action in the court of common pleas of the county in which the property is located except that if the action is against a state officer, the principal contractor or subcontractor shall file the action in the court of common pleas of Franklin county. If the court determines in the action that the public authority improperly failed to discharge the affidavit and make payment, the court may award reasonable attorney fees.

The bond is void upon the failure of the claimant to commence suit within sixty days after the date of the service of the notice or, if the claimant commences suit within the required time period, upon the satisfaction of any judgment that is entered in favor of the claimant, upon final judgment against the claimant, or upon dismissal of the suit for any reason.

Effective Date: 04-10-1991

1311.32 Enforcement by civil action.

The duty to pay to claimants the amounts and in the order of preference, as provided in sections [1311.29](#) and [1311.31](#) of the Revised Code, may be enforced by an action in the court of common pleas or the subcontractor, material supplier, or laborer may, when the amounts are due, recover through the public authority in the court of common pleas the whole or a pro rata amount of the subcontractor's, material supplier's, or laborer's claim or estimate, not exceeding in any case the balance due to the principal contractor. Either of these actions shall be brought in the county in which the public property involved is situated, except that actions against state officers shall be brought only in Franklin county. The court shall resolve all disputes concerning whether the affidavit filed pursuant to section [1311.26](#) of the Revised Code has been perfected and concerning priorities, that may arise from enforcement of the affidavit or the bond that secures the affidavit, pursuant to section [1311.311](#) of the Revised Code.

Effective Date: 04-10-1991; 03-30-2007

1311.34 Laborers shall have lien upon real property of employer.

Employees of any person, association of persons, or corporation, whether such employment is at agriculture, mining, manufacture, or other manual labor, have a lien upon the real property of their employers for their wages. The lien is superior to the following liens taken or attaching during the existence of the unpaid labor claim:

- (A) Liens of attachment;
- (B) Liens of mortgage, that are:
 - (1) Given or taken at a time of actual insolvency of the debtor;
 - (2) Given with a view of preferring creditors;
 - (3) Given to secure a pre-existing debt.

Liens upon real property of employers for wages are superior to all exemptions.

If an employer is placed in the hands of an assignee, receiver, or trustee, claims due for labor performed within the period of three months prior to the time the assignee, receiver, or trustee is appointed, shall first be paid out of the trust fund, in preference to all other claims against the employer, except claims for taxes and the costs of administering the trust.

Effective Date: 09-28-1979

1311.35 Waiver of lien.

The liens in section [1311.34](#) of the Revised Code are waived by the employee, as to any portion of such labor, unless within thirty days from the expiration of three months from the performance thereof, he files with the county recorder of the county where the labor was performed an itemized statement, verified by affidavit, of the amount, kind, and value of the labor performed within such period, with all credits and offsets and the amount then due him therefor. Such statement, when filed, must be recorded in a book kept for the purpose, and becomes a lien upon the real property of the employer without any specific description thereof, for the period of one year from the filing of the statement.

Effective Date: 10-01-1953

1311.36 Enforcement and priority of liens.

If an action is brought to enforce the lien within the time provided in section [1311.35](#) of the Revised Code, it continues in force until finally adjudicated. The proceedings to enforce it are the same as in other cases of lien, against the owner of the property and all other persons interested. If several persons have or obtain liens under sections [1311.34](#) and [1311.35](#) of the Revised Code, against the property of the same employer, they have no priority among themselves, but all must be paid pro rata. Such persons do not have priority over those obtaining other liens under this chapter but the persons obtaining liens under this chapter have priority as provided in this chapter.

Effective Date: 04-10-1991

Chapter 3313: BOARDS OF EDUCATION

3313.372 Installment payment contract for purchase and installation of energy conservation measures.

(A) As used in this section, "energy conservation measure" means an installation or modification of an installation in, or remodeling of, a building, to reduce energy consumption. It includes:

- (1) Insulation of the building structure and systems within the building;
- (2) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- (3) Automatic energy control systems;
- (4) Heating, ventilating, or air conditioning system modifications or replacements;
- (5) Caulking and weatherstripping;
- (6) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;
- (7) Energy recovery systems;
- (8) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (9) Any other modification, installation, or remodeling approved by the Ohio school facilities commission as an energy conservation measure.

(B) A board of education of a city, exempted village, local, or joint vocational school district may enter into an installment payment contract for the purchase and installation of energy conservation measures. The provisions of such installment payment contracts dealing with interest charges and financing terms shall not be subject to the competitive bidding requirements of section [3313.46](#) of the Revised Code, and shall be on the following terms:

- (1) Not less than one-fifteenth of the costs thereof shall be paid within two years from the date of purchase.

(2) The remaining balance of the costs thereof shall be paid within fifteen years from the date of purchase. An installment payment contract entered into by a board of education under this section shall require the board to contract in accordance with division (A) of section [3313.46](#) of the Revised Code for the installation, modification, or remodeling of energy conservation measures unless division (A) of section [3313.46](#) of the Revised Code does not apply pursuant to division (B)(3) of that section.

(C) The board may issue the notes of the school district signed by the president and the treasurer of the board and specifying the terms of the purchase and securing the deferred payments provided in this section, payable at the times provided and bearing interest at a rate not exceeding the rate determined as provided in section [9.95](#) of the Revised Code. The notes may contain an option for prepayment and shall not be subject to Chapter 133. of the Revised Code. In the resolution authorizing the notes, the board may provide, without the vote of the electors of the district, for annually levying and collecting taxes in amounts sufficient to pay the interest on and retire the notes, except that the total net indebtedness of the district without a vote of the electors incurred under this and all other sections of the Revised Code, except section [3318.052](#) of the Revised Code, shall not exceed one per cent of the district's tax valuation. Revenues derived from local taxes or otherwise, for the purpose of conserving energy or for defraying the current operating expenses of the district, may be applied to the payment of interest and the retirement of such notes. The notes may be sold at private sale or given to the contractor under the installment payment contract authorized by division (B) of this section.

(D) Debt incurred under this section shall not be included in the calculation of the net indebtedness of a school district under section [133.06](#) of the Revised Code.

(E) No school district board shall enter into an installment payment contract under division (B) of this section unless it first obtains a report of the costs of the energy conservation measures and the savings thereof as described under division (G) of section [133.06](#) of the Revised Code as a requirement for issuing energy securities, makes a finding that the amount spent on such measures is not likely to exceed the amount of money it would save in energy costs and resultant operational and maintenance costs as described in that division, except that that finding shall cover the ensuing fifteen years, and the Ohio school facilities commission determines that the district board's findings are reasonable and approves the contract as described in that division. The district board shall monitor the savings and maintain a report of those savings, which shall be available to the commission in the same manner as required by division (G) of section [133.06](#) of the Revised Code in the case of energy securities.

Effective Date: 06-30-1997; 03-30-2006

3313.373 Shared-savings contract.

(A) As used in this section:

(1) "Energy saving measure" means both of the following:

(a) The acquisition and installation, by purchase, lease, lease purchase, lease with an option to buy, or installment purchase, of an energy conservation measure as defined in section [3313.372](#) of the Revised Code and any attendant architectural and engineering consulting services.

(b) Architectural and engineering consulting services related to energy conservation.

(2) "Shared-savings contract" means a contract for one or more energy savings measures, which contract provides that all payments, except payments for maintenance and repairs and obligations on termination of the contract prior to its expiration, are to be a stated percentage of calculated savings of energy costs attributable to the energy saving measure over a defined period of time and are to be made only to the extent that such savings occur. A contract that requires any additional capital investment or contribution of funds, other than funds available from state or federal energy grants, or that is for an initial term of longer than ten years is not a shared-savings contract.

(B) The board of education of a city, local, exempted village, or joint vocational school district may enter into a shared-savings contract with any person experienced in the design and implementation of energy saving measures for buildings owned or rented by the board. Such contract is not subject to section [3313.46](#) of the Revised Code. If the contract is for a term extending beyond the fiscal year, it shall be considered to be a continuing contract within the meaning of division (D) of section [5705.41](#) of the Revised Code. A board of education entering into an installment contract under this section shall also comply with section [3313.372](#) of the Revised Code.

(C) In the case of a shared-savings contract running beyond the fiscal year in which it is entered into, the board shall include in its annual appropriations measure for each subsequent year any amounts payable under shared-savings contracts during such year and shall furnish the certification required by section [5705.44](#) of the Revised Code, but the failure of a board to make such an appropriation or furnish the certificates referred to in division (D) of section [5705.41](#), or [5705.412](#) or [5705.44](#) of the Revised Code, shall not affect the validity of the shared-savings contract or the board's obligations under the contract.

Effective Date: 10-01-1985

3313.374 Installment payment contract for construction and purchase of administrative offices.

(A) This section applies only to city, exempted village, and local school districts to which both of the following apply:

(1) The board of education of the district has entered into rental agreements for administrative office facilities for at least ten consecutive years;

(2) The rent paid by the board has increased at an average annual percentage rate of not less than four per cent during the ten-year period immediately preceding the date on which the board adopts the resolution described in division (B) of this section.

(B) A board of education may adopt a resolution to enter into an installment payment contract for the construction and purchase of office facilities on land owned by the board to be used for administrative offices of the school district. The provisions of the contract dealing with interest charges and financing terms shall not be subject to the competitive bidding requirements of section [3313.46](#) of the Revised Code. The provisions of the contract dealing with the construction of office facilities shall be subject to division (A) of section [3313.46](#) of the Revised Code. The contract shall be on the following terms:

(1) The term of the installment payment contract shall not exceed fifteen years, measured from the date of the installment payment contract;

(2) Installment payments shall be made not less frequently than every six months during the term of the contract except the contract may provide for the first payment to be made not later than eleven months after the date of the contract;

(3) The total amount of the installment payments becoming due and payable during any twelve-month period after the school district has occupied the facilities shall be substantially equal; except the total amount of installment payments becoming due and payable in the final twelve-month period of the contract may be lower than the total amount due and payable in earlier twelve-month periods.

(4) Provision may be made for capitalizing interest charges during the period of construction of the office facilities.

(C) The board may issue notes of the school district signed by the president and treasurer of the board and securing the installment payments provided in this section, payable at the times provided and

bearing interest at a rate not exceeding the rate determined as provided in section [9.95](#) of the Revised Code. The notes may contain an option for prepayment and shall not be subject to Chapter 133. of the Revised Code.

(D) Debt incurred under this section shall not be included in the calculation of net indebtedness of a school district under section [133.06](#) of the Revised Code.

Effective Date: 06-30-1995

3313.375 Lease-purchase agreement for building or improvements to building.

The board of education of a city, local, exempted village, or joint vocational school district, the governing board of an educational service center, or the governing authority of a community school may enter into a lease-purchase agreement providing for construction; enlarging or other improvement, furnishing, and equipping; lease; and eventual acquisition of a building or improvements to a building for any school district, educational service center, or community school purpose. The agreement shall provide for a lease for a series of one-year renewable lease terms totaling not more than thirty years. The agreement shall provide that at the end of the series of lease terms provided for in the agreement the title to the leased property shall be vested in the school district or educational service center, if all obligations of the school district, educational service center, or community school provided for in the agreement have been satisfied. The agreement may, in addition to the rental payments, require the school district, educational service center, or community school to pay the lessor a lump-sum amount as a condition of obtaining title to the leased property. In conjunction with the agreement, a school district board of education, an educational service center governing board, or a governing authority of a community school may grant leases, easements, or licenses for underlying land or facilities under the board's control for terms not exceeding five years beyond the final renewal term of the lease-purchase agreement entered into pursuant to this section. Payments under the agreement may be deemed to be, and paid as, current operating expenses. The obligations under a lease-purchase agreement entered into pursuant to this section shall not be considered to be net indebtedness of a school district under section [133.06](#) of the Revised Code.

Effective Date: 04-08-2003

3313.46 Contract bidding process - exceptions.

(A) In addition to any other law governing the bidding for contracts by the board of education of any school district, when any such board determines to build, repair, enlarge, improve, or demolish any school building, the cost of which will exceed twenty-five thousand dollars, except in cases of urgent necessity, or for the security and protection of school property, and except as otherwise provided in division (D) of section 713.23 and in section 125.04 of the Revised Code, all of the following shall apply:

(1) The board shall cause to be prepared the plans, specifications, and related information as required in divisions (A)(1), (2), and (3) of section 153.01 of the Revised Code unless the board determines that other information is sufficient to inform any bidders of the board's requirements. However, if the board determines that such other information is sufficient for bidding a project, the board shall not engage in the construction of any such project involving the practice of professional engineering, professional surveying, or architecture, for which plans, specifications, and estimates have not been made by, and the construction thereof inspected by, a licensed professional engineer, licensed professional surveyor, or registered architect.

(2) The board shall advertise for bids once each week for a period of not less than two consecutive weeks, or as provided in section 7.16 of the Revised Code, in a newspaper of general circulation in the district before the date specified by the board for receiving bids. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web

site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the school district, provided that the first notice published in such newspaper meets all of the following requirements:

- (a) It is published at least two weeks before the opening of bids.
 - (b) It includes a statement that the notice is posted on the board of education's internet web site.
 - (c) It includes the internet address of the board's internet web site.
 - (d) It includes instructions describing how the notice may be accessed on the board's internet web site.
- (3) Unless the board extends the time for the opening of bids they shall be opened at the time and place specified by the board in the advertisement for the bids.
- (4) Each bid shall contain the name of every person interested therein. Each bid shall meet the requirements of section 153.54 of the Revised Code.
- (5) When both labor and materials are embraced in the work bid for, the board may require that each be separately stated in the bid, with the price thereof, or may require that bids be submitted without such separation.
- (6) None but the lowest responsible bid shall be accepted. The board may reject all the bids, or accept any bid for both labor and material for such improvement or repair, which is the lowest in the aggregate. In all other respects, the award of contracts for improvement or repair, but not for purchases made under section 3327.08 of the Revised Code, shall be pursuant to section 153.12 of the Revised Code.
- (7) The contract shall be between the board and the bidders. The board shall pay the contract price for the work pursuant to sections 153.13 and 153.14 of the Revised Code. The board shall approve and retain the estimates referred to in section 153.13 of the Revised Code and make them available to the auditor of state upon request.
- (8) When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between such bidders.
- (9) When there is reason to believe there is collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected.
- (B) Division (A) of this section does not apply to the board of education of any school district in any of the following situations:
- (1) The acquisition of educational materials used in teaching.
 - (2) If the board determines and declares by resolution adopted by two-thirds of all its members that any item is available and can be acquired only from a single source.
 - (3) If the board declares by resolution adopted by two-thirds of all its members that division (A) of this section does not apply to any installation, modification, or remodeling involved in any energy conservation measure undertaken through an installment payment contract under section 3313.372 of the Revised Code or undertaken pursuant to division (G) of section 133.06 of the Revised Code.
 - (4) The acquisition of computer software for instructional purposes and computer hardware for instructional purposes pursuant to division (B)(4) of section 3313.37 of the Revised Code.

(C) No resolution adopted pursuant to division (B)(2) or (3) of this section shall have any effect on whether sections 153.12 to 153.14 and 153.54 of the Revised Code apply to the board of education of any school district with regard to any item.

Effective Date: 11-02-1999; 2008 SB268 09-12-2008; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

Chapter 3353: ETECH OHIO COMMISSION

3353.04 Powers of commission.

(A) The eTech Ohio commission may perform any act necessary to carry out the functions of this chapter, including any of the following:

(1) Make grants to institutions and other organizations as prescribed by the general assembly for the provision of technical assistance, professional development, and other support services to enable school districts, community schools established under Chapter 3314. of the Revised Code, other educational institutions, and affiliates to utilize educational technology;

(2) Establish a reporting system for school districts, community schools, other educational institutions, affiliates, and educational technology organizations that receive financial assistance from the commission. The system may require the reporting of information regarding the manner in which the assistance was expended, the manner in which the equipment or services purchased with the assistance is being utilized, the results or outcome of the utilization, the manner in which the utilization is compatible with the statewide academic standards adopted by the state board of education pursuant to section 3301.079 of the Revised Code, and any other information determined by the commission.

(3) Ensure that, where appropriate, products produced by any entity to which the commission provides financial assistance for use in elementary and secondary education are aligned with the statewide academic standards adopted by the state board pursuant to section 3301.079 of the Revised Code;

(4) Promote accessibility to educational products aligned with the statewide academic standards, adopted by the state board pursuant to section 3301.079 of the Revised Code, for school districts, community schools, and other entities serving grades kindergarten through twelve;

(5) Own or operate transmission facilities and interconnection facilities, or contract for transmission facilities and interconnection facilities, for an educational television, radio, or radio reading service network;

(6) Establish standards for interconnection facilities used by the commission in the transmission of educational television, radio, or radio reading service programming;

(7) Enter into agreements with noncommercial educational television or radio broadcasting stations or radio reading services for the operation of the interconnection;

(8) Enter into agreements with noncommercial educational television or radio broadcasting stations or radio reading services for the production and use of educational television, radio, or radio reading service programs to be transmitted by the educational telecommunications network;

(9) Execute contracts and other agreements necessary and desirable to carry out the purposes of this chapter and other duties prescribed to the commission by law or authorize the executive director of the commission to execute such contracts and agreements on the commission's behalf;

(10) Act as consultant with educational television and educational radio stations and radio reading services toward coordination within the state of the distribution of federal funds that may become available for equipment for educational broadcasting or radio reading services;

(11) Make payments to noncommercial Ohio educational television or radio broadcasting stations or radio reading services to sustain the operation of such stations or services;

(12) In consultation with participants in programs administered by the commission, establish guidelines governing purchasing and procurement that facilitate the timely and effective implementation of such programs;

(13) In consultation with participants in programs administered by the commission, consider the efficiency and cost savings of statewide procurement prior to allocating and releasing funds for such programs;

(14) In consultation with participants in programs administered by the commission, establish a systems support network to facilitate the timely implementation of the programs and other projects and activities for which the commission provides assistance.

(B) Chapters 123., 124., 125., and 153. of the Revised Code and sections 9.331 to 9.335 of the Revised Code do not apply to contracts, programs, projects, or activities of the commission.

Effective Date: 06-30-1995; 07-01-2005; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

Chapter 3333: OHIO BOARD OF REGENTS

3333.072 Allocation of state capital appropriations to state colleges and universities.

The chancellor of the Ohio board of regents, after consulting with the state colleges and universities and with the office of budget and management, shall adopt rules in accordance with Chapter 119. of the Revised Code to govern the allocation of state capital appropriations to state colleges and universities. In drafting the rules, the chancellor shall incorporate the recommendations of the final report of the commission to study higher education debt service, issued June 28, 1994, as these recommendations have been utilized and modified in procedures developed by the chancellor and the office of budget and management since the report was issued.

Effective Date: 05-06-2005; 2007 HB2 05-15-2007

Chapter 3345: STATE UNIVERSITIES - GENERAL POWERS

3345.011 State university definitions.

State university" means a public institution of higher education which is a body politic and corporate. Each of the following institutions of higher education shall be recognized as a state university: university of Akron, Bowling Green state university, Central state university, university of Cincinnati, Cleveland state university, Kent state university, Miami university, Ohio university, Ohio state university, Shawnee state university, university of Toledo, Wright state university, and Youngstown state university.

State institution of higher education" means any state university or college as defined in division (A)(1) of section [3345.12](#) of the Revised Code, community college, state community college, university branch established under Chapter 3355. of the Revised Code, or technical college.

"University system of Ohio" means the collective group of all of the state institutions of higher education.

"Member of the university system of Ohio" means any individual state institution of higher education.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-20-1997

3345.03 Audit of accounts.

The expenditure of all moneys under sections [3345.01](#) to [3345.07](#) of the Revised Code, or for the purpose of carrying out such sections[,] raised or secured from any source, shall be subject to the audit of the auditor of state, the cost thereof to be paid by the university or college audited.

Effective Date: 07-01-1985

3345.12 State university additional definitions - issuance of obligations.

(A) As used in this section and sections 3345.07 and 3345.11 of the Revised Code, in other sections of the Revised Code that make reference to this section unless the context does not permit, and in related bond proceedings unless otherwise expressly provided:

(1) "State university or college" means each of the state universities identified in section 3345.011 of the Revised Code and the northeast Ohio medical university, and includes its board of trustees.

(2) "Institution of higher education" or "institution" means a state university or college, or a community college district, technical college district, university branch district, or state community college, and includes the applicable board of trustees or, in the case of a university branch district, any other managing authority.

(3) "Housing and dining facilities" means buildings, structures, and other improvements, and equipment, real estate, and interests in real estate therefor, to be used for or in connection with dormitories or other living quarters and accommodations, or related dining halls or other food service and preparation facilities, for students, members of the faculty, officers, or employees of the institution of higher education, and their spouses and families.

(4) "Auxiliary facilities" means buildings, structures, and other improvements, and equipment, real estate, and interests in real estate therefor, to be used for or in connection with student activity or student service facilities, housing and dining facilities, dining halls, and other food service and preparation facilities, vehicular parking facilities, bookstores, athletic and recreational facilities, faculty centers, auditoriums, assembly and exhibition halls, hospitals, infirmaries and other medical and health facilities, research, and continuing education facilities.

(5) "Education facilities" means buildings, structures, and other improvements, and equipment, real estate, and interests in real estate therefor, to be used for or in connection with, classrooms or other instructional facilities, libraries, administrative and office facilities, and other facilities, other than auxiliary facilities, to be used directly or indirectly for or in connection with the conduct of the institution of higher education.

(6) "Facilities" means housing and dining facilities, auxiliary facilities, or education facilities, and includes any one, part of, or any combination of such facilities, and further includes site improvements, utilities, machinery, furnishings, and any separate or connected buildings, structures, improvements, sites, open space and green space areas, utilities or equipment to be used in, or in connection with the operation or maintenance of, or supplementing or otherwise related to the services or facilities to be provided by, such facilities.

(7) "Obligations" means bonds or notes or other evidences of obligation, including interest coupons pertaining thereto, authorized to be issued under this section or section 3345.07, 3345.11, 3354.121, 3355.091, 3357.112, or 3358.10 of the Revised Code.

(8) "Bond service charges" means principal, including any mandatory sinking fund or redemption requirements for the retirement of obligations or assurances, interest, or interest equivalent and other accreted amounts, and any call premium required to be paid on obligations or assurances.

(9) "Bond proceedings" means the resolutions, trust agreement, indenture, and other agreements and credit enhancement facilities, and amendments and supplements to the foregoing, or any one or more or combination thereof, authorizing, awarding, or providing for the terms and conditions applicable to, or providing for the security or liquidity of, obligations or assurances, and the provisions contained in those obligations or assurances.

(10) "Costs of facilities" means the costs of acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, equipping, or furnishing facilities, and the financing thereof, including the cost of clearance and preparation of the site and of any land to be used in connection with facilities, the cost of any indemnity and surety bonds and premiums on insurance, all related direct administrative expenses and allocable portions of direct costs of the institution of higher education or state agency, cost of engineering, architectural services, design, plans, specifications and surveys, estimates of cost, legal fees, fees and expenses of trustees, depositories, bond registrars, and paying agents for the obligations, cost of issuance of the obligations and financing costs and fees and expenses of financial advisers and consultants in connection therewith, interest on the obligations from the date thereof to the time when interest is to be covered by available receipts or other sources other than proceeds of the obligations, amounts necessary to establish reserves as required by the bond proceedings, costs of audits, the reimbursements of all moneys advanced or applied by or borrowed from the institution or others, from whatever source provided, including any temporary advances from state appropriations, for the payment of any item or items of cost of facilities, and all other expenses necessary or incident to planning or determining feasibility or practicability with respect to facilities, and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, rehabilitation, remodeling, renovation, enlargement, improvement, equipment, and furnishing of facilities, the financing thereof and the placing of them in use and operation, including any one, part of, or combination of such classes of costs and expenses.

(11) "Available receipts" means all moneys received by the institution of higher education, including income, revenues, and receipts from the operation, ownership, or control of facilities or entrepreneurial projects, grants, gifts, donations, and pledges and receipts therefrom, receipts from fees and charges, and the proceeds of the sale of obligations or assurances, including proceeds of obligations or assurances issued to refund obligations or assurances previously issued, but excluding any special fee, and receipts therefrom, charged pursuant to division (D) of section 154.21 of the Revised Code.

(12) "Credit enhancement facilities" has the meaning given in division (H) of section 133.01 of the Revised Code.

(13) "Financing costs" has the meaning given in division (K) of section 133.01 of the Revised Code.

(14) "Interest" or "interest equivalent" has the meaning given in division (R) of section 133.01 of the Revised Code.

(15) "Assurances" means bonds, notes, or other evidence of indebtedness, including interest coupons pertaining thereto, authorized to be issued under section 3345.36 of the Revised Code.

(16) "Entrepreneurial project" has the same meaning as in section 3345.36 of the Revised Code.

(17) "Costs of entrepreneurial projects" means any costs related to the establishment or development of entrepreneurial projects pursuant to a resolution adopted under section 3345.36 of the Revised Code.

(B) Obligations issued under section 3345.07 or 3345.11 of the Revised Code by a state university or college shall be authorized by resolution of its board of trustees. Obligations issued by any other institution of higher education shall be authorized by resolution of its board of trustees, or managing directors in the case of certain university branch districts, as applicable. Sections 9.96 and 9.98 to 9.983 of the Revised Code apply to obligations and assurances. Obligations and assurances may be issued to pay costs of facilities or entrepreneurial projects even if the institution anticipates the possibility of a future state appropriation to pay all or a portion of such costs.

(C) Obligations and assurances shall be secured by a pledge of and lien on all or such part of the available receipts of the institution of higher education as it provides for in the bond proceedings, excluding moneys raised by taxation and state appropriations except as permitted by section 3333.90 of the Revised Code. Such pledge and lien may be made prior to all other expenses, claims, or payments, excepting any pledge of such available receipts previously made to the contrary and except as provided by any existing restrictions on the use thereof, or such pledge and lien may be made subordinate to such other expenses, claims, or payments, as provided in the bond proceedings. Obligations or assurances may be additionally secured by covenants of the institution to make, fix, adjust, collect, and apply such charges, rates, fees, rentals, and other items of available receipts as will produce pledged available receipts sufficient to meet bond service charges, reserve, and other requirements provided for in the bond proceedings. Notwithstanding this and any other sections of the Revised Code, the holders or owners of the obligations or assurances shall not be given the right and shall have no right to have excises or taxes levied by the general assembly for the payment of bond service charges thereon, and each such obligation or assurance shall bear on its face a statement to that effect and to the effect that the right to such payment is limited to the available receipts and special funds pledged to such purpose under the bond proceedings.

All pledged available receipts and funds and the proceeds of obligations or assurances are trust funds and, subject to the provisions of this section and the applicable bond proceedings, shall be held, deposited, invested, reinvested, disbursed, applied, and used to such extent, in such manner, at such times, and for such purposes, as are provided in the bond proceedings.

(D) The bond proceedings for obligations or assurances shall provide for the purpose thereof and the principal amount or maximum principal amount, and provide for or authorize the manner of determining the principal maturity or maturities, the sale price including any permitted discount, the interest rate or rates, which may be a variable rate or rates, or the maximum interest rate, the date of the obligations or assurances and the date or dates of payment of interest thereon, their denominations, the manner of sale thereof, and the establishment within or without the state of a place or places of payment of bond service charges. The bond proceedings also shall provide for a pledge of and lien on available receipts of the institution of higher education as provided in division (C) of this section, and a pledge of and lien on such fund or funds provided in the bond proceedings arising from available receipts, which pledges and liens may provide for parity with obligations or assurances theretofore or thereafter issued by the institution. The available receipts so pledged and thereafter received by the institution and the funds so pledged are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding against all parties having claims of any kind against the institution, irrespective of whether such parties have notice thereof, and shall create a perfected security interest for all purposes of Chapter 1309. of the Revised Code, without the necessity for separation or delivery of funds or for the filing or recording of the bond proceedings by which such pledge is created or any certificate, statement, or other document with respect thereto; and the pledge of such available receipts and funds shall be effective and the money therefrom and thereof may be applied to the purposes for which pledged without necessity for any act of appropriation.

(E) The bond proceedings may contain additional provisions customary or appropriate to the financing or to the obligations or assurances or to particular obligations and assurances, including:

(1) The acquisition, construction, reconstruction, equipment, furnishing, improvement, operation, alteration, enlargement, maintenance, insurance, and repair of facilities or entrepreneurial projects, and the duties of the institution of higher education with reference thereto;

(2) The terms of the obligations or assurances, including provisions for their redemption prior to maturity at the option of the institution of higher education at such price or prices and under such terms and conditions as are provided in the bond proceedings;

(3) Limitations on the purposes to which the proceeds of the obligations or assurances may be applied;

(4) The rates or rentals or other charges for the use of or right to use the facilities or entrepreneurial projects financed by the obligations or assurances, or other properties the revenues or receipts from which are pledged to the obligations or assurances, and rules for assuring any applicable use and occupancy thereof, including limitations upon the right to modify such rates, rentals, other charges, or regulations;

(5) The use and expenditure of the pledged available receipts in such manner and to such extent as shall be determined, which may include provision for the payment of the expenses of operation, maintenance, and repair of facilities or entrepreneurial projects so that such expenses, or part thereof, shall be paid or provided as a charge prior or subsequent to the payment of bond service charges and any other payments required to be made by the bond proceedings;

(6) Limitations on the issuance of additional obligations or assurances;

(7) The terms of any trust agreement or indenture securing the obligations or assurances or under which the same may be issued;

(8) The deposit, investment, and application of funds, and the safeguarding of funds on hand or on deposit without regard to Chapter 131. or 135. of the Revised Code, and any bank or trust company or other financial institution that acts as depository of any moneys under the bond proceedings shall furnish such indemnifying bonds or pledge such securities as required by the bond proceedings or otherwise by the institution of higher education;

(9) The binding effect of any or every provision of the bond proceedings upon such officer, board, commission, authority, agency, department, or other person or body as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision;

(10) Any provision that may be made in a trust agreement or indenture;

(11) Any other or additional agreements with respect to the facilities of the institution of higher education or its entrepreneurial projects, their operation, the available receipts and funds pledged, and insurance of facilities or entrepreneurial projects and of the institution, its officers and employees.

(F) Such obligations or assurances may have the seal of the institution of higher education or a facsimile thereof affixed thereto or printed thereon and shall be executed by such officers as are designated in the bond proceedings, which execution may be by facsimile signatures. Any obligations or assurances may be executed by an officer who, on the date of execution, is the proper officer although on the date of such obligations or assurances such person was not the proper officer. In case any officer whose signature or a facsimile of whose signature appears on any such obligation or assurance ceases to be such officer before delivery thereof, such signature or facsimile is nevertheless valid and sufficient for all purposes as if the person had remained such officer until such delivery; and in case the seal of the institution has been changed after a facsimile of the seal has been imprinted on such obligations or assurances, such facsimile seal continues to be sufficient as to such obligations or assurances and obligations or assurances issued in substitution or exchange therefor.

(G) All such obligations or assurances are negotiable instruments and securities under Chapter 1308. of the Revised Code, subject to the provisions of the bond proceedings as to registration. The obligations or assurances may be issued in coupon or in registered form, or both. Provision may be made for the registration of any obligations or assurances with coupons attached thereto as to principal alone or as to

both principal and interest, their exchange for obligations or assurances so registered, and for the conversion or reconversion into obligations or assurances with coupons attached thereto of any obligations or assurances registered as to both principal and interest, and for reasonable charges for such registration, exchange, conversion, and reconversion.

(H) Pending preparation of definitive obligations or assurances, the institution of higher education may issue interim receipts or certificates which shall be exchanged for such definitive obligations or assurances.

(I) Such obligations or assurances may be secured additionally by a trust agreement or indenture between the institution of higher education and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without this state but authorized to exercise trust powers within this state. Any such agreement or indenture may contain the resolution authorizing the issuance of the obligations or assurances, any provisions that may be contained in the bond proceedings as authorized by this section, and other provisions which are customary or appropriate in an agreement or indenture of such type, including:

(1) Maintenance of each pledge, trust agreement, and indenture, or other instrument comprising part of the bond proceedings until the institution of higher education has fully paid the bond service charges on the obligations or assurances secured thereby, or provision therefor has been made;

(2) In the event of default in any payments required to be made by the bond proceedings, or any other agreement of the institution of higher education made as a part of the contract under which the obligations or assurances were issued, enforcement of such payments or agreement by mandamus, the appointment of a receiver, suit in equity, action at law, or any combination of the foregoing;

(3) The rights and remedies of the holders of obligations or assurances and of the trustee, and provisions for protecting and enforcing them, including limitations on rights of individual holders of obligations or assurances;

(4) The replacement of any obligations or assurances that become mutilated or are destroyed, lost, or stolen;

(5) Such other provisions as the trustee and the institution of higher education agree upon, including limitations, conditions, or qualifications relating to any of the foregoing.

(J) Each duty of the institution of higher education and its officers or employees, undertaken pursuant to the bond proceedings or any related agreement or lease made under authority of law, is hereby established as a duty of such institution, and of each such officer or employee having authority to perform such duty, specially enjoined by law resulting from an office, trust, or station within the meaning of section 2731.01 of the Revised Code. The persons who are at the time the members of the board of trustees or the managing directors of the institution or its officers or employees are not liable in their personal capacities on such obligations or assurances, or lease, or other agreement of the institution.

(K) The authority to issue obligations or assurances includes authority to:

(1) Issue obligations or assurances in the form of bond anticipation notes and to renew them from time to time by the issuance of new notes. Such notes are payable solely from the available receipts and funds that may be pledged to the payment of such bonds, or from the proceeds of such bonds or renewal notes, or both, as the institution of higher education provides in its resolution authorizing such notes. Such notes may be additionally secured by covenants of the institution to the effect that it will do such or all things necessary for the issuance of such bonds or renewal notes in appropriate amount, and either exchange such bonds or renewal notes therefor or apply the proceeds thereof to the extent necessary, to make full payment of the bond service charges on such notes at the time or times contemplated, as provided in such resolution. Subject to the provisions of this division, all references to obligations or assurances in this section apply to such anticipation notes.

(2) Issue obligations or assurances to refund, including funding and retirement of, obligations or assurances previously issued to pay costs of facilities or entrepreneurial projects. Such obligations or assurances may be issued in amounts sufficient for payment of the principal amount of the obligations or assurances to be so refunded, any redemption premiums thereon, principal maturities of any obligations or assurances maturing prior to the redemption of any other obligations or assurances on a parity therewith to be so refunded, interest accrued or to accrue to the maturity date or dates of redemption of such obligations or assurances, and any expenses incurred or to be incurred in connection with such refunding or the issuance of the obligations or assurances.

(L) Obligations and assurances are lawful investments for banks, societies for savings, savings and loan associations, deposit guarantee associations, trust companies, trustees, fiduciaries, insurance companies, including domestic for life and domestic not for life, trustees or other officers having charge of sinking and bond retirement or other special funds of political subdivisions and taxing districts of this state, the commissioners of the sinking fund, the administrator of workers' compensation in accordance with the investment policy approved by the bureau of workers' compensation board of directors pursuant to section 4121.12 of the Revised Code, the state teachers retirement system, the public employees retirement system, the school employees retirement system, and the Ohio police and fire pension fund, notwithstanding any other provisions of the Revised Code or rules adopted pursuant thereto by any state agency with respect to investments by them, and are also acceptable as security for the deposit of public moneys.

(M) All facilities or entrepreneurial projects purchased, acquired, constructed, or owned by an institution of higher education, or financed in whole or in part by obligations or assurances issued by an institution, and used for the purposes of the institution or other publicly owned and controlled college or university, is public property used exclusively for a public purpose, and such property and the income therefrom is exempt from all taxation and assessment within this state, including ad valorem and excise taxes. The obligations or assurances, the transfer thereof, and the income therefrom, including any profit made on the sale thereof, are at all times free from taxation within the state. The transfer of tangible personal property by lease under authority of this section or section 3345.07, 3345.11, 3345.36, 3354.121, 3355.091, 3357.112, or 3358.10 of the Revised Code is not a sale as used in Chapter 5739. of the Revised Code.

(N) The authority granted by this section is cumulative with the authority granted to institutions of higher education under Chapter 154. of the Revised Code, and nothing in this section impairs or limits the authority granted by Chapter 154. of the Revised Code. In any lease, agreement, or commitment made by an institution of higher education under Chapter 154. of the Revised Code, it may agree to restrict or subordinate any pledge it may thereafter make under authority of this section.

(O) Title to lands acquired under this section and sections 3345.07 and 3345.11 of the Revised Code by a state university or college shall be taken in the name of the state.

(P) Except where costs of facilities or entrepreneurial projects are to be paid in whole or in part from funds appropriated by the general assembly, section 125.81 of the Revised Code and the requirement for certification with respect thereto under section 153.04 of the Revised Code do not apply to such facilities or entrepreneurial projects.

(Q) A state university or college may sell or lease lands or interests in land owned by it or by the state for its use, or facilities authorized to be acquired or constructed by it under section 3345.07 or 3345.11 of the Revised Code, to permit the purchasers or lessees thereof to acquire, construct, equip, furnish, reconstruct, alter, enlarge, remodel, renovate, rehabilitate, improve, maintain, repair, or maintain and operate thereon and to provide by lease or otherwise to such institution, facilities authorized in section 3345.07 or 3345.11 of the Revised Code or entrepreneurial projects authorized under section 3345.36 of the Revised Code. Such land or interests therein shall be sold for such appraised value, or leased, and on such terms as the board of trustees determines. All deeds or other instruments relating to such sales or leases shall be executed by such officer of the state university or college as the board of trustees designates. The state university or college shall hold, invest, or use the proceeds of such sales or leases for the same purposes for which proceeds of borrowings may be used under sections 3345.07 and

3345.11 of the Revised Code or, if the proceeds relate to the sale or lease of entrepreneurial projects, for purposes of section 3345.36 of the Revised Code.

(R) An institution of higher education may pledge available receipts, to the extent permitted by division (C) of this section with respect to obligations, to secure the payments to be made by it under any lease, lease with option to purchase, or lease-purchase agreement authorized under this section or section 3345.07, 3345.11, 3345.36, 3354.121, 3355.091, 3357.112, or 3358.10 of the Revised Code.

Amended by 129th General Assembly File No. 18, HB 139, § 1, eff. 4/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 11-02-1999; 05-06-2005; 07-01-2006; 2007 HB100 09-10-2007

3345.121 Notice to legislative authorities of educational facility construction or renovation - comments or objections.

As used in this section:

(A) "Board of trustees" means the board of trustees of a state university, university housing commission, state medical university, community college district, university branch district, technical college district, or state community college.

(B) "Political subdivision" means a municipal corporation, county, or township.

(C) "Institution" means all real property owned or leased by a board of trustees. If a board owns or leases two or more parcels of real property that are not contiguous to any other such real property, institution includes only that group of parcels that includes the parcel on which the educational facility is or is to be located.

(D) "Educational facility" means any building, structure, facility, utility, improvement, site, or other interest in real estate, together with any appurtenance necessary or convenient to the uses thereof, to be used for or in connection with the conduct or operation of an educational institution. Educational facilities include, but are not limited to, classrooms and other instructional facilities, laboratories, research facilities, libraries, study facilities, administrative and office facilities, museums, gymnasiums, campus walks, drives, and site improvements, streets, roads, bridges, dormitories and other suitable living quarters or accommodations, dining halls and other food service and preparation facilities, student services or activity facilities, physical education, athletic and recreational facilities, theatres, auditoriums, assembly and exhibition halls, greenhouses, agricultural buildings and facilities, parking, storage, and maintenance facilities, infirmary, hospital, medical, and health facilities, continuing education facilities, communications, fire prevention, and fire fighting facilities, and any one, part of, or combination of the foregoing, whether or not comprising part of one building, structure, or facility.

(E) "Capital facilities" means buildings, structures, and other improvements, equipment, real estate, and interests in real estate within this state, and any one, part of, or combination of the foregoing, to serve the general purposes for which the political subdivision is authorized to issue obligations pursuant to Chapter 133. of the Revised Code, including, but not limited to, drives, roadways, parking facilities, walks, lighting, machinery, furnishings, utilities, landscaping, wharves, docks, piers, reservoirs, dams, tunnels, bridges, retaining walls, riprap, culverts, ditches, channels, watercourses, retention basins, standpipes and water storage facilities, waste treatment and disposal facilities, heating, air conditioning, and communications facilities, and site improvements.

(F) "Cost of capital facilities" means the costs of acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, equipping, or furnishing capital facilities, and the financing thereof, including the cost of clearance and preparation of the site and of any land to be used

in connection with capital facilities, the cost of any indemnity and surety bonds and premiums on insurance, all related direct administrative expenses and allocable portions of direct costs of the facilities, cost of engineering and architectural services, designs, plans, specifications, surveys, and estimates of cost, legal fees, fees and expenses of trustees, depositories, and paying agents for the obligations, cost of issuance of the obligations and financing charges and fees and expenses of financial advisers and consultants in connection therewith, interest on obligations from the date thereof to the time when interest is to be covered from sources other than proceeds of obligations, amounts necessary to establish reserves as required by the bond proceedings, costs of audits, the reimbursement of all moneys advanced or applied by or borrowed from any governmental agency, from whatever source provided, for the payment of any items of cost of the capital facilities, and all other expenses necessary or incident to planning or determining feasibility or practicability with respect to capital facilities, and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, rehabilitation, remodeling, renovation, enlargement, improvement, equipment, and furnishing of capital facilities, the financing thereof, and the placing of the same in use and operation, including any one, part of, or combination of such classes of costs and expenses.

(G) "Legislative authority" means, in the case of a municipal corporation, its legislative authority; in the case of a township, its board of trustees; and in the case of a county, its board of commissioners.

Not later than the ninetieth day after the effective date of an initial appropriation by the general assembly for the construction or renovation of an educational facility that exceeds one hundred thousand dollars, the board of trustees of the institution receiving the appropriation shall, by certified mail, return receipt requested, submit to the legislative authority of each political subdivision within which the institution is located or to which it is contiguous, a written notice of the board's intention to proceed with such construction or renovation. This notice shall include a description of the construction or renovation, the estimated date for opening bids therefor, and the estimated date of the completion of the construction or renovation.

Not later than the sixtieth day after it receives the notice, the legislative authority may, by certified mail, return receipt requested, forward its comments or objections on the proposed construction or renovation to the board, which shall include, but need not be limited to, a description of any capital facilities it determines the political subdivision will be required to make as a direct or indirect consequence of the construction or renovation and the estimated costs of such capital facilities. The board shall not advertise for bids for the construction or renovation until it has received comments or objections from the legislative authority or until sixty days have elapsed since the legislative authority received the notice, whichever is earlier. The board shall maintain as part of its permanent records, any comments or objections received from the legislative authority and any action taken by the board with respect to such comments or objections.

Amended by 129th General Assembly File No. 18, HB 139, § 1, eff. 4/29/2011.

Effective Date: 08-05-1981

3345.50 Administration of capital facilities project - state appropriations under \$ 4 million.

Notwithstanding anything to the contrary in sections 123.01 and 123.15 of the Revised Code, a state university, a state community college, or the northeast Ohio medical university not certified pursuant to section 123.17 of the Revised Code may administer any capital facilities project for the construction, reconstruction, improvement, renovation, enlargement, or alteration of a public improvement under its jurisdiction for which the total amount of funds expected to be appropriated by the general assembly does not exceed four million dollars without the supervision, control, or approval of the department of administrative services as specified in those sections, if both of the following occur:

(A) Within sixty days after the effective date of the section of an act in which the general assembly initially makes an appropriation for the project, the board of trustees of the institution notifies the chancellor of the Ohio board of regents in writing of its intent to administer the capital facilities project;

(B) The board of trustees complies with the guidelines established pursuant to section 153.16 of the Revised Code and all laws that govern the selection of consultants, preparation and approval of contract documents, receipt of bids, and award of contracts with respect to the project.

The chancellor shall adopt rules in accordance with Chapter 119. of the Revised Code that establish criteria for the administration by any such institution of higher education of a capital facilities project for which the total amount of funds expected to be appropriated by the general assembly exceeds four million dollars. The criteria, to be developed with the department of administrative services and higher education representatives selected by the chancellor, shall include such matters as the adequacy of the staffing levels and expertise needed for the institution to administer the project, past performance of the institution in administering such projects, and the amount of institutional or other nonstate money to be used in financing the project. The chancellor and the department of administrative services shall approve the request of any such institution of higher education that seeks to administer any such capital facilities project and meets the criteria set forth in the rules and in the requirements of division (B) of this section.

Amended by 129th General Assembly File No. 18, HB 139, § 1, eff. 4/29/2011.

Effective Date: 03-18-1999; 05-06-2005; 07-01-2006

3345.51 Administration of capital facilities project - state appropriations immaterial.

(A) Notwithstanding anything to the contrary in sections 123.01 and 123.15 of the Revised Code, a state university, the northeast Ohio medical university, or a state community college may administer any capital facilities project for the construction, reconstruction, improvement, renovation, enlargement, or alteration of a public improvement under its jurisdiction for which funds are appropriated by the general assembly without the supervision, control, or approval of the department of administrative services as specified in those sections, if all of the following occur:

(1) The institution is certified by the state architect under section 123.17 of the Revised Code;

(2) Within sixty days after the effective date of the section of an act in which the general assembly initially makes an appropriation for the project, the board of trustees of the institution notifies the chancellor of the Ohio board of regents in writing of its request to administer the capital facilities project and the chancellor approves that request pursuant to division (B) of this section;

(3) The board of trustees passes a resolution stating its intent to comply with section 153.13 of the Revised Code and the guidelines established pursuant to section 153.16 of the Revised Code and all laws that govern the selection of consultants, preparation and approval of contract documents, receipt of bids, and award of contracts with respect to the project.

(B) The chancellor shall adopt rules in accordance with Chapter 119. of the Revised Code that establish criteria for the administration by any such institution of higher education of a capital facilities project for which the general assembly appropriates funds. The criteria, to be developed with the department of administrative services and higher education representatives selected by the chancellor, shall include such matters as the adequacy of the staffing levels and expertise needed for the institution to administer the project, past performance of the institution in administering such projects, and the amount of institutional or other nonstate money to be used in financing the project. The chancellor shall approve the request of any such institution of higher education that seeks to administer any such capital facilities project and meets the criteria set forth in the rules and the requirements of division (A) of this section.

(C) Any institution that administers a capital facilities project under this section shall conduct biennial audits for the duration of the project to ensure that the institution is complying with Chapters 9., 123., and 153. of the Revised Code and that the institution is using its certification issued under section 123.17 of the Revised Code appropriately. The chancellor, in consultation with higher education representatives selected by the chancellor, shall adopt rules in accordance with Chapter 119. of the Revised Code that establish criteria for the conduct of the audits. The criteria shall include documentation necessary to determine compliance with Chapters 9., 123., and 153. of the Revised Code and a method to determine whether an institution is using its certification issued under section 123.17 of the Revised Code appropriately.

(D) The chancellor, in consultation with higher education representatives selected by the chancellor, shall adopt rules in accordance with Chapter 119. of the Revised Code establishing criteria for monitoring capital facilities projects administered by institutions under this section. The criteria shall include the following:

(1) Conditions under which the chancellor may revoke the authority of an institution to administer a capital facilities project under this section, including the failure of an institution to maintain a sufficient number of employees who have successfully completed the certification program under section 123.17 of the Revised Code;

(2) A process for institutions to remedy any problems found by an audit conducted pursuant to division (C) of this section, including the improper use of state funds or violations of Chapter 9., 123., or 153. of the Revised Code.

(E) If the chancellor revokes an institution's authority to administer a capital facilities project, the department of administrative services shall administer the capital facilities project. The chancellor also may require an institution, for which the chancellor revoked authority to administer a capital facilities project, to acquire a new local administration competency certification pursuant to section 123.17 of the Revised Code.

Amended by 129th General Assembly File No. 18, HB 139, § 1, eff. 4/29/2011.

Effective Date: 05-06-2005; 07-01-2006

3345.61 Energy conservation measures definitions.

As used in this section and sections [3345.62](#) to [3345.66](#) of the Revised Code:

(A) "Avoided capital costs" means a measured reduction in the cost of future equipment or other capital purchases that results from implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such cost.

(B) "Board of trustees of a state institution of higher education" means the board of trustees of a state institution of higher education as defined in section [3345.011](#) of the Revised Code.

(C) "Energy conservation measure" means an installation or modification of an installation in, or a remodeling of, an existing building in order to reduce energy consumption . The term includes any of the following:

(1) Installation or modification of insulation in the building structure and systems within the building;

(2) Installation or modification of a storm window or door, a multiglazed window or door, or a heat absorbing or heat reflective glazed and coated window and door system; installation of additional glazing; a reduction in glass area; or other window or door system modification that reduces energy consumption and operating costs;

- (3) Installation or modification of an automatic energy control system;
- (4) Replacement or modification of a heating, ventilating, or air conditioning system;
- (5) Application of caulking and weatherstripping;
- (6) Replacement or modification of a lighting fixture to increase the energy efficiency of the system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;
- (7) Installation or modification of an energy recovery system;
- (8) Installation or modification of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (9) Any other modification, installation, or remodeling approved by the board of trustees of a state institution of higher education as an energy conservation measure for one or more buildings owned by the institution.

(D) "Energy saving measure" means the acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of an energy conservation measure and any attendant architectural and engineering consulting services.

(E) "Energy, water, or wastewater cost savings" means a measured reduction in, as applicable, the cost of fuel, energy or water consumption, wastewater production, or stipulated operation or maintenance resulting from the implementation of one or more energy or water conservation measures, when compared to an established baseline for previous such costs, respectively.

(F) "Operating cost savings" means a measured reduction in the cost of stipulated operation or maintenance created by the installation of new equipment or implementation of a new service, when compared with an established baseline for previous such stipulated costs.

(G) "Water conservation measure" means an installation or modification of an installation in, or a remodeling of, an existing building or the surrounding grounds in order to reduce water consumption. The term includes any of the following:

- (1) Water-conserving fixture, appliance, or equipment, or the substitution of a nonwater-using fixture, appliance, or equipment;
- (2) Water-conserving, landscape irrigation equipment;
- (3) Landscaping measure that reduces storm water runoff demand and capture and hold applied water and rainfall, including landscape contouring such as the use of a berm, swale, or terrace and including the use of a soil amendment, including compost, that increases the water-holding capacity of the soil;
- (4) Rainwater harvesting equipment or equipment to make use of water collected as part of a storm water system installed for water quality control;
- (5) Equipment for recycling or reuse of water originating on the premises or from another source, including treated, municipal effluent;
- (6) Equipment needed to capture water for nonpotable uses from any nonconventional, alternate source, including air conditioning condensate or gray water;

(7) Any other modification, installation, or remodeling approved by the board of trustees of a state institution of higher education, as defined in section [3345.011](#) of the Revised Code, as a water conservation measure for one or more buildings or the surrounding grounds owned by the institution.

(H) "Water saving measure" means the acquisition and installation, by the purchase, lease, lease-purchase, lease with an option to buy, or installment purchases of a water conservation measure and any attendant architectural and engineering consulting services.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 06-20-1997

3345.62 Contract for report containing analysis and recommendations on energy conservation measures.

The board of trustees of a state institution of higher education may contract with an energy or water services company, architect, professional engineer, contractor, or other person experienced in the design and implementation of energy or water conservation measures for a report containing an analysis and recommendations pertaining to the implementation of energy or water conservation measures that would result in energy , water, or wastewater cost savings, operating cost savings, or avoided capital costs for the institution. The report shall include estimates of all costs of such installations, including the costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of the energy , water, or wastewater cost savings, operating cost savings, and avoided capital costs created.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

3345.63 Procedure for contracts other than installment payment contracts.

If the board of trustees of a state institution of higher education wishes to enter into a contract, other than an installment payment contract provided under section [3345.64](#) of the Revised Code, to implement one or more energy or water saving measures, the board may proceed under the applicable competitive bidding requirements in Chapter 153. or section [3354.16](#), [3355.12](#), [3357.16](#), or [3358.10](#) of the Revised Code or, notwithstanding those requirements, may enter into such a contract as provided in section [3345.65](#) of the Revised Code.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

3345.64 Procedure for installment payment contracts.

In accordance with this section, the board of trustees of a state institution of higher education may enter into an installment payment contract for the implementation of one or more energy or water saving measures. Any such contract shall be subject to the competitive bidding requirements of Chapter 153. or section [3354.16](#), [3355.12](#), [3357.16](#), or [3358.10](#) of the Revised Code, as applicable to each such board, except as follows:

(A) If the board does not exempt the entire installment payment contract from the applicable competitive bidding requirements pursuant to division (B) of this section, the provisions of the contract dealing with interest charges and financing terms shall not be subject to the applicable competitive bidding requirements. Each such contract shall require repayment on the following terms:

(1) Not less than one- fifteenth of the costs of the contract shall be paid within two years from the date of purchase;

(2) The remaining balance of the costs of the contract shall be paid within fifteen years from the date of purchase .

(B) The board by majority vote may exempt from the applicable competitive bidding requirements an entire installment payment contract for the implementation of energy or water saving measures pursuant to this section and instead of those requirements shall enter into the contract as provided in section [3345.65](#) of the Revised Code.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

3345.65 Request for proposals - awarding of contract.

To enter into a contract under this section pursuant to section [3345.63](#) or division (B) of section [3345.64](#) of the Revised Code, a board of trustees of a state institution of higher education shall request proposals from at least three parties for the implementation of energy or water saving measures. Prior to providing any interested party a copy of any such request, the board shall advertise, in a newspaper of general circulation in the county where the contract is to be performed, its intent to request proposals for the implementation of energy or water saving measures. The notice shall invite interested parties to submit proposals for consideration and shall be published at least thirty days prior to the date for accepting proposals.

Upon receiving the proposals, the board shall analyze them. After considering the cost estimates of each proposal, how qualified each party submitting a proposal is to implement its proposal, and the institution's ability to pay for each with current revenues or by financing the cost of each, the board may select one or more proposals or, instead, reject all proposals. In selecting proposals, the board shall select the proposal or proposals most likely to result in the greatest savings when the cost of the proposal is compared to the energy , water, or wastewater cost savings, operating cost savings, and avoided capital costs that will result from implementing the proposal.

No board shall award a contract to implement energy or water saving measures under this section unless the board finds that the cost of the contract is not likely to exceed the amount of energy , water, or wastewater savings, operating cost savings, and avoided capital costs over no more than fifteen years.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

3345.66 Issuance of notes.

The board of trustees of a state institution of higher education may issue notes of the institution signed by the chairperson and treasurer or other chief fiscal officer of the board and specifying the terms of the purchase and securing the payments provided in section [3345.64](#) of the Revised Code, payable at the times provided and bearing interest at a rate not exceeding a rate determined under section [9.95](#) of the Revised Code. The notes may contain an option for prepayment and are not subject to Chapter 133. of the Revised Code. Revenues derived from any source, other than money appropriated by the general assembly, that may be used for the purpose of implementing energy or water saving measures or for defraying the current operating expenses of the institution may be pledged to the payment of interest and the retirement of such notes. The notes may be sold at private sale or given to the contractor under the installment payment contract authorized by section [3345.64](#) of the Revised Code.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 10-12-1994

3345.69 Committee to develop guidelines for energy efficiency.

(A) As used in this section:

(1) "State institution of higher education" has the same meaning as in section [3345.011](#) of the Revised Code.

(2) "Board of trustees of a state institution of higher education" has the same meaning as in section [3345.61](#) of the Revised Code.

(B) The chairperson of the interuniversity council of Ohio and the secretary of the Ohio association of community colleges shall assist in coordinating the organization and operation of a committee to carry out this section. The committee shall be comprised of the presidents of the state institutions of higher education or their designees. The committee, in consultation with the office of energy services of the department of administrative services, shall develop guidelines for the board of trustees of each state institution of higher education to use in ensuring energy efficiency and conservation in on- and off-campus buildings. Initial guidelines shall be adopted not later than ninety days after the effective date of this section. At a minimum, guidelines under this section shall do all of the following:

(1) Include a goal to reduce on- and off-campus building energy consumption by at least twenty per cent by 2014, using calendar year 2004 as the benchmark year, while recognizing the diverse nature and different energy demands and uses of such buildings and measures already taken to increase building energy efficiency and conservation;

(2) Prescribe minimum energy efficiency and conservation standards for any new, on- or off-campus capital improvement project with a construction cost of one hundred thousand dollars or more, which standards shall be based on general building type and cost-effectiveness;

(3) Prescribe minimum energy efficiency and conservation standards for the leasing of an off-campus space of at least twenty-thousand square feet;

(4) Incorporate best practices into energy efficiency and conservation standards and plans;

(5) Provide that each board develop its own fifteen-year plan for phasing in energy efficiency and conservation projects;

(6) Provide that project impact assessments include the fiscal effects of energy efficiency and conservation recommendations and plans;

(7) Establish mechanisms for each board to report periodically to the committee on its progress relative to the guidelines.

(C) The board of trustees of a state institution of higher education shall adopt rules under section [111.15](#) of the Revised Code to carry out the guidelines established pursuant to division (B) of this section, including in the execution of the board's authority under sections [3345.62](#) to [3345.66](#) of the Revised Code.

Effective Date: 04-05-2007

Chapter 3354: COMMUNITY COLLEGES

3354.01 Community college definitions.

As used in sections 3354.01 to [3354.18](#), inclusive, of the Revised Code:

(A) "Community college district" means a political subdivision of the state and a body corporate with all the powers of a corporation, comprised of the territory of one or more contiguous counties having together a total population of not less than seventy-five thousand preceding the establishment of such district, and organized for the purpose of establishing, owning, and operating a community college within the territory of such district.

(B) "Contiguous counties" means counties so located that each such county shares at least one boundary in common with at least one other such county in the group of counties referred to as being "contiguous."

(C) "Community college" means a public institution of education beyond the high school organized for the principal purpose of providing for the people of the community college district wherein such college is situated the instructional programs defined in this section as "arts and sciences" and "technical," or either, and may include the "adult-education" program as defined in this section, not exceeding two years' duration. A university maintained and operated by a municipality located in a county having a total population equal to the requirement for a community college district as set forth in division (A) of section 3354.01 of the Revised Code and is found by the Ohio board of regents to offer instructional programs which are needed in the community and which are equivalent to those required of community colleges shall be, for the purposes of receiving state or federal financial aid only, considered a community college and shall receive the same state financial assistance granted to community colleges but only in respect to students enrolled in their first and second year of post high school education in the kinds of instructional programs offered by the municipal university.

(D) "Arts and sciences program" means a curricular program of two years or less duration, provided within a community college, planned and intended to enable students to gain academic credit for courses generally comparable to courses offered in the first two years in accredited colleges and universities in the state, and designed either to enable students to transfer to such colleges and universities for the purpose of earning baccalaureate degrees or to enable students to terminate academic study after two years with a proportionate recognition of academic achievement.

(E) "Adult-education program" means the dissemination of post high school educational service and knowledge, by a community college, for the occupational, cultural, or general educational benefit of adult persons, such educational service and knowledge not being offered for the primary purpose of enabling such persons to obtain academic credit or other formal academic recognition.

(F) "Charter amendment" means a change in the official plan of a community college for the purpose of acquiring additional lands or structures, disposing of or transferring lands or structures, erection of structures, or creating or abolishing of one or more academic departments corresponding to generally recognized fields of academic study.

(G) "Technical program" means a post high school curricular program of two years or less duration, provided within a community college, planned and intended to enable students to gain academic credit for courses designed to prepare such students to meet the occupational requirements of the community.

(H) "Operating costs" means all expenses for all purposes of the community college district except expenditures for permanent improvements having an estimated life of usefulness of five years or more as certified by the fiscal officer of the community college district.

Effective Date: 09-15-1965

3354.09 Powers and duties of board of trustees.

The board of trustees of a community college district may:

(A) Own and operate a community college, pursuant to an official plan prepared and approved in accordance with section [3354.07](#) of the Revised Code, or enter into a contract with a generally accredited public university or college for operation of such community college by such university or college pursuant to an official plan prepared and approved in accordance with section [3354.07](#) of the Revised Code;

(B) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease, use, and sell real and personal property as is necessary for the conduct of the program of the community college on whatever terms and for whatever consideration may be appropriate for the purpose of the college;

(C) Accept gifts, grants, bequests, and devises absolutely or in trust for support of the college during the existence of the college;

(D) Appoint the administrative officers, faculty, and staff, necessary and proper for such community college, and fix their compensation except in instances in which the board of trustees has delegated such powers to a college or university operating such community college pursuant to a contract entered into by the board of trustees of the district;

(E) Provide for a community college necessary lands, buildings or other structures, equipment, means, and appliances;

(F) Develop and adopt, pursuant to the official plan, the curricular programs identified in section [3354.01](#) of the Revised Code as arts and sciences programs and technical programs, or either. Such programs may include adult-education programs.

(G) Except as provided in sections [3333.17](#) and [3333.32](#) of the Revised Code, establish schedules of fees and tuition for students who are residents of the district, residents of Ohio but not of the district, and students who are nonresidents of Ohio. The establishment of rules governing the determination of residence shall be subject to approval of the Ohio board of regents. Students who are nonresidents of Ohio shall be required to pay higher rates of fees and tuition than the rates required of students who are residents of Ohio but not of the district, and students who are residents of the district shall pay a smaller tuition and fee rate than the rate for either category of nonresident students.

(H) Authorize, approve, ratify, or confirm any agreement relating to any such community college with the United States government, acting through any agency of such government designated or created to aid in the financing of such projects, or with any person or agency offering grants in aid in financing such educational facilities or the operation of such facilities except as prohibited in division (K) of this section. Such agreement may include a provision for repayment of advances, grants, or loans made to any community college district from funds which may become available to it. When the United States government or its agent makes a grant of money to any community college district to aid in paying the cost of any projects of such district, or enters into an agreement with the community college district for the making of any such grant of money, the amount thereof is deemed appropriated for such purpose by the community college district and is deemed in process of collection within the meaning of section [5705.41](#) of the Revised Code.

(I) Grant appropriate certificates of achievement to students successfully completing the community college programs;

(J) Prescribe rules for the effective operation of a community college and exercise such other powers as are necessary for the efficient management of such college;

(K) Receive and expend gifts or grants from the state for the payment of operating costs, for the acquisition, construction, or improvement of buildings or other structures, or for the acquisition or use of land. In no event shall state gifts or grants be expended for the support of adult-education programs. Gifts or grants from the state for operating costs shall not in any biennium exceed the amount recommended by the Ohio board of regents to the governor as provided in Chapter 3333. of the Revised Code. Such gifts or grants shall be distributed to such districts in equal quarter-annual payments, unless otherwise provided or authorized in any act appropriating moneys for such purposes, on or before the last day of February, May, August, and November in each year.

(L) Retain consultants in the fields of education, planning, architecture, law, engineering, or other fields of professional skill;

(M) Purchase:

(1) A policy or policies of insurance insuring the district against loss of or damage to property, whether real, personal, or mixed, which is owned by the district or leased by it as lessee or which is in the process of construction by or for the district;

(2) A policy or policies of fidelity insurance in such amounts and covering such trustees, officers, and employees of the district as it considers necessary or desirable;

(3) A policy or policies of liability insurance from an insurer or insurers licensed to do business in this state insuring its members, officers, and employees against all civil liability arising from an act or omission by the member, officer, or employee when the member, officer, or employee is not acting manifestly outside the scope of employment or official responsibilities with the institution, with malicious purpose or bad faith, or in a wanton or reckless manner, or may otherwise provide for the indemnification of such persons against such liability. All or any portion of the cost, premium, or charge for such a policy or policies or indemnification payment may be paid from any funds under the institution's control. The policy or policies of liability insurance or the indemnification policy of the institution may cover any risks including, but not limited to, damages resulting from injury to property or person, professional liability, and other special risks, including legal fees and expenses incurred in the defense or settlement of claims for such damages.

(4) A policy or policies of insurance insuring the district against any liabilities to which it may be subject on account of damage or injury to persons or property, including liability for wrongful death.

(N) Designate one or more employees of the institution as state university law enforcement officers, to serve and have duties as prescribed in section [3345.04](#) of the Revised Code. Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section [5301.012](#) of the Revised Code.

Effective Date: 09-22-2000

3354.16 Contracts requiring bidding - biennial adjustment.

(A) When the board of trustees of a community college district has by resolution determined to let by contract the work of improvements pursuant to the official plan of such district, contracts in amounts exceeding a dollar amount set by the board, which dollar amount shall not exceed two hundred thousand dollars, shall be advertised after notices calling for bids have been published once a week for three consecutive weeks or as provided in section 7.16 of the Revised Code, in a newspaper of general circulation within the community college district wherein the work is to be done. Subject to section 3354.10 of the Revised Code, the board of trustees of the district may let such contract to the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, who meets the requirements of section 153.54 of the Revised Code. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done. Such contract shall be approved by the board of trustees and signed by the president of the board and by the contractor.

(B) On the first day of January of every even-numbered year, the chancellor of the board of regents shall adjust the two hundred thousand dollar contract limit set forth in division (A) of this section, as adjusted in any previous year pursuant to this division. The chancellor shall adjust the limit according to the average increase or decrease for each of the two years immediately preceding the adjustment as set forth in the United States department of commerce, bureau of economic analysis implicit price deflator for gross domestic product, nonresidential structures, or an alternative if the federal government ceases to publish this metric, provided that no increase or decrease for any year shall exceed three per cent of the contract limit in existence at the time of the adjustment. Notwithstanding division (A) of this section, the limit adjusted under this division shall be used thereafter in lieu of the limit in division (A) of this section.

(C) Before entering into an improvement pursuant to division (A) of this section, and except for contracts made with a construction manager at risk, a design-build firm, or a general contracting firm, as those terms are defined in section 153.50 of the Revised Code, the board of trustees of a community college district shall require separate and distinct proposals to be made for furnishing materials or doing work on the improvement, or both, in the board's discretion, for each separate and distinct branch or class of work entering into the improvement. The board of trustees also may require a single, combined proposal for the entire project for materials or doing work, or both, in the board's discretion, that includes each separate and distinct branch or class of work entering into the improvement.

(D) When more than one branch or class of work is required, no contract for the entire job, or for a greater portion thereof than is embraced in one such branch or class of work shall be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids in the aggregate.

Effective Date: 03-14-2003; 2008 HB562 09-22-2008; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

Chapter 3357: TECHNICAL COLLEGES

3357.01 Technical college definitions.

As used in this chapter:

(A) "Technical college" means an institution of education beyond the high school, including an institution of higher education, organized for the principal purpose of providing for the residents of the technical college district, wherein such college is situated, any one or more of the instructional programs defined in this section as "technical college," or "adult-education technical programs," normally not exceeding two years duration and not leading to a baccalaureate degree.

(B) "Technical college district" means a political subdivision of the state and a body corporate with all the powers of a corporation, comprised of the territory of a city school district or a county, or two or more contiguous school districts or counties, which meets the standards prescribed by the Ohio board of regents pursuant to section [3357.02](#) of the Revised Code, and which is organized for the purpose of establishing, owning, and operating one or more technical colleges within the territory of such district.

(C) "Contiguous school districts or counties" means school districts or counties so located that each such school district or county shares at least one boundary or a portion thereof in common with at least one other such school district or county in the group of school districts or counties referred to as being "contiguous."

(D) "Technical college program" means a post high school curricular program provided within a technical college, planned and intended to qualify students, after satisfactory completion of such a program normally two years in duration, to pursue careers in which they provide immediate technical assistance to professional or managerial persons generally required to hold baccalaureate or higher academic

degrees in technical or professional fields. The technical and professional fields referred to in this section include, but are not limited to, engineering and physical, medical, or other sciences.

(E) "Adult-education technical program" means the dissemination of post high school technical education service and knowledge, for the occupational, or general educational benefit of adult persons.

(F) "Charter amendment" means a change in the official plan of a technical college for the purpose of acquiring additional lands or structures, disposing of or transferring lands or structures, erecting structures, creating or abolishing technical college or adult education technical curricular programs.

(G) "Baccalaureate-oriented associate degree program" means a curricular program of not more than two years' duration that is planned and intended to enable students to gain academic credit for courses comparable to first- and second-year courses offered by accredited colleges and universities. The purpose of baccalaureate-oriented associate degree coursework in technical colleges is to enable students to transfer to colleges and universities and earn baccalaureate degrees or to enable students to terminate academic study after two years with a proportionate recognition of academic achievement through receipt of an associate degree.

Effective Date: 02-17-1972; 2007 HB119 09-29-2007

3357.09 Powers and duties of board of trustees.

The board of trustees of a technical college district may:

(A) Own and operate a technical college, pursuant to an official plan prepared and approved in accordance with section [3357.07](#) of the Revised Code;

(B) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease, use, and sell, real and personal property as necessary for the conduct of the program of the technical college on whatever terms and for whatever consideration may be appropriate for the purposes of the institution;

(C) Accept gifts, grants, bequests, and devises absolutely or in trust for support of the technical college;

(D) Appoint the president, faculty, and such other employees as necessary and proper for such technical college, and fix their compensation;

(E) Provide for a technical college necessary lands, buildings or other structures, equipment, means, and appliances;

(F) Develop and adopt, pursuant to the official plan, any one or more of the curricular programs identified in section [3357.01](#) of the Revised Code as technical-college programs, or adult-education technical programs;

(G) Except as provided in sections [3333.17](#) and [3333.32](#) of the Revised Code, establish schedules of fees and tuition for: students who are residents of the district; students who are residents of Ohio but not of the district; students who are nonresidents of Ohio. The establishment of rules governing the determination of residence shall be subject to approval of the Ohio board of regents. Students who are nonresidents of Ohio shall be required to pay higher rates of fees and tuition than the rates required of students who are residents of Ohio but not of the district, and students who are residents of the district shall pay smaller tuition and fee rates than the rates for either of the above categories of nonresident students, except that students who are residents of Ohio but not of the district shall be required to pay higher fees and tuition than students who are residents of the district only when a district tax levy has been adopted and is in effect under the authority of section [3357.11](#), [5705.19](#), or [5705.191](#) of the Revised Code.

(H) Authorize, approve, ratify, or confirm, with approval of the Ohio board of regents, any agreement with the United States government, acting through any agency designated to aid in the financing of technical college projects, or with any person, organization, or agency offering grants-in-aid for technical college facilities or operation;

(I) Receive assistance for the cost of equipment and for the operation of such technical colleges from moneys appropriated for technical education or for matching of Title VIII of the "National Defense Education Act," 72 Stat. 1597 (1958), 20 U.S.C.A. 15a-15 e. Moneys shall be distributed by the Ohio board of regents in accordance with rules which the board shall establish governing its allocations to technical colleges chartered under section [3357.07](#) of the Revised Code.

(J) Grant appropriate associate degrees to students successfully completing the technical college programs and certificates of achievement to those students who complete other programs;

(K) Prescribe rules for the effective operation of a technical college, and exercise such other powers as are necessary for the efficient management of such college;

(L) Enter into contracts and conduct technical college programs or technical courses outside the technical college district;

(M) Enter into contracts with the board of education of any local, exempted village, or city school district or the governing board of any educational service center to permit the school district or service center to use the facilities of the technical college district;

(N) Designate one or more employees of the institution as state university law enforcement officers, to serve and have duties as prescribed in section [3345.04](#) of the Revised Code;

(O) Subject to the approval of the Ohio board of regents, offer technical college programs or technical courses for credit at locations outside the technical college district. For purposes of computing state aid, students enrolled in such courses shall be deemed to be students enrolled in programs and courses at off-campus locations in the district.

(P) Purchase a policy or policies of liability insurance from an insurer or insurers licensed to do business in this state insuring its members, officers, and employees against all civil liability arising from an act or omission by the member, officer, or employee, when the member, officer, or employee is not acting manifestly outside the scope of the member's, officer's, or employee's employment or official responsibilities with the institution, with malicious purpose or bad faith, or in a wanton or reckless manner, or may otherwise provide for the indemnification of such persons against such liability. All or any portion of the cost, premium, or charge for such a policy or policies or indemnification payment may be paid from any funds under the institution's control. The policy or policies of liability insurance or the indemnification policy of the institution may cover any risks including, but not limited to, damages resulting from injury to property or person, professional liability, and other special risks, including legal fees and expenses incurred in the defense or settlement of claims for such damages. Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section [5301.012](#) of the Revised Code.

Effective Date: 09-22-2000

3357.16 Contracts requiring bidding - biennial adjustment.

(A) When the board of trustees of a technical college district has by resolution determined to let by contract the work of improvements pursuant to the official plan of such district, contracts in amounts exceeding a dollar amount set by the board, which dollar amount shall not exceed two hundred thousand dollars, shall be advertised after notice calling for bids has been published once a week for three consecutive weeks or as provided in section 7.16 of the Revised Code, in a newspaper of general circulation within the technical college district where the work is to be done. The board of trustees of the

technical college district may let such contract to the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, who meets the requirements of section 153.54 of the Revised Code. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done. Such contract shall be approved by the board of trustees and signed by the president of the board and by the contractor.

(B) On the first day of January of every even-numbered year, the chancellor of the board of regents shall adjust the two hundred thousand dollar contract limit set forth in division (A) of this section, as adjusted in any previous year pursuant to this division. The chancellor shall adjust the limit according to the average increase or decrease for each of the two years immediately preceding the adjustment as set forth in the United States department of commerce, bureau of economic analysis implicit price deflator for gross domestic product, nonresidential structures, or an alternative if the federal government ceases to publish this metric, provided that no increase or decrease for any year shall exceed three per cent of the contract limit in existence at the time of the adjustment. Notwithstanding division (A) of this section, the limit adjusted under this division shall be used thereafter in lieu of the limit in division (A) of this section.

(C) Before entering into an improvement pursuant to division (A) of this section, and except for contracts made with a construction manager at risk, a design-build firm, or a general contracting firm, as those terms are defined in section 153.50 of the Revised Code, the board of trustees of a technical college district shall require separate and distinct proposals to be made for furnishing materials or doing work on the improvement, or both, in the board's discretion, for each separate and distinct branch or class of work entering into the improvement. The board of trustees also may require a single, combined proposal for the entire project for materials or doing work, or both, in the board's discretion, that includes each separate and distinct branch or class of work entering into the improvement.

(D) When more than one branch or class of work is required, no contract for the entire job, or for a greater portion thereof than is embraced in one such branch or class of work shall be awarded, unless the separate bids do not cover all the work and materials required or the bids for the whole or for two or more kinds of work or materials are lower than the separate bids in the aggregate.

Effective Date: 03-14-2003; 2008 HB562 09-22-2008; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

Chapter 3358: STATE COMMUNITY COLLEGES

3358.01 State community college definitions.

As used in sections 3358.01 to [3358.10](#) of the Revised Code:

(A) "State community college district" means a political subdivision composed of the territory of a county, or two or more contiguous counties, in either case having a total population of at least one hundred fifty thousand, and organized for the purpose of establishing, owning, and operating a state community college within the district or a political subdivision created pursuant to division (A) of section [3358.02](#) of the Revised Code.

(B) "State community college" means a two-year institution, offering a baccalaureate-oriented program, technical education program, or an adult continuing education program. The extent to which the college offers baccalaureate-oriented and technical programs shall be determined in its charter.

(C) "Baccalaureate-oriented program" means a curricular program of not more than two years' duration that is planned and intended to enable students to gain academic credit for courses comparable to first- and second-year courses offered by accredited colleges and universities. The purpose of baccalaureate-oriented coursework in state community colleges is to enable students to transfer to colleges and universities and earn baccalaureate degrees or to enable students to terminate academic study after two years with a proportionate recognition of academic achievement through receipt of an associate degree.

(D) "Technical education program" means a post high school program of not more than two years' duration that is planned and intended to prepare students to pursue employment or improve technical knowledge in careers generally but not exclusively at the semiprofessional level. Technical education programs include, but are not limited to, programs in the technologies of business, engineering, health, natural science, and public service and are programs which, after two years of academic study, result in proportionate recognition of academic achievement through receipt of an associate degree.

(E) "Adult continuing education program" means the offering of short courses, seminars, workshops, exhibits, performances, and other educational activities for the general educational or occupational benefit of adults.

Effective Date: 11-04-1977

3358.08 Powers and duties of board of trustees.

The board of trustees of a state community college district may:

(A) Own and operate a state community college;

(B) Hold, encumber, control, acquire by donation, purchase or condemn, construct, own, lease, use, and sell, real and personal property as necessary for the conduct of the program of the state community college on whatever terms and for whatever consideration may be appropriate for the purpose of the institution;

(C) Accept gifts, grants, bequests, and devises absolute or in trust for support of the state community college;

(D) Employ a president, and appoint or approve the appointment of other necessary administrative officers, full-time faculty members, and operating staff. The board may delegate the appointment of operating staff and part-time faculty members to the college president. The board shall fix the rate of compensation of the president and all officers and full-time employees as are necessary and proper for state community colleges.

(E) Provide for the state community college necessary lands, buildings, or other structures, equipment, means, and appliances;

(F) Establish within the maximum amounts permitted by law, schedules of fees and tuition for students who are Ohio residents and students who are not;

(G) Grant appropriate associate degrees to students successfully completing the state community college's programs, and certificates of achievement to students who complete other programs;

(H) Prescribe policies for the effective operation of the state community college and exercise such other powers as are necessary for the efficient management of the college;

(I) Enter into contracts with neighboring colleges and universities for the conduct of state community college programs or technical courses outside the state community college district;

(J) Purchase:

(1) A policy or policies of insurance insuring the district against loss or damage to property, whether real, personal, or mixed, which is owned by the district or leased by it as lessee or which is in the process of construction by or for the district;

(2) A policy or policies of fidelity insurance in such amounts and covering such trustees, officers, and employees of the district as the board may consider necessary or desirable;

(3) A policy or policies of liability insurance from an insurer or insurers licensed to do business in this state insuring its members, officers, and employees against all civil liability arising from an act or omission by the member, officer, or employee, when the member, officer, or employee is not acting manifestly outside the scope of employment or official responsibilities with the institution, with malicious purpose or bad faith, or in a wanton or reckless manner, or may otherwise provide for the indemnification of such persons against such liability. All or any portion of the cost, premium, or charge for such a policy or policies or indemnification payment may be paid from any funds under the institution's control. The policy or policies of liability insurance or the indemnification policy of the institution may cover any risks including, but not limited to, damages resulting from injury to property or person, professional liability, and other special risks, including legal fees and expenses incurred in the defense or settlement claims of such damages.

(4) A policy or policies of insurance insuring the district against any liabilities to which it may be subject on account of damage or injury to persons or property, including liability for wrongful death. Any instrument by which real property is acquired pursuant to this section shall identify the agency of the state that has the use and benefit of the real property as specified in section [5301.012](#) of the Revised Code.

Effective Date: 10-26-1999

Chapter 4113: MISCELLANEOUS LABOR PROVISIONS

4113.61 Time limitations for payments to subcontractors and materialmen.

(A)(1) If a subcontractor or material supplier submits an application or request for payment or an invoice for materials to a contractor in sufficient time to allow the contractor to include the application, request, or invoice in the contractor's own pay request submitted to an owner, the contractor, within ten calendar days after receipt of payment from the owner for improvements to property, shall pay to the:

(a) Subcontractor, an amount that is equal to the percentage of completion of the subcontractor's contract allowed by the owner for the amount of labor or work performed;

(b) Material supplier, an amount that is equal to all or that portion of the invoice for materials which represents the materials furnished by the material supplier.

The contractor may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the contractor and the subcontractor or material supplier, and may withhold amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the subcontractor or material supplier.

If the contractor fails to comply with division (A)(1) of this section, the contractor shall pay the subcontractor or material supplier, in addition to the payment due, interest in the amount of eighteen per cent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the owner and ending on the date of full payment of the payment due plus interest to the subcontractor or material supplier.

(2) If a lower tier subcontractor or lower tier material supplier submits an application or request for payment or an invoice for materials to a subcontractor, material supplier, or other lower tier subcontractor or lower tier material supplier in sufficient time to allow the subcontractor, material supplier, or other lower tier subcontractor or lower tier material supplier to include the application, request, or invoice in the subcontractor's, material supplier's, or other lower tier subcontractor's or lower tier material supplier's own pay request submitted to a contractor, other subcontractor, material

supplier, lower tier subcontractor, or lower tier material supplier, the subcontractor, material supplier, or other lower tier subcontractor or lower tier material supplier, within ten calendar days after receipt of payment from the contractor, other subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier for improvements to property, shall pay to the:

(a) Lower tier subcontractor, an amount that is equal to the percentage of completion of the lower tier subcontractor's contract allowed by the owner for the amount of labor or work performed;

(b) Lower tier material supplier, an amount that is equal to all or that portion of the invoice for materials which represents the materials furnished by the lower tier material supplier.

The subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier and the lower tier subcontractor or lower tier material supplier, and may withhold amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the lower tier subcontractor or lower tier material supplier.

If the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier fails to comply with division (A)(2) of this section, the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier shall pay the lower tier subcontractor or lower tier material supplier, in addition to the payment due, interest in the amount of eighteen per cent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the contractor, other subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier and ending on the date of full payment of the payment due plus interest to the lower tier subcontractor or lower tier material supplier.

(3) If a contractor receives any final retainage from the owner for improvements to property, the contractor shall pay from that retainage each subcontractor and material supplier the subcontractor's or material supplier's proportion of the retainage, within ten calendar days after receipt of the retainage from the owner, or within the time period provided in a contract, invoice, or purchase order between the contractor and the subcontractor or material supplier, whichever time period is shorter, provided that the contractor has determined that the subcontractor's or material supplier's work, labor, and materials have been satisfactorily performed or furnished and that the owner has approved the subcontractor's or material supplier's work, labor, and materials.

If the contractor fails to pay a subcontractor or material supplier within the appropriate time period, the contractor shall pay the subcontractor or material supplier, in addition to the retainage due, interest in the amount of eighteen per cent per annum of the retainage due, beginning on the eleventh day following the receipt of the retainage from the owner and ending on the date of full payment of the retainage due plus interest to the subcontractor or material supplier.

(4) If a subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier receives any final retainage from the contractor or other subcontractor, lower tier subcontractor, or lower tier material supplier for improvements to property, the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier shall pay from that retainage each lower tier subcontractor or lower tier the lower tier subcontractor's or lower tier material supplier's proportion of the retainage, within ten calendar days after receipt of payment from the contractor or other subcontractor, lower tier subcontractor, or lower tier material supplier, or within the time period provided in a contract, invoice, or purchase order between the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier and the lower tier subcontractor or lower tier material supplier, whichever time period is shorter, provided that the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier has determined that the lower tier subcontractor's or lower tier material supplier's work, labor, and materials have been satisfactorily performed or furnished and that the owner has approved the lower tier subcontractor's or lower tier material supplier's work, labor, and materials.

If the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier fails to pay the lower tier subcontractor or lower tier material supplier within the appropriate time period, the subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier shall pay the lower tier subcontractor or lower tier material supplier, in addition to the retainage due, interest in the amount of eighteen per cent per annum of the retainage due, beginning on the eleventh day following the receipt of the retainage from the contractor or other subcontractor, lower tier subcontractor, or lower tier material supplier and ending on the date of full payment of the retainage due plus interest to the lower tier subcontractor or lower tier material supplier.

(5) A contractor, subcontractor, or lower tier subcontractor shall pay a laborer wages due within ten days of payment of any application or request for payment or the receipt of any retainage from an owner, contractor, subcontractor, or lower tier subcontractor.

If the contractor, subcontractor, or lower tier subcontractor fails to pay the laborer wages due within the appropriate time period, the contractor, subcontractor, or lower tier subcontractor shall pay the laborer, in addition to the wages due, interest in the amount of eighteen per cent per annum of the wages due, beginning on the eleventh day following the receipt of payment from the owner, contractor, subcontractor, or lower tier subcontractor and ending on the date of full payment of the wages due plus interest to the laborer.

(B)(1) If a contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier has not made payment in compliance with division (A)(1), (2), (3), (4), or (5) of this section within thirty days after payment is due, a subcontractor, material supplier, lower tier subcontractor, lower tier material supplier, or laborer may file a civil action to recover the amount due plus the interest provided in those divisions. If the court finds in the civil action that a contractor, subcontractor, material supplier, lower tier subcontractor, or lower tier material supplier has not made payment in compliance with those divisions, the court shall award the interest specified in those divisions, in addition to the amount due. Except as provided in division (B)(3) of this section, the court shall award the prevailing party reasonable attorney fees and court costs.

(2) In making a determination to award attorney fees under division (B)(1) of this section, the court shall consider all relevant factors, including but not limited to the following:

- (a) The presence or absence of good faith allegations or defenses asserted by the parties;
- (b) The proportion of the amount of recovery as it relates to the amount demanded;
- (c) The nature of the services rendered and the time expended in rendering the services.

(3) The court shall not award attorney fees under division (B)(1) of this section if the court determines, following a hearing on the payment of attorney fees, that the payment of attorney fees to the prevailing party would be inequitable.

(C) This section does not apply to any construction or improvement of any single-, two-, or three-family detached dwelling houses.

(D)(1) No provision of this section regarding entitlement to interest, attorney fees, or court costs may be waived by agreement and any such term in any contract or agreement is void and unenforceable as against public policy.

(2) This section shall not be construed as impairing or affecting, in any way, the terms and conditions of any contract, invoice, purchase order, or any other agreement between a contractor and a subcontractor or a material supplier or between a subcontractor and another subcontractor, a material supplier, a lower tier subcontractor, or a lower tier material supplier, except that if such terms and conditions contain time periods which are longer than any of the time periods specified in divisions (A)(1), (2), (3),

(4), and (5) of this section or interest at a percentage less than the interest stated in those divisions, then the provisions of this section shall prevail over such terms and conditions.

(E) Notwithstanding the definition of lower tier material supplier in this section, a person is not a lower tier material supplier unless the materials supplied by the person are:

(1) Furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site, or by other evidence that the materials are to be used on a particular structure or improvement;

(2) Incorporated in the improvement or consumed as normal wastage in the course of the improvement; or

(3) Specifically fabricated for incorporation in the improvement and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the improvement.

(F) As used in this section:

(1) "Contractor" means any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of a structure or improvement under a contract with an owner, or a "construction manager" or "construction manager at risk" as those terms are defined in section 9.33 of the Revised Code, or a "design-build firm" as that term is defined in section 153.65 of the Revised Code.

(2) "Laborer," "material supplier," "subcontractor," and "wages" have the same meanings as in section 1311.01 of the Revised Code.

(3) "Lower tier subcontractor" means a subcontractor who is not in privity of contract with a contractor but is in privity of contract with another subcontractor.

(4) "Lower tier material supplier" means a material supplier who is not in privity of contract with a contractor but is in privity of contract with another subcontractor or a material supplier.

(5) "Wages due" means the wages due to a laborer as of the date a contractor or subcontractor receives payment for any application or request for payment or retainage from any owner, contractor, or subcontractor.

(6) "Owner" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof and relates to all the interests either legal or equitable, which a person may have in the real estate upon which improvements are made, including interests held by any person under contracts of purchase, whether in writing or otherwise.

Effective Date: 04-16-1993; 03-30-2007; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

4113.62 Construction contract provisions against public policy.

(A) Any provision of a construction contract, agreement, or understanding that waives rights under a surety bond is void and unenforceable as against public policy.

(B) Any provision of a construction contract, agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives any pending or asserted claim on the basis of final payment made from one person to another for the construction contract, agreement, or understanding, is void and unenforceable as against public policy, when the person against whom the claim is pending or asserted has received notice of that pending or asserted claim. Nothing in this division precludes parties to a construction contract, agreement, or

understanding from entering into a subsequent settlement agreement arising from a claim under that construction contract, agreement, or understanding.

(C)(1) Any provision of a construction contract, agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction contract when the cause of the delay is a proximate result of the owner's act or failure to act, or that waives any other remedy for a construction contract when the cause of the delay is a proximate result of the owner's act or failure to act, is void and unenforceable as against public policy.

(2) Any provision of a construction subcontract, agreement, or understanding, or specification or other documentation that is made part of a construction subcontract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction subcontract when the cause of the delay is a proximate result of the owner's or contractor's act or failure to act, or that waives any other remedy for a construction subcontract when the cause of the delay is a proximate result of the owner's or contractor's act or failure to act, is void and unenforceable as against public policy.

(D)(1) Any provision of a construction contract, agreement, understanding, or specification or other document or documentation that is made a part of a construction contract, subcontract, agreement, or understanding for an improvement, or portion thereof, to real estate in this state that makes the construction contract or subcontract, agreement, or other understanding subject to the laws of another state is void and unenforceable as against public policy.

(2) Any provision of a construction contract, agreement, understanding, specification, or other document or documentation that is made a part of a construction contract, subcontract, agreement, or understanding for an improvement, or portion thereof, to real estate in this state that requires any litigation, arbitration, or other dispute resolution process provided for in the construction contract, subcontract, agreement, or understanding to occur in another state is void and unenforceable as against public policy. Any litigation, arbitration, or other dispute resolution process provided for in the construction contract, subcontract, agreement, or understanding shall take place in the county or counties in which the improvement to real estate is located or at another location within this state mutually agreed upon by the parties.

(3) Nothing in this section shall be construed to apply to any promissory note, loan agreement, mortgage, security agreement, assignment of rents, or any other contract, agreement, understanding, or other document or documentation to which a financial institution, as defined in section [5725.01](#) of the Revised Code, or any affiliate, as defined in division (A)(1) of section [1109.53](#) of the Revised Code, is a party.

(E) No construction contract, agreement, or understanding that makes payment from a contractor to a subcontractor or materials supplier, or from a subcontractor to a materials supplier, lower tier subcontractor, or lower tier materials supplier contingent or conditioned upon receipt of payment from any other person shall prohibit a person from filing a claim to protect rights under sections [153.56](#), [1311.06](#), and [1311.26](#) of the Revised Code from expiring during the pendency of receipt of payment.

(F) Nothing in this section shall be construed to create a liability for a surety on a bond that is greater than that of its principal, or limit the availability to a surety of any defenses available to its principal.

(G) As used in this section:

(1) "Contractor" and "lower tier subcontractor" have the same meanings as in section [4113.61](#) of the Revised Code.

(2) "Materials supplier" includes any person by whom any materials are furnished in furtherance of an improvement.

(3) "Lower tier materials supplier" means a materials supplier who is not in privity of contract with a contractor but is in privity of contract with another subcontractor or a materials supplier.

(4) "Subcontractor," "improvement," and "materials" have the same meanings as in section [1311.01](#) of the Revised Code.

(5) "Construction contract" means a contract or agreement for the design, planning, construction, alteration, repair, maintenance, moving, demolition, or excavation of a building, structure, highway, road, appurtenance, or appliance situated on real estate located in this state.

Effective Date: 03-22-2001

Chapter 4115: WAGES AND HOURS ON PUBLIC WORKS

4115.03 Wages and hours on public works definitions.

As used in sections 4115.03 to [4115.16](#) of the Revised Code:

(A) "Public authority" means any officer, board, or commission of the state, or any political subdivision of the state, authorized to enter into a contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any institution supported in whole or in part by public funds and said sections apply to expenditures of such institutions made in whole or in part from public funds.

(B) "Construction" means any of the following:

(1) Except as provided in division (B)(3) of this section, any new construction of a public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority:

(a) One hundred twenty-five thousand dollars, beginning on the effective date of this amendment and continuing for one year thereafter;

(b) Two hundred thousand dollars, beginning when the time period described in division (B)(1)(a) of this section expires and continuing for one year thereafter;

(c) Two hundred fifty thousand dollars, beginning when the time period described in division (B)(1)(b) of this section expires.

(2) Except as provided in division (B)(4) of this section, any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement, the total overall project cost of which is fairly estimated to be more than the following amounts and performed by other than full-time employees who have completed their probationary period in the classified civil service of a public authority:

(a) Thirty-eight thousand dollars, beginning on the effective date of this amendment and continuing for one year thereafter;

(b) Sixty thousand dollars, beginning when the time period described in division (B)(2)(a) of this section expires and continuing for one year thereafter;

(c) Seventy-five thousand dollars, beginning when the time period described in division (B)(2)(b) of this section expires.

(3) Any new construction of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than seventy-eight thousand two hundred fifty-eight dollars adjusted biennially by the director of commerce pursuant to section 4115.034 of the Revised Code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority;

(4) Any reconstruction, enlargement, alteration, repair, remodeling, renovation, or painting of a public improvement that involves roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction, the total overall project cost of which is fairly estimated to be more than twenty-three thousand four hundred forty-seven dollars adjusted biennially by the director of commerce pursuant to section 4115.034 of the Revised Code and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.

(C) "Public improvement" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by a public authority of the state or any political subdivision thereof or by any person who, pursuant to a contract with a public authority, constructs any structure for a public authority of the state or a political subdivision thereof. When a public authority rents or leases a newly constructed structure within six months after completion of such construction, all work performed on such structure to suit it for occupancy by a public authority is a "public improvement." "Public improvement" does not include an improvement authorized by section [1515.08](#) of the Revised Code that is constructed pursuant to a contract with a soil and water conservation district, as defined in section [1515.01](#) of the Revised Code, or performed as a result of a petition filed pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, wherein no less than seventy-five per cent of the project is located on private land and no less than seventy-five per cent of the cost of the improvement is paid for by private property owners pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised Code.

(D) "Locality" means the county wherein the physical work upon any public improvement is being performed.

(E) "Prevailing wages" means the sum of the following:

(1) The basic hourly rate of pay;

(2) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program;

(3) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing the following fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected:

(a) Medical or hospital care or insurance to provide such;

(b) Pensions on retirement or death or insurance to provide such;

(c) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;

(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;

(e) Life insurance;

(f) Disability and sickness insurance;

(g) Accident insurance;

(h) Vacation and holiday pay;

(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;

(j) Other bona fide fringe benefits.

None of the benefits enumerated in division (E)(3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.

(F) "Interested party," with respect to a particular contract for construction of a public improvement, means:

(1) Any person who submits a bid for the purpose of securing the award of the contract;

(2) Any person acting as a subcontractor of a person described in division (F)(1) of this section;

(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person described in division (F)(1) or (2) of this section and which exists, in whole or in part, for the purpose of negotiating with employers concerning the wages, hours, or terms and conditions of employment of employees;

(4) Any association having as members any of the persons described in division (F)(1) or (2) of this section.

(G) Except as used in division (A) of this section, "officer" means an individual who has an ownership interest or holds an office of trust, command, or authority in a corporation, business trust, partnership, or association.

Effective Date: 07-01-2000; 09-29-2011

4115.031 Discharge of obligation of contractor or subcontractor.

The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the director of commerce, insofar as Chapter 4115. of the Revised Code is concerned, may be discharged by the making of payments in cash, by the making of contributions of a type referred to in division (E)(2) of section [4115.03](#) of the Revised Code or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in division (E)(3) of section [4115.03](#) of the Revised Code, or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in division (E)(1) plus the rates referred to in divisions (E)(2) and (3) of section [4115.03](#) of the Revised Code.

In determining the overtime pay to which the laborer or mechanic is entitled under any federal or state law, the person's regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under division (E)(1) of section [4115.03](#) of the Revised Code, except that where the amount of payments, contributions, or costs incurred with respect to that person exceeds the prevailing wage applicable to the person under Chapter 4115. of the Revised Code, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to the person, the amount of contributions or costs of the types described in divisions (E)(2) and (3) actually incurred with respect to the person, or the amount determined under

divisions (E)(2) and (3) of section [4115.03](#) of the Revised Code but not actually paid, whichever amount is the greater.

Effective Date: 07-01-2000

4115.032 Application to construction projects.

Construction on any project, facility, or project facility to which section [122.452](#), [122.80](#), [165.031](#), [166.02](#), [1551.13](#), [1728.07](#), or [3706.042](#) of the Revised Code applies is hereby deemed to be construction of a public improvement within section [4115.03](#) of the Revised Code. All contractors and subcontractors working on such projects, facilities, or project facilities shall be subject to and comply with sections [4115.03](#) to [4115.16](#) of the Revised Code, and the director of commerce shall, and any interested party may, bring proceedings under such sections to enforce compliance.

The director shall make the determination of wages as required under sections [122.452](#), [122.80](#), [165.031](#), [166.02](#), [1551.13](#), [1728.07](#), and [3706.042](#) of the Revised Code and shall designate one of the director's employees to act as the prevailing wage coordinator under section [4115.071](#) for any project, facility, or project facility for which a coordinator has not been designated by any public authority.

Effective Date: 07-01-2000

4115.033 Subdividing public improvement projects.

No public authority shall subdivide a public improvement project into component parts or projects, the cost of which is fairly estimated to be less than the threshold levels set forth in division (B) of section 4115.03 of the Revised Code, unless the projects are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of the public authority.

Effective Date: 06-21-1994; 09-29-2011

4115.034 Adjusting threshold levels for public improvement projects.

On January 1, 1996, and the first day of January of every even-numbered year thereafter, the director of commerce shall adjust the threshold levels for which public improvement projects are subject to sections 4115.03 to 4115.16 of the Revised Code as set forth in divisions (B)(3) and (4) of section 4115.03 of the Revised Code. The director shall adjust those amounts according to the average increase or decrease for each of the two years immediately preceding the adjustment as set forth in the United States department of commerce, bureau of the census implicit price deflator for construction, provided that no increase or decrease for any year shall exceed three per cent of the threshold level in existence at the time of the adjustment.

Effective Date: 07-01-2000; 09-29-2011

4115.04 Determination of prevailing wage - exceptions.

(A)(1) Every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking such construction with its own forces, shall have the director of commerce determine the prevailing rates of wages of mechanics and laborers in accordance with section [4115.05](#) of the Revised Code for the class of work called for by the public improvement, in the locality where the work is to be performed. Except as provided in division (A)(2) of this section, that schedule of wages shall be attached to and made part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract. A copy of the bidding blank shall be filed with the director before the contract is awarded. A minimum rate of wages

for common laborers, on work coming under the jurisdiction of the department of transportation, shall be fixed in each county of the state by the department of transportation, in accordance with section [4115.05](#) of the Revised Code.

(2) In the case of contracts that are administered by the department of natural resources, the director of natural resources or the director's designee shall include language in the contracts requiring wage rate determinations and updates to be obtained directly from the department of commerce through electronic or other means as appropriate. Contracts that include this requirement are exempt from the requirements established in division (A)(1) of this section that involve attaching the schedule of wages to the specifications for the work, making the schedule part of those specifications, and printing the schedule on the bidding blanks where the work is done by contract.

(B) Sections [4115.03](#) to [4115.16](#) of the Revised Code do not apply to:

(1) Public improvements in any case where the federal government or any of its agencies furnishes by loan or grant all or any part of the funds used in constructing such improvements, provided that the federal government or any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers employed in the construction of such improvements;

(2) A participant in a work activity, developmental activity, or an alternative work activity under sections [5107.40](#) to [5107.69](#) of the Revised Code when a public authority directly uses the labor of the participant to construct a public improvement if the participant is not engaged in paid employment or subsidized employment pursuant to the activity;

(3) Public improvements undertaken by, or under contract for, the board of education of any school district or the governing board of any educational service center;

(4) Public improvements undertaken by, or under contract for, a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code if none of the funds used in constructing the improvements are the proceeds of bonds or other obligations that are secured by the full faith and credit of the state, a county, a township, or a municipal corporation and none of the funds used in constructing the improvements, including funds used to repay any amounts borrowed to construct the improvements, are funds that have been appropriated for that purpose by the state, a board of county commissioners, a township, or a municipal corporation from funds generated by the levy of a tax, provided that a county hospital or municipal hospital may elect to apply sections [4115.03](#) to [4115.16](#) of the Revised Code to a public improvement undertaken by, or under contract for, the hospital.

(5) Any project described in divisions (D)(1)(a) to (D)(1)(e) of section [176.05](#) of the Revised Code;

(6) Public improvements undertaken by, or under contract for, a port authority as defined in section 4582.01 or 4582.21 of the Revised Code;

(7) Any portion of a public improvement undertaken and completed solely with labor donated by the individuals performing the labor, by a labor organization and its members, or by a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project.

(C) Under no circumstances shall a public authority apply the prevailing wage requirements of this chapter to a public improvement that is exempt under division (B)(3) of this section.

Effective Date: 07-01-2000; 04-27-2005; 2006 HB699 03-29-2007; 04-06-2007; 09-29-2011

4115.05 Prevailing rate of wage in locality to control contract wage.

The prevailing rate of wages to be paid for a legal day's work, as prescribed in section [4115.04](#) of the Revised Code, to laborers, workers, or mechanics upon public works shall not be less at any time during the life of a contract for the public work than the prevailing rate of wages then payable in the same trade or occupation in the locality where such public work is being performed, under collective bargaining agreements or understandings, between employers and bona fide organizations of labor in force at the date the contract for the public work, relating to the trade or occupation, was made, and collective bargaining agreements or understandings successor thereto.

Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less at any time during the life of a contract for the public work than the prevailing rate of wages then payable for such labor in the locality where the public work is being performed, under or as a result of collective bargaining agreements or understandings between employers and bona fide organizations of labor in force at the date the contract for the public work, requiring the employment of serving laborers, helpers, assistants, or apprentices, was made, and collective bargaining agreements or understandings successor thereto.

Apprentices will be permitted to work only under a bona fide apprenticeship program if such program exists and is registered with the Ohio apprenticeship council.

The allowable ratio of apprentices to skilled workers permitted to work shall not be greater than the ratio allowed the contractor or subcontractor in the collective bargaining agreement or understanding referred to in this section under which the work is being performed. A contractor, subcontractor, or public authority that exceeds the permissible ratio of apprentices to skilled workers by two or fewer apprentices for not more than two days in any thirty-day period shall not be found in violation of this provision with regard to that excess number of apprentices.

For purposes of establishing the prevailing rate of wages, a labor organization that is a party to a collective bargaining agreement, contract, or understanding, including any successor agreement, contract, or understanding, that establishes wages for a trade or occupation typically employed on public improvements shall file with the director of commerce all relevant portions of any such agreement, contract, or understanding to which the labor organization is a party. The filing shall occur within ninety days after the agreement, contract, or understanding is executed, except that the relevant portion of any agreement, contract, or understanding to which a labor organization is a party on the effective date of this amendment shall be filed within ninety days after the effective date of this amendment. The labor organization shall certify under penalty of law that the portion of the agreement, contract, or understanding filed under this section contains, in full, all provisions of the agreement, contract, or understanding concerning wages paid to persons and the apprentice to skilled worker ratio under the agreement, contract, or understanding.

In the event there is no such collective bargaining agreement or understanding in the immediate locality, then the prevailing rates of wages in the nearest locality in which such collective bargaining agreements or understandings are in effect shall be the prevailing rate of wages, in such locality, for the various occupations covered by sections [4115.03](#) to [4115.16](#) of the Revised Code.

The prevailing rate of wages to be paid for a legal day's work, to laborers, workers, or mechanics, upon any material to be used in or in connection with a public work, shall be not less than the prevailing rate of wages payable for a day's work in the same trade or occupation in the locality within the state where such public work is being performed and where the material in its final or completed form is to be situated, erected, or used.

Every contract for a public work shall contain a provision that each laborer, worker, or mechanic, employed by such contractor, subcontractor, or other person about or upon such public work, shall be paid the prevailing rate of wages provided in this section.

No contractor or subcontractor under a contract for a public work shall sublet any of the work covered by such contract unless specifically authorized to do so by the contract.

Where contracts are not awarded or construction undertaken within ninety days from the date of the establishment of the prevailing rate of wages, there shall be a redetermination of the prevailing rate of wages before the contract is awarded. A public authority shall, within seven working days after receiving from the director a notice of a change in the prevailing wage rate, notify all affected contractors and subcontractors with whom the public authority has contracts for a public improvement of the changes and require the contractors to make the necessary adjustments in the prevailing wage rates.

If, upon receipt of the relevant portions of a collective bargaining agreement, contract, or understanding, the director determines that the prevailing wage rate has changed in the locality in which an ongoing project is being constructed, any change in that rate shall take effect two weeks after the director receives the relevant portions of the agreement, contract, or understanding showing that the prevailing wage rate has changed.

If the director determines that a contractor or subcontractor has violated sections [4115.03](#) to [4115.16](#) of the Revised Code because the public authority has not notified the contractor or subcontractor as required by this section, the public authority is liable for any back wages, fines, damages, court costs, and attorney's fees associated with the enforcement of said sections by the director for the period of time running until the public authority gives the required notice to the contractor or subcontractor.

On the occasion of the first pay date under a contract, the contractor or subcontractor shall furnish each employee not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of labor with individual written notification of the job classification to which the employee is assigned, the prevailing wage determined to be applicable to that classification, separated into the hourly rate of pay and the fringe payments, and the identity of the prevailing wage coordinator appointed by the public authority. The contractor or subcontractor shall furnish the same notification to each affected employee every time the job classification of the employee is changed.

Effective Date: 07-01-2000; 09-29-2011

4115.06 Contract to contain provision requiring payment of certain wage rate.

In all cases where any public authority fixes a prevailing rate of wages under section [4115.04](#) of the Revised Code, and the work is done by contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate of wages which shall not be less than the rate of wages so fixed. The successful bidder and all his subcontractors shall comply strictly with the wage provisions of the contract.

Where a public authority constructs a public improvement with its own forces, such public authority shall pay a rate of wages which shall not be less than the rate of wages fixed as provided in section [4115.04](#) of the Revised Code, except in those instances provided for in sections [723.52](#), [5517.02](#), [5575.01](#), and [5543.19](#) of the Revised Code.

Effective Date: 08-25-1976

4115.07 Full payment of wages - records.

All contractors and subcontractors required by sections [4115.03](#) to [4115.16](#) of the Revised Code, and the action of any public authority to pay not less than the prevailing rate of wages shall make full payment of such wages in legal tender, without any deduction for food, sleeping accommodations, transportation, use of small tools, or any other thing of any kind or description. This section does not apply where the employer and employee enter into an agreement in writing at the beginning of any

term of employment covering deductions for food, sleeping accommodations, or other similar item, provided such agreement is submitted by the employer to the public authority fixing the rate of wages and is approved by such public authority as fair and reasonable.

All contractors or subcontractors falling within or affected by sections [4115.03](#) to [4115.16](#) of the Revised Code, shall keep full and accurate payroll records with respect to wages paid each employee and the number of hours worked by each employee, covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. Such payroll records shall be open to inspection by any authorized representative of the contracting public authority, including the prevailing wage coordinator or the director of commerce at any reasonable time and as often as may be necessary, and such records shall not be destroyed or removed from the state for the period of one year following the completion of the public improvement in connection with which the records are made. There shall be posted in a prominent and accessible place on the site of the work a legible statement of the schedule of wage rates specified in the contract to the various classifications of laborers, workers, and mechanics employed, said statement to remain posted during the life of each contract.

Each contractor or subcontractor shall file with the contracting public authority upon completion of the public improvement and prior to final payment therefor an affidavit stating that the contractor or subcontractor has fully complied with sections [4115.03](#) to [4115.16](#) of the Revised Code.

Effective Date: 07-01-2000

4115.071 Prevailing wage coordinator.

(A) Each contracting public authority that enters into a contract other than a contract for printing, binding, and related services, whose contractor and subcontractors are subject to sections [4115.03](#) to [4115.16](#) of the Revised Code shall, no later than ten days before the first payment of wages is payable to any employee of any contractor or subcontractor, designate and appoint one of its own employees to serve as the prevailing wage coordinator during the life of the contract. The duties of the coordinator shall include:

(1) Setting up and maintaining, available for public inspection including inspection by interested parties or affected employees, files of payroll reports and affidavits submitted by contractors and subcontractors pursuant to sections [4115.03](#) to [4115.16](#) of the Revised Code;

(2) Ascertaining from each contractor or subcontractor, at the beginning of performance under the contract, the dates during its life when payments of wages to employees are to be made;

(3) Receiving from each contractor or subcontractor, a copy of the contractor's or subcontractor's complete payroll for each date exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked each day during the pay period and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages;

(4) Establishing and following procedures to monitor the compliance by each contractor and subcontractor with the requirement imposed by this section for timely filing of copies of payroll records;

(5) Receiving from each contractor or subcontractor upon completion of the public improvement and prior to final payment therefor the affidavit required by section [4115.07](#) of the Revised Code;

(6) Reporting any delinquency in the filing of the certified copy of the payroll and the affidavit to the chief officer of the contracting public authority and the director of commerce.

(B) Any contracting public authority having a permanent employee with the title, powers, and functions described in division (A) of this section for the prevailing wage coordinator need not separately

designate and appoint an employee for each public work contract entered into by the contracting public authority.

(C) Every contractor and subcontractor who is subject to sections [4115.03](#) to [4115.16](#) of the Revised Code shall, upon beginning performance under the contractor's or subcontractor's contract with any contracting public authority, supply to the prevailing wage coordinator of the contracting public authority a schedule of the dates during the life of the contract with the authority on which the contractor or subcontractor is required to pay wages to employees. The contractor or subcontractor shall also deliver to the prevailing wage coordinator a certified copy of the contractor's or subcontractor's payroll, within two weeks after the initial pay date, and supplemental reports for each month thereafter which shall exhibit for each employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments, and deductions from the employee's wages. If the life of the contract is expected to be no more than four months from the beginning of performance by the contractor or subcontractor, such supplemental reports shall be filed each week after the initial report. The certification of each payroll shall be executed by the contractor, subcontractor, or duly appointed agent thereof and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by the contract.

(D) If it is found that a public authority or prevailing wage coordinator has not complied with this section, the director shall give notice thereof in writing to the public authority or prevailing wage coordinator. Sufficient time shall be allowed for compliance as the director deems necessary. At the expiration of the time prescribed in the notice, the director shall, in writing, inform the attorney general of the fact that notice has been given and that the public authority or prevailing wage coordinator to whom it was directed has not complied with it. On receipt thereof, the attorney general shall bring suit in the name of the state in the court of common pleas of the county in which the public authority is located, to require the public authority or prevailing wage coordinator to comply with this section.

Effective Date: 07-01-2000

4115.08 Failure to ascertain prevailing rates of wages.

No public official, authorized to contract for or construct with the official's own forces a public improvement, shall fail, before advertising for bids or undertaking such construction with those forces, to have the director of commerce determine the prevailing rates of wages of mechanics and laborers for the class of work called for by the public improvement in the locality where the work is to be performed, as provided in section [4115.04](#) of the Revised Code.

Effective Date: 07-01-2000

4115.09 Awarding of contract without ascertaining prevailing rates of wages.

No member of a public board, commission, or other public authority authorized to contract for or construct with its own forces a public improvement, shall vote for the award of any contract for the construction of such improvement, or vote for the disbursement of any funds on account of the construction of such public improvement, unless such public authority has first had the director of commerce determine the prevailing rates of wages of mechanics and laborers for the class of work called for by such public improvement in the locality where the work is to be performed, as provided in section [4115.04](#) of the Revised Code.

Effective Date: 07-01-2000

4115.10 Prohibitions.

(A) No person, firm, corporation, or public authority that constructs a public improvement with its own forces, the total overall project cost of which is fairly estimated to be more than the amounts set forth in division (B) of section [4115.03](#) of the Revised Code, adjusted biennially by the director of commerce pursuant to section [4115.034](#) of the Revised Code, as appropriate, shall violate the wage provisions of sections [4115.03](#) to [4115.16](#) of the Revised Code, or suffer, permit, or require any employee to work for less than the rate of wages so fixed, or violate the provisions of section [4115.07](#) of the Revised Code. Any employee upon any public improvement, except an employee to whom or on behalf of whom restitution is made pursuant to division (C) of section [4115.13](#) of the Revised Code, who is paid less than the fixed rate of wages applicable thereto may recover from such person, firm, corporation, or public authority that constructs a public improvement with its own forces the difference between the fixed rate of wages and the amount paid to the employee and in addition thereto a sum equal to twenty-five per cent of that difference. The person, firm, corporation, or public authority who fails to pay the rate of wages so fixed also shall pay a penalty to the director of seventy-five per cent of the difference between the fixed rate of wages and the amount paid to the employees on the public improvement. The director shall deposit all moneys received from penalties paid to the director pursuant to this section into the labor operating fund. The director shall use the fund for the enforcement of sections [4115.03](#) to [4115.16](#) of the Revised Code. The employee may file suit for recovery within ninety days of the director's determination of a violation of sections [4115.03](#) to [4115.16](#) of the Revised Code or is barred from further action under this division. Where the employee prevails in a suit, the employer shall pay the costs and reasonable attorney's fees allowed by the court.

(B) Any employee upon any public improvement who is paid less than the prevailing rate of wages applicable thereto may file a complaint in writing with the director upon a form furnished by the director. The complaint shall include documented evidence to demonstrate that the employee was paid less than the prevailing wage in violation of this chapter. Upon receipt of a properly completed written complaint of any employee paid less than the prevailing rate of wages applicable, the director shall take an assignment of a claim in trust for the assigning employee and bring any legal action necessary to collect the claim. The employer shall pay the costs and reasonable attorney's fees allowed by the court if the employer is found in violation of sections [4115.03](#) to [4115.16](#) of the Revised Code.

(C) If after investigation pursuant to section [4115.13](#) of the Revised Code, the director determines there is a violation of sections [4115.03](#) to [4115.16](#) of the Revised Code and a period of sixty days has elapsed from the date of the determination, and if:

(1) No employee has brought suit pursuant to division (A) of this section;

(2) No employee has requested that the director take an assignment of a wage claim pursuant to division (B) of this section;

The director shall bring any legal action necessary to collect any amounts owed to employees and the director. The director shall pay over to the affected employees the amounts collected to which the affected employees are entitled under division (A) of this section. In any action in which the director prevails, the employer shall pay the costs and reasonable attorney's fees allowed by the court.

(D) Where persons are employed and their rate of wages has been determined as provided in section [4115.04](#) of the Revised Code, no person, either for self or any other person, shall request, demand, or receive, either before or after the person is engaged, that the person so engaged pay back, return, donate, contribute, or give any part or all of the person's wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent the procuring or retaining of employment, and no person shall, directly or indirectly, aid, request, or authorize any other person to violate this section. This division does not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

(E) The director shall enforce sections [4115.03](#) to [4115.16](#) of the Revised Code.

(F) For the purpose of supplementing existing resources and to assist in enforcing division (E) of this section, the director may contract with a person registered as a public accountant under Chapter 4701. of the Revised Code to conduct an audit of a person, firm, corporation, or public authority.

(G) No contractor or subcontractor shall be responsible for the payment of the penalties provided in division (A) of this section resulting from a violation of sections 4115.03 to 4115.16 of the Revised Code by its subcontractor, provided that the contractor or subcontractor has made a good faith effort to ensure that its subcontractor complied with the requirements of sections 4115.03 to 4115.16 of the Revised Code.

Effective Date: 09-26-2003; 09-29-2011

4115.101 Prevailing wage custodial fund.

There is hereby created the prevailing wage custodial fund, which shall be in the custody of the treasurer of state but shall not be part of the state treasury. The director of commerce shall deposit to the fund all money paid by employers to the director that are held in trust for employees to whom prevailing wages are due and owing. The director shall make disbursements from the fund in accordance with this chapter to employees affected by violations of this chapter. If the director determines that any funds in the prevailing wage custodial fund are not returnable to employees as required under this section, then the director shall certify to the treasurer of state the amount of the funds that are not returnable. Upon the receipt of a certification from the director in accordance with this section, the treasurer of state shall transfer the certified amount of the funds from the prevailing wage custodial fund to the labor operating fund.

Effective Date: 07-01-2000; 09-29-2011

4115.11 Paying wages in full in cash.

Employers who have not established a plan, by a labor agreement or otherwise, for the provision of wages as defined in division (E)(2) of section [4115.03](#) of the Revised Code shall pay the prevailing rates of wages in full in cash.

Effective Date: 11-03-1965

4115.12 Administrative rules for contractors and subcontractors.

In order to facilitate the administration of sections [4115.03](#) to [4115.16](#) of the Revised Code, and to achieve the purposes of those sections, the director of commerce may adopt reasonable rules, not inconsistent with those sections, for contractors and subcontractors engaged in the construction, prosecution, completion, or repair of a public improvement financed in whole or in part by any public authority.

Effective Date: 07-01-2000

4115.13 Investigations - recommendations.

(A) Upon the director's own motion or within five days of the filing of a properly completed complaint under section [4115.10](#) or [4115.16](#) of the Revised Code, the director of commerce, or a representative designated by the director, shall investigate any alleged violation of sections [4115.03](#) to [4115.16](#) of the Revised Code.

(B) At the conclusion of the investigation, the director or a designated representative shall make a determination as to whether the alleged violation was committed. If the director or designated

representative determines that the alleged violation was an intentional violation, the director or designated representative shall give written notice by certified mail of that determination to the contractor, subcontractor, or officer of the contractor or subcontractor which also shall state that the contractor, subcontractor, or officer of the contractor or subcontractor may file with the director an appeal of the determination within thirty days after the date the notice was received. If the contractor, subcontractor, or officer of the contractor or subcontractor timely appeals the determination, within sixty days of the filing of the appeal, the director or designated representative shall schedule the appeal for a hearing. If the contractor, subcontractor, or officer of the contractor or subcontractor fails to timely appeal the determination, the director or designated representative shall adopt the determination as a finding of fact for purposes of division (D) of this section. The director or designated representative, in the performance of any duty or execution of any power prescribed by sections [4115.03](#) to [4115.16](#) of the Revised Code, may hold hearings, and such hearings shall be held within the county in which the violation of sections [4115.03](#) to [4115.16](#) of the Revised Code is alleged to have been committed, or in Franklin county, whichever county the person alleged to have committed the violation chooses. For the purpose of the hearing, the director may designate a hearing examiner who shall, after notice to all interested parties, conduct a hearing and make findings of fact and recommendations to the director. The director shall make a decision, which shall be sent to the affected parties. The director or designated representative may make decisions, based upon findings of fact, as are found necessary to enforce sections [4115.03](#) to [4115.16](#) of the Revised Code.

(C) If any underpayment by a contractor or subcontractor was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, the director or designated representative may make a decision ordering the employer to make restitution to the employees, or on their behalf, the plans, funds, or programs for any type of fringe benefits described in the applicable wage determination. In accordance with the finding of the director that any underpayment was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, employers who make restitution are not subject to any further proceedings pursuant to sections [4115.03](#) to [4115.16](#) of the Revised Code.

If a contractor's or subcontractor's underpayment to an employee is less than one thousand dollars, the contractor or subcontractor is not subject to any further proceedings under sections [4115.03](#) to [4115.16](#) of the Revised Code for that underpayment if the contractor or subcontractor makes full restitution to the affected employee.

(D) If the director or designated representative makes a decision, based upon findings of fact, that a contractor, subcontractor, or officer of a contractor or subcontractor has intentionally violated sections [4115.03](#) to [4115.16](#) of the Revised Code, the contractor, subcontractor, or officer of a contractor or subcontractor is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same as provided in section [4115.133](#) of the Revised Code. A contractor, subcontractor, or officer of a contractor or subcontractor may appeal the decision, within sixty days after the decision, to the court of common pleas of the county in which the first hearing involving the violation was heard. If the contractor, subcontractor, or officer of a contractor or subcontractor does not timely appeal the determination of the director or designated representative under division (B) of this section, the contractor, subcontractor, or officer of a contractor or subcontractor may appeal the findings of fact, within sixty days after the determinations are adopted as findings of fact, to the court of common pleas within the county in which the violation of sections [4115.03](#) to [4115.16](#) of the Revised Code is alleged to have been committed or in Franklin county, whichever county the person alleged to have committed the violation chooses.

(E) No appeal to the court from the decision of the director may be had by the contractor or subcontractor unless the contractor or subcontractor files a bond with the court in the amount of the restitution, conditioned upon payment should the decision of the director be upheld.

(F) No statement of a contractor, subcontractor, or officer of a contractor or subcontractor and no determination, recommendation, or finding of fact issued under this section is admissible as evidence in a criminal action brought under this chapter against the contractor, subcontractor, or officer of a contractor or subcontractor.

(G) In determining whether a contractor, subcontractor, or officer of a contractor or subcontractor intentionally violated sections [4115.03](#) to [4115.16](#) of the Revised Code, the director may consider as evidence either of the following:

(1) The fact that the director, prior to the commission of the violation under consideration, issued notification to the contractor, subcontractor, or officer of a contractor or subcontractor of the same or a similar violation, provided that the commission of the same or a similar violation of sections [4115.03](#) to [4115.16](#) of the Revised Code at a subsequent time does not create a presumption that the subsequent violation was intentional;

(2) The fact that, prior to the commission of the violation, the contractor, subcontractor, or officer of a contractor or subcontractor used reasonable efforts to ascertain the correct interpretation of sections [4115.03](#) to [4115.16](#) of the Revised Code from the director or of the Revised Code, provided that a violation is presumed not to be intentional where a contractor, subcontractor, or officer of a contractor or subcontractor complies with a decision the director or designated representative issues pursuant to a request made under section [4115.131](#) of the Revised Code.

(H) As used in this section, "intentional violation" means a willful, knowing, or deliberate failure to comply with any provision of sections [4115.03](#) to [4115.16](#) of the Revised Code, and includes, but is not limited to, the following actions when conducted in the manner described in this division:

(1) An intentional failure to submit reports as required under division (C) of section [4115.071](#) of the Revised Code or knowingly submitting false or erroneous reports;

(2) An intentional misclassification of employees for the purpose of reducing wages;

(3) An intentional misclassification of employees as independent contractors or as apprentices;

(4) An intentional failure to pay the prevailing wage;

(5) An intentional failure to comply with the allowable ratio of apprentices to skilled workers as required under section [4115.05](#) of the Revised Code and by rules adopted by the director pursuant to section [4115.12](#) of the Revised Code;

(6) Intentionally allowing an officer of a contractor or subcontractor who is known to be prohibited from contracting directly or indirectly with a public authority for the construction of a public improvement or from performing any work on the same pursuant to section [4115.133](#) of the Revised Code to perform work on a public improvement.

Effective Date: 07-01-2000; 09-29-2011

4115.131 Contract disputes.

In the event of a specific contract dispute concerning a prevailing wage determination, a proper wage classification, or a novel or unusual situation pertaining to sections [4115.03](#) to [4115.16](#) of the Revised Code, the director of commerce may, upon request by a public authority or by a person having a contract with a public authority, cause to be made such investigation and hearing as the director deems necessary and render a decision embodying the director's findings and conclusions. Unless finally reversed on appeal to the courts, the decision of the director shall form the basis for decision of any complaint on the same facts filed pursuant to sections [4115.03](#) to [4115.16](#) of the Revised Code.

Effective Date: 07-01-2000

4115.132 Director of commerce - investigatory powers.

In any investigation undertaken by the director of commerce pursuant to sections [4115.03](#) to [4115.16](#) of the Revised Code, the director, a designated representative, or hearing examiner may administer oaths, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records, and testimony relating to and relevant to the violation under investigation. In case of contumacy, failure, or refusal of any person, contractor, or subcontractor to obey the order, any court of common pleas having jurisdiction of the person, contractor, or subcontractor, upon application of the director or representative designated by the director shall have jurisdiction to issue to the person, contractor, or subcontractor an order requiring the person, contractor, or subcontractor to appear before the director or a representative designated by the director, to produce evidence as is ordered, and to give testimony relating to the matter under investigation or in question. Any failure to obey an order of the court may be punished by the court as a contempt thereof.

Effective Date: 07-01-2000

4115.133 Filing list of convicted contractors, subcontractors, and officers of contractors and subcontractors.

(A) The director of commerce shall file with the secretary of state a list of contractors, subcontractors, and officers of contractors and subcontractors who have been prosecuted and convicted for violations of or have been found to have intentionally violated sections [4115.03](#) to [4115.16](#) of the Revised Code. The director shall not include on the list a contractor, subcontractor, or officer of a contractor or subcontractor until the expiration of any applicable appeal period relative to the finding, or if appealed, until the date of the final judgment of a court.

(B) Each contractor, subcontractor, or officer of a contractor or subcontractor who has been prosecuted and convicted for violations of or is found to have intentionally violated sections [4115.03](#) to [4115.16](#) of the Revised Code is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same as a contractor, subcontractor, or officer of a contractor or subcontractor for a period of one year from the date of the expiration of the applicable period for filing an appeal, or if appealed, from the date of the final judgment of a court. If the contractor, subcontractor, or officer of a contractor or subcontractor is found to have intentionally violated sections [4115.03](#) to [4115.16](#) of the Revised Code another time within five years after the date specified under division (B) of this section, the contractor, subcontractor, or officer of a contractor or subcontractor is prohibited from so contracting or performing work for a period of three years from the date of the expiration of the applicable period for filing an appeal, or if appealed, from the date of the final judgment of a court.

(C) No public authority shall award a contract for a public improvement to any contractor, subcontractor, or officer of a contractor or subcontractor during the time that the contractor's, subcontractor's, or officer's name appears on such list. The filing of the notice of conviction or of the finding with the secretary of state constitutes notice to all public authorities.

Effective Date: 07-01-2000

4115.14 Written notice of noncompliance.

If it is found that a person, public authority, or prevailing wage coordinator has not complied with sections [4115.03](#) to [4115.16](#) of the Revised Code, the director of commerce shall give notice thereof in writing to such person or public authority pursuant to section [4115.15](#) of the Revised Code. Sufficient time shall be allowed for compliance therewith as the director deems necessary not to exceed thirty days from the date of notice.

At the expiration of the time prescribed in such notice, the director shall in writing inform the attorney general of the fact that such notice has been given and that the person, public authority, or prevailing wage coordinator to whom it was directed has not complied with such notice. On receipt thereof, the attorney general shall bring suit in the name of the state in the court of common pleas of the county in which such person, public authority, or prevailing wage coordinator is located to enjoin the awarding of such contract for a public improvement or if the contract has already been awarded to enjoin further work under the contract until the requirements of such notice are complied with.

The court may issue a temporary restraining order without notice to the defendant in such action. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the director to the defendant was not unreasonable or arbitrary, it shall issue an order enjoining the defendant from awarding such contract for a public improvement or continuing work under the contract until the notice is complied with.

Such injunctions shall continue operative until the court is satisfied that the requirements of such notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power invested in it in other similar cases.

Both the plaintiff and defendant in such action have the same rights of appeal as are provided by law in other injunction cases.

Effective Date: 07-01-2000

4115.15 Notice to halt work.

Where an investigation by the director of commerce reveals that a contractor or subcontractor has failed to pay the prevailing rate of wages, the contracting public authority or the director may, upon written notice to the contractor or subcontractor and the sureties of the contractor or subcontractor, and after hearing held pursuant to section [4115.13](#) of the Revised Code, order work halted on the part of the contract for which less than the prevailing rate of wages has been paid, until the defaulting contractor has filed with the director a bond in an amount of such penal sum as the director shall set, conditioned upon payment of the prevailing rate of wages.

Effective Date: 07-01-2000

4115.16 Filing complaint.

(A) An interested party may file a complaint with the director of commerce alleging a specific violation of sections [4115.03](#) to 4115.16 of the Revised Code by a specific contractor or subcontractor. The complaint shall be in writing on a form furnished by the director and shall include sufficient evidence to justify the complaint. The director, upon receipt of a properly completed complaint, shall investigate pursuant to section [4115.13](#) of the Revised Code. The director shall not investigate any complaint filed under this section that fails to allege a specific violation or that lacks sufficient evidence to justify the complaint. If the director determines that no violation has occurred or that the violation was not intentional, the interested party may appeal the decision to the court of common pleas of the county where the violation is alleged to have occurred.

(B) Except as otherwise provided in this section, the director or the designated representative shall conclude the investigation conducted under section 4115.13 of the Revised Code and make a determination not later than one hundred twenty days after the complaint is filed. The director or the designated representative may take additional time, of up to ninety days, to conclude the investigation and make a determination if the parties to the complaint are given notice of the extension before the initial one-hundred-twenty-day period expires. The director or the designated representative may take more time than that which is provided in this section to conclude the investigation and make a determination if the director, or the designated representative, and all parties to the complaint agree to a different time frame.

If the director has not ruled on the merits of the complaint within the time provided under this section, the interested party may file a complaint in the court of common pleas of the county in which the violation is alleged to have occurred. The complaint may make the contracting public authority a party to the action, but not the director. Contemporaneous with service of the complaint, the interested party shall deliver a copy of the complaint to the director. Upon receipt thereof, the director shall cease investigating or otherwise acting upon the complaint filed pursuant to division (A) of this section. The court in which the complaint is filed pursuant to this division shall hear and decide the case, and upon finding that a violation has occurred, shall make such orders as will prevent further violation and afford to injured persons the relief specified under sections [4115.03](#) to 4115.16 of the Revised Code. The court's finding that a violation has occurred shall have the same consequences as a like determination by the director. The court may order the director to take such action as will prevent further violation and afford to injured persons the remedies specified under sections [4115.03](#) to 4115.16 of the Revised Code. Upon receipt of any order of the court pursuant to this section, the director shall undertake enforcement action without further investigation or hearings.

(C) The director shall make available to the parties to any appeal or action pursuant to this section all files, documents, affidavits, or other information in the director's possession that pertain to the matter. The rules generally applicable to civil actions in the courts of this state shall govern all appeals or actions under this section. Any determination of a court under this section is subject to appellate review.

(D) Where, pursuant to this section, a court finds a violation of sections [4115.03](#) to 4115.16 of the Revised Code, the court shall award attorney fees and court costs to the prevailing party. In the event the court finds that no violation has occurred, the court may award court costs and fees to the prevailing party, other than to the director or the public authority, where the court finds the action brought was unreasonable or without foundation, even though not brought in subjective bad faith.

Effective Date: 07-01-2000; 09-29-2011

4115.21 Time for filing complaint.

A person who files a complaint with the director of commerce alleging a violation of sections [4115.03](#) to [4115.16](#) of the Revised Code shall file the complaint within two years after the completion of the public improvement upon which the violation is alleged to have occurred or be barred from further administrative action under this chapter.

Effective Date: 09-26-2003

4115.99 Penalty.

(A) Whoever violates section [4115.08](#) or [4115.09](#) of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.

(B) Whoever violates division (C) of section [4115.071](#), section [4115.10](#), or [4115.11](#) of the Revised Code is guilty of a misdemeanor of the second degree for a first offense; for each subsequent offense such person is guilty of a misdemeanor of the first degree.

Effective Date: 08-25-1976

Chapter 4582: PORT AUTHORITIES

4582.01 Port authority definitions.

As used in sections [4582.02](#) to [4582.20](#) of the Revised Code:

(A) "Port authority" means a body corporate and politic created pursuant to the authority of section [4582.02](#) of the Revised Code.

(B) "Authorized purposes" or "purpose" means either of the following:

(1) Activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the port authority;

(2) Activities authorized by Sections 13 and 16 of Article VIII, Ohio Constitution.

(C) "Cost," as applied to a port authority facility, means the cost of acquisition or construction of the facility, and the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for that acquisition or construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved, the cost of acquiring or constructing and equipping a principal office of the port authority, the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements for the access roads, the cost of public utility and common carrier relocation or duplication, the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for no more than eighteen months after the completion of construction, engineering, expenses of research and development with respect to port authority facilities, legal expenses, plans, specifications, surveys, studies, estimates of cost and revenues, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing the facility, administrative expense, and any other expenses necessary or incident to acquiring or constructing the facility, the financing of such acquisition or construction, including the amount authorized in the resolution of the port authority providing for the issuance of port authority revenue bonds to be paid into any special funds from the proceeds of the bonds and the financing of the placing of the facility in operation. Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, the preparation of plans and specifications, and other engineering services, or any other cost described above, in connection with the acquisition or construction of a facility may be regarded as part of the cost of the facility and may be reimbursed out of the proceeds of port authority revenue bonds as authorized by this chapter.

(D) "Port authority facilities" means real or personal property, or any combination thereof, that is owned, leased, or otherwise controlled or financed by a port authority and is related to, useful for, or in furtherance of, one or more authorized purposes.

(E) "Bonds" means bonds, notes, or other forms or evidences of obligation issued in temporary or definitive form, including notes issued in anticipation of the issuance of bonds and renewal notes.

(F) "Construction," unless the context indicates a different meaning or intent, includes alteration, construction, creation, development, enlargement, improvement, installation, reconstruction, remodeling, and renovation.

(G) "Person" means any individual, firm, partnership, or corporation, or any combination thereof.

(H) "Contracting subdivision" means any governmental subdivision or taxing district of the state that, by action of its legislative authority, enters into an agreement with a port authority or a port authority and one or more other governmental subdivisions or taxing districts of the state. "Contracting subdivision" does not mean a transportation improvement district.

(I) "Governmental subdivision" includes, but is not limited to, any county, municipal corporation, township, port authority, water or sewer district, solid waste management district, school district, health district, park district, soil and water conservation district, water conservancy district, regional transit authority, airport authority, or other district, authority, or commission created pursuant to the laws of this state. "Governmental subdivision" does not include a transportation improvement district.

4582.12 Procedure for bidding and contracts.

(A)(1) Except as otherwise provided in division (E) of section 307.671 of the Revised Code, division (A) of this section does not apply to a port authority educational and cultural facility acquired, constructed, and equipped pursuant to a cooperative agreement entered into under section 307.671 of the Revised Code.

(2)(a) Except as provided in division (C) of this section or except when the port authority elects to construct a building, structure, or other improvement pursuant to a contract made with a construction manager at risk under sections 9.33 to 9.335 of the Revised Code or with a design-build firm under sections 153.65 to 153.73 of the Revised Code, when the cost of a contract for the construction of any building, structure, or other improvement undertaken by a port authority involves an expenditure exceeding the higher of one hundred thousand dollars or the amount as adjusted under division (A)(2)(b) of this section and the port authority is the contracting entity, the port authority shall make a written contract after notice calling for bids for the award of the contract has been given by publication twice, with at least seven days between publications, in a newspaper of general circulation in the area of the jurisdiction of the port authority. Each such contract shall be let to the lowest responsive and responsible bidder in accordance with section 9.312 of the Revised Code. Every contract let shall be in writing and if the contract involves work or construction, it shall be accompanied by or shall refer to plans and specifications for the work to be done, prepared for and approved by the port authority, signed by an authorized officer of the port authority and by the contractor, and shall be executed in triplicate.

Each bid shall be awarded in accordance with sections 153.54, 153.57, and 153.571 of the Revised Code.

The port authority may reject any and all bids.

(b) On January 1, 2012, and the first day of January of every even-numbered year thereafter, the director of commerce shall adjust the threshold level for contracts subject to the bidding requirements contained in division (A)(2)(a) of this section. The director shall adjust this amount according to the average increase for each of the two years immediately preceding the adjustment as set forth in the producer price index for material and supply inputs for new nonresidential construction as determined by the bureau of labor statistics of the United States department of labor or, if that index no longer is published, a generally available comparable index. If there is no resulting increase, the threshold shall remain the same until the next scheduled adjustment on the first day of January of the next even-numbered year.

(B) The board of directors of a port authority by rule may provide criteria for the negotiation and award without competitive bidding of any contract as to which the port authority is the contracting entity for the construction of any building, structure, or other improvement under any of the following circumstances:

(1) There exists a real and present emergency that threatens damage or injury to persons or property of the port authority or other persons, provided that a statement specifying the nature of the emergency that is the basis for the negotiation and award of a contract without competitive bidding shall be signed by the officer of the port authority that executes that contract at the time of the contract's execution and shall be attached to the contract.

(2) A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement.

(3) The contract is for any energy conservation measure as defined in section 307.041 of the Revised Code.

(4) With respect to material to be incorporated into the improvement, only a single source or supplier exists for the material.

(5) A single bid is received by the port authority after complying with the provisions of division (A) of this section.

(C)(1) If a contract is to be negotiated and awarded without competitive bidding for the reason set forth in division (B)(2) of this section, the port authority shall publish a notice calling for technical proposals at least twice, with at least seven days between publications, in a newspaper of general circulation in the area of the port authority. After receipt of the technical proposals, the port authority may negotiate with and award a contract for the improvement to the proposer making the proposal considered to be the most advantageous to the port authority.

(2) If a contract is to be negotiated and awarded without competitive bidding for the reason set forth in division (B)(4) of this section, any construction activities related to the incorporation of the material into the improvement also may be provided without competitive bidding by the source or supplier of that material.

(D) No contract for the construction or repair of any building, structure, or other improvement and no loan agreement for the borrowing of funds for any such improvement undertaken by a port authority, where the port authority is the contracting entity, shall be executed unless laborers and mechanics employed on such improvements are paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the improvement. The wages shall be determined in accordance with the requirements of Chapter 4115. of the Revised Code for the determination of prevailing wage rates, provided that the requirements of this section do not apply where the federal government or any of its agencies furnishes by loan or grant all or any part of the funds used in connection with such project and prescribes predetermined minimum wages to be paid to the laborers and mechanics.

Amended by 129th General Assembly File No. 7, HB 114, § 101.01, eff. 6/29/2011.

Effective Date: 05-17-2000; 12-30-2004; 09-29-2011

Chapter 5540: TRANSPORTATION IMPROVEMENT DISTRICTS

5540.03 Powers of transportation improvement district.

(A) A transportation improvement district may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Adopt an official seal;

(3) Sue and be sued in its own name, plead and be impleaded, provided any actions against the district shall be brought in the court of common pleas of the county in which the principal office of the district is located, or in the court of common pleas of the county in which the cause of action arose, and all summonses, exceptions, and notices of every kind shall be served on the district by leaving a copy thereof at its principal office with the secretary-treasurer;

(4) Purchase, construct, maintain, repair, sell, exchange, police, operate, or lease projects;

(5) Issue either or both of the following for the purpose of providing funds to pay the costs of any project or part thereof:

(a) Transportation improvement district revenue bonds;

(b) Bonds pursuant to Section 13 of Article VIII, Ohio Constitution;

(6) Maintain such funds as it considers necessary;

(7) Direct its agents or employees, when properly identified in writing and after at least five days' written notice, to enter upon lands within its jurisdiction to make surveys and examinations preliminary to the location and construction of projects for the district, without liability of the district or its agents or employees except for actual damage done;

(8) Make and enter into all contracts and agreements necessary or incidental to the performance of its functions and the execution of its powers under this chapter;

(9) Employ or retain or contract for the services of consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts, financial advisers, trustees, marketing, remarketing, and administrative agents, attorneys, and other employees, independent contractors, or agents as are necessary in its judgment and fix their compensation, provided all such expenses shall be payable solely from the proceeds of bonds or from revenues;

(10) Receive and accept from the federal or any state or local government, including, but not limited to, any agency, entity, or instrumentality of any of the foregoing, loans and grants for or in aid of the construction, maintenance, or repair of any project, and receive and accept aid or contributions from any source or person of money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such loans, grants, and contributions are made. Nothing in division (A)(10) of this section shall be construed as imposing any liability on this state for any loan received by a transportation improvement district from a third party unless this state has entered into an agreement to accept such liability.

(11) Acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties under this chapter;

(12) Establish and collect tolls or user charges for its projects;

(13) Do all acts necessary and proper to carry out the powers expressly granted in this chapter.

(B) Chapters 123., 124., 125., 153., and 4115., and sections 9.331 to 9.335 and 307.86 of the Revised Code do not apply to contracts or projects of a transportation improvement district.

Effective Date: 03-31-1997; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

Chapter 6115: SANITARY DISTRICTS

6115.20 Contract bidding procedures.

(A) When it is determined to let the work relating to the improvements for which a sanitary district was established by contract, contracts in amounts to exceed ten thousand dollars shall be advertised after notice calling for bids has been published once a week for five consecutive weeks completed on the date of last publication or as provided in section 7.16 of the Revised Code, in a newspaper of general circulation within the sanitary district where the work is to be done. The board of directors of the sanitary district shall let bids as provided in this section or, if applicable, section 9.312 of the Revised Code. If the bids are for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, the board of directors of the sanitary district shall let the contract to the lowest or best bidder who meets the requirements of section 153.54 of the Revised Code. If the bids are for a contract for any other work relating to the improvements for which a sanitary district was established, the board of directors of the sanitary district shall let the contract to the lowest or best bidder who gives a good and approved bond, with ample security, conditioned on the carrying out of the contract and the payment for all labor and material. The contract shall be in writing and shall be accompanied by or shall

refer to plans and specifications for the work to be done prepared by the chief engineer. The plans and specifications at all times shall be made and considered a part of the contract. The contract shall be approved by the board and signed by the president of the board and by the contractor and shall be executed in duplicate. In case of emergency the advertising of contracts may be waived upon the consent of the board with the approval of the court or judge in vacation.

(B) In the case of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use that includes two municipal corporations in two counties, any service to be purchased, including the services of an accountant, architect, attorney at law, physician, or professional engineer, at a cost in excess of ten thousand dollars shall be obtained in the manner provided in sections 153.65 to 153.73 of the Revised Code. For the purposes of the application of those sections to division (B) of this section, all of the following apply:

(1) "Public authority," as used in those sections, shall be deemed to mean a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use that includes two municipal corporations in two counties;

(2) "Professional design firm," as used in those sections, shall be deemed to mean any person legally engaged in rendering professional design services as defined in division (B)(3) of this section;

(3) "Professional design services," as used in those sections, shall be deemed to mean accounting, architectural, legal, medical, or professional engineering services;

(4) The use of other terms in those sections shall be adapted accordingly, including, without limitation, for the purposes of division (D) of section 153.67 of the Revised Code;

(5) Divisions (A) to (C) of section 153.71 of the Revised Code do not apply.

(C) The board of directors of a district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use may contract for, purchase, or otherwise procure for the benefit of employees of the district and pay all or any part of the cost of group insurance policies that may provide benefits, including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, vision care, medical care, hearing aids, or prescription drugs. Any group insurance policy purchased under this division shall be purchased from the health care corporation that the board of directors determines offers the most cost-effective group insurance policy.

Effective Date: 05-06-1998; 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

Temporary law provisions of Am. Sub. H.B. 153 as enrolled.

SECTION 207.10.20. OHIO ADMINISTRATIVE KNOWLEDGE SYSTEM

The Ohio Administrative Knowledge System (OAKS) is an enterprise resource planning system that replaced the state's central services infrastructure systems, including, but not limited to, the Central Accounting System, the Human Resources/Payroll System, the Capital Improvements Projects Tracking System, the Fixed Assets Management System, and the Procurement System. The Department of Administrative Services, in conjunction with the Office of Budget and Management, may update or add functionality to the OAKS system that will support shared services, financial or human resources functions, and enterprise applications that improve the state's operational efficiency. This includes, but is not limited to, the installation and implementation of hardware and software. Any lease-purchase arrangement entered into under Chapter 125. of the Revised Code to finance the OAKS system and the enhancements described above, including any fractionalized interest therein, as defined in division (N) of section 133.01 of the Revised Code, shall provide that at the end of the lease period, the financed asset becomes the property of the state.

Effective Date: 09-29-2011

SECTION 207.10.30. OAKS LEASE RENTAL PAYMENTS

The foregoing appropriation item 100415, OAKS Rental Payments, shall be used for payments at the times they are required to be made for the period from July 1, 2011, through June 30, 2013, pursuant to leases and agreements entered into under Chapter 125. of the Revised Code, as supplemented by Section 281.10 of Am. Sub. H.B. 562 of the 127th General Assembly and other prior acts of the General Assembly, with respect to financing the costs associated with the acquisition, development, installation, and implementation of the Ohio Administrative Knowledge System. If it is determined that additional appropriations are necessary for this purpose, the amounts are hereby appropriated.

Effective Date: 09-29-2011

SECTION 207.20.80. CENTRALIZED GATEWAY ENHANCEMENT FUND

(A) As used in this section, "Ohio Business Gateway" refers to the internet-based system operated by the Department of Administrative Services with the advice of the Ohio Business Gateway Steering Committee established under section 5703.57 of the Revised Code. The Ohio Business Gateway is established to provide businesses a central web site where various filings and payments are submitted online to government. The information is then distributed to the various government entities that interact with the business community.

(B) As used in this section:

(1) "State Portal" refers to the official web site of the state, operated by the Department of Administrative Services.

(2) "Shared Hosting Environment" refers to the computerized system operated by the Department of Administrative Services for the purpose of providing capability for state agencies to host web sites.

(C) There is hereby created in the state treasury the Centralized Gateway Enhancement Fund (Fund 5X30). The foregoing appropriation item 100634, Centralized Gateway Enhancement, shall be used by the Department of Administrative Services to pay the costs of enhancing, expanding, and operating the infrastructure of the Ohio Business Gateway, State Portal, and Shared Hosting Environment. The Director of Administrative Services shall submit spending plans to the Director of Budget and Management to justify operating transfers to the fund from the General Revenue Fund. Upon approval, the Director of Budget and Management shall transfer approved amounts to the fund, not to exceed the amount of the annual appropriation in each fiscal year. The spending plans may be based on the recommendations of the Ohio Business Gateway Steering Committee or its successor.

Effective Date: 09-29-2011

SECTION 207.20.90. CASH TRANSFERS FROM THE MAJOR IT PURCHASES FUND

Upon request of the Director of Administrative Services, the Director of Budget and Management may make the following transfers from the Major IT Purchases Fund (Fund 4N60):

(1) Up to \$2,800,000 in each fiscal year of the biennium to the State Architect's Fund (Fund 1310) to support the OAKS Capital Improvements Module and other costs of the State Architect's Office that are not directly related to capital projects managed by the State Architect;

(2) Up to \$310,276 in fiscal year 2012 and up to \$305,921 in fiscal year 2013 to the Director's Office Fund (Fund 1120) to support operating expenses of the Accountability and Results Initiative.

Effective Date: 09-29-2011

SECTION 207.20.93. CASH TRANSFERS FROM THE BUILDING MANAGEMENT FUND TO THE STATE ARCHITECT'S FUND

Upon request of the Director of Administrative Services, the Director of Budget and Management may transfer up to \$2,000,000 from the Building Management Fund (Fund 1320) to the State Architect's Fund (Fund 1310) to support the OAKS Capital Improvements Module and other costs of the State Architect's Office that are not directly related to capital projects managed by the State Architect. If the cash balance in the State Architect's Fund (Fund 1310) is determined to be sufficient, the Director of Administrative Services may request that the Director of Budget and Management transfer cash from the State Architect's Fund (Fund 1310) to the Building Management Fund (Fund 1320) in an amount equal to the initial cash transfer made under this section plus applicable interest.

Effective Date: 09-29-2011

SECTION 207.30.30. DIRECTOR'S DECLARATION OF PUBLIC EXIGENCY

Whenever the Director of Administrative Services declares a "public exigency," as provided in division (C) of section 123.15 of the Revised Code, the Director shall also notify the members of the Controlling Board.

Effective Date: 09-29-2011

SECTION 503.30. CAPITAL PROJECT SETTLEMENTS

This section specifies an additional and supplemental procedure to provide for payments of judgments and settlements if the Director of Budget and Management determines, pursuant to division (C)(4) of section 2743.19 of the Revised Code, that sufficient unencumbered moneys do not exist in the fund to support a particular appropriation to pay the amount of a final judgment rendered against the state or a state agency, including the settlement of a claim approved by a court, in an action upon and arising out of a contractual obligation for the construction or improvement of a capital facility if the costs under the contract were payable in whole or in part from a state capital projects appropriation. In such a case, the Director may either proceed pursuant to division (C)(4) of section 2743.19 of the Revised Code or apply to the Controlling Board to increase an appropriation or create an appropriation out of any unencumbered moneys in the state treasury to the credit of the capital projects fund from which the initial state appropriation was made. The amount of an increase in appropriation or new appropriation approved by the Controlling Board is hereby appropriated from the applicable capital projects fund and made available for the payment of the judgment or settlement.

If the Director does not make the application authorized by this section or the Controlling Board disapproves the application, and the Director does not make application under division (C)(4) of section 2743.19 of the Revised Code, the Director shall for the purpose of making that payment make a request to the General Assembly as provided for in division (C)(5) of that section.

Effective Date: 09-29-2011

SECTION 503.95. EMERGENCY CAPITAL APPROPRIATIONS AND AUTHORIZATION TO ISSUE OBLIGATIONS

Notwithstanding any provision of law to the contrary, the Director of Budget and Management may establish a process for, and receive from state agencies or institutions, applications for funding emergency or critical capital facilities needs that may be paid from the funds identified in this section. Upon review of any such application, if determined necessary to address emergency or critical capital needs identified in an application, the director may request Controlling Board approval to establish additional capital appropriations, from the following funds in an aggregate amount not to exceed \$50,000,000 for the FY 2011 - FY 2012 capital biennium: the Administrative Building Fund (Fund 7026), the Adult Correctional Building Fund (Fund 7027), the Juvenile Correctional Building Fund (Fund 7028),

the Ohio Cultural Facilities Fund (Fund 7030), the Ohio Parks and Natural Resources Fund (Fund 7031), the Mental Health Facilities Improvement Fund (Fund 7033), the Parks and Recreation Improvement Fund (Fund 7035), and any other capital fund from which emergency capital facilities funding is deemed necessary by the Director as a result of any natural disaster occurring between July 1, 2010, and September 30, 2010, that resulted in damages to a facility of a state-assisted institution of higher education. Reference is made to Section 221.20.30 of Am. Sub. H.B. 562 (as to Fund 7026), Section 223.11 of Am. Sub. H.B. 562 (as to Fund 7027), Section 225.11 of Am. Sub. H.B. 562 (as to Fund 7028), Section 227.11 of Am. Sub. H.B. 562 (as to Fund 7030), Section 229.11 of Am. Sub. H.B. 562 (as to Fund 7031), Section 231.40.10 of Am. Sub. H.B. 562 (as to Fund 7033), Section 233.60.30 of Am. Sub. H.B. 562 (as to Fund 7034), and Section 235.12 of Am. Sub. H.B. 562 (as to Fund 7035), each of which authorizes the issuance and sale of original obligations, pursuant to the applicable constitutional and statutory authority indicated therein, in a principal amount indicated therein. In addition to those amounts previously authorized for each of those purposes, the Ohio Public Facilities Commission or the Treasurer of State, as applicable, are each hereby authorized to issue and sell additional original obligations, pursuant to the applicable constitutional and statutory authority, in an aggregate principal amount equal to any additional capital appropriations approved by the Controlling Board under the authority of this section for that purpose, plus amounts necessary to cover the costs of issuance of those additional original obligations. Sections 518.10 and 518.20 of Am. Sub. H.B. 153 of the 129th General Assembly apply to the debt service on any additional obligations issued and sold under this paragraph.

Effective Date: 09-29-2011

SECTION 701.10. The Department of Administrative Services shall post on the Department's Internet web site the form for the contract documents that a public authority contracting for services with a construction manager at risk or a design-build firm must use on and after the date of the posting and until the rules adopted under section 153.503 of the Revised Code are implemented.

Effective Date: 09-29-2011 subject to section 701.13 of Am. Sub. H.B. 153

SECTION 701.13. (A) The Director of Administrative Services shall adopt rules in accordance with Chapter 119. of the Revised Code to establish guidelines for the provision of surety bonds by construction managers at risk, as required under section 9.333 of the Revised Code, and design-build firms, as required under section 153.70 of the Revised Code.

(B) Except as provided in division (C) of this section, the amendment or enactment of sections 9.33, 9.331, 9.332, 9.333, 9.334, 9.335, 123.011, 126.141, 153.01, 153.03, 153.07, 153.08, 153.50, 153.501, 153.502, 153.503, 153.51, 153.52, 153.53, 153.54, 153.55, 153.56, 153.581, 153.65, 153.66, 153.67, 153.69, 153.692, 153.693, 153.694, 153.70, 153.71, 153.72, 153.73, 153.80, 3313.46, 3353.04, 3354.16, 3357.16, 4113.61, 5540.03, and 6115.20 of the Revised Code and Section 701.10 of this act modifying the laws governing the permissible methods of construction delivery for the construction of public improvements shall apply only to public improvement projects commencing on or after the date the rules adopted under division (A) of this section become effective.

(C) The provisions of the sections listed in division (B) of this section that are amended or enacted by this act that apply the provisions of section 7.16 of the Revised Code, as enacted by this act, are not subject to the delayed application provisions of that division.

Effective Date: 09-29-2011