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Bill Analysis

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Primary Sponsors: Reps. Stephens and Edwards

S. Ben Fogle, Attorney

SUMMARY

- Creates a financing system for the state to aid counties in constructing or renovating county jail facilities, subject to the approval of the Department of Rehabilitation and Correction (DRC).

Funding formula – project approval

- Requires the DRC to conduct a needs assessment of a county upon request of the board of county commissioners, or upon request of a multi-county jail facilities commission (MCJFC) (see "**Multi-county jail facilities**," below) (only one assessment per year per county).
- Requires the DRC, when making a needs assessment, to conduct an on-site evaluation of existing jail facilities to determine need.
- Requires the Ohio Facilities Construction Commission (OFCC) in conjunction with the DRC, to develop a set of minimum standards for the construction of jail facilities.
- Requires the OFCC, in conjunction with the DRC, to develop a funding formula ranking counties based on need, using a percentile ranking, which accounts for the county's need versus the funds it can raise to contribute to the project.
- Requires the DRC to approve a project only if the project conforms to OFCC and DRC standards, and the project keeps with the needs of the county as determined by the assessment; exceptions to be made where topography, sparsity of population, and other factors make larger jail facilities impracticable.
- Allows renovations rather than construction of a new facility if the renovations equal or are less than the cost of the new facility, the facilities will be operationally efficient and adequate for future needs of the county, and it complies with DRC and OFCC standards.

- Requires the DRC to approve a project only if the county can prove that the county can generate adequate revenue to fund the basic project cost, and the operations and maintenance of the proposed jail facilities.

County funding – county's portion of the basic project cost

- Allows a county to generate revenue for the project by the following means: unencumbered county funds, bonds, local donated contributions, bond issue or tax levy, and the proceeds of other tax levies that lawfully may be used for building or maintaining jail facilities.
- Allows certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of the facilities.
- Prohibits counties from submitting, as evidence to the DRC that the county can adequately fund its jail facilities, any proposal to rent any portion of the jail facility or facilities to other political subdivisions.
- Specifies that a county's portion of the basic project cost is to be 1% of the basic project cost times the percentile in which the county ranks according to the DRC's funding formula.
- Prohibits a county's share of the basic project cost from being above 95%.
- Prescribes a formula for projects in counties that previously had an approved project under the bill's provisions.
- Gives counties or MCJFCs 120 days to accept the DRC's conditional approval.
- Requires, if necessary, that the electors of the county or counties approve the bond issue or levy not later than 13 months after the date the county received the DRC's conditional approval, or else the conditional approval lapses.
- Specifies that, if the conditional approval lapses, the amount reserved and encumbered for the project is released, but also specifies that that county or those counties have first priority as additional funds become available.
- Specifies the requirements for local donated contributions, including that they may offset the required amount of bonds to be issued.

Controlling Board approval

- Specifies that if the DRC approves a project, the project is conditionally approved and then goes before the Controlling Board.
- Requires the Controlling Board to then approve or reject the DRC's determination, the amount of the state's portion of the basic project cost, and the amount of the state's portion to be encumbered in the current fiscal year.

- Prohibits the Controlling Board from approving a project for a county that has had a project approved in the last 20 years, unless the board of county commissioners demonstrates an exceptional increase in need has occurred.

Written agreement between the OFCC and the board of county commissioners

- Requires, if the county has met its share of the basic project cost through election or otherwise, the OFCC to enter into an agreement with the board of county commissioners or the MCJFC, and specifies the terms of the agreement.
- Requires the board of county commissioners or the MCJFC, after entering into the agreement, and if applicable, to issue bonds or notes in anticipation of the agreement and deposit the proceeds into the county's construction fund.
- Requires that the board of county commissioners or the MCJFC then employ a qualified professional to prepare preliminary plans, working drawings, specifications, estimates of cost, and such data as the board or MCJFC, and OFCC, consider necessary for the project.
- Provides that, once the board or MCJFC has approved the preliminary plans, the plans are submitted to the OFCC for approval, modification, or rejection.
- Requires the OFCC to approve the plans once the plans conform to the standards adopted by the OFCC and DRC, and subsequently cause the qualified professional to prepare the drawings, specifications, and estimates of cost.
- Requires that, if the proposed facility is located within one mile of a state route or highway, the plans also be approved by the Director of Transportation.

Construction bids

- Requires the board or MCJFC to advertise for construction bids, using competitive bidding procedures, once the specifications, drawings, and estimates of cost have been approved by the board or MCJFC and the OFCC.
- Requires the award to go to the lowest responsible bidder within 60 days of advertising, and requires the winning bidder to accept the contract within ten days of the award.
- Allows the board or MCJFC to reject all bids and readvertise, with the permission of the OFCC.

Appropriations

- Requires the OFCC to determine the amount of appropriations to be encumbered for any project undertaken under the bill's provisions, based on the project's estimated construction schedule for that year.
- Requires the OFCC, in subsequent fiscal years, to grant ongoing projects priority for state funds over projects for which initial state funding is sought.

- Requires the OFCC to request that the Controlling Board transfer to the county's project construction fund the amount appropriated by the General Assembly and set aside for that purpose.

County construction funds

- Requires the county auditor to disburse county project construction funds upon the approval of the OFCC, which then must issue vouchers against the fund as required.
- Provides that all investment earnings of the fund are credited to the fund.
- Allows the board of county commissioners, by resolution, to use all or part of the fund's investment earnings that are attributable to the county's contribution to pay the cost of jail facilities, or portions or components thereof, which are not part of the basic project cost.
- Provides that, after a certificate of completion has been issued for the project, any remaining investment earnings must be retained in the county construction fund or transferred to a project maintenance fund, the county's permanent improvement fund, or the OFCC, as appropriate.

Multi-county jail facilities

- Permits two or more counties to form a MCJFC pursuant to an agreement approved by the DRC, and build a multi-county jail facility.
- Sets forth the required terms of MCJFC agreements.
- Provides that if the electors of one of the counties fail to approve the funds necessary to fund the county's portion of the cost, the other contracting counties are not obliged to pay any portion of the cost of the county in which the levy or issuance was not approved.

Jail Facility Building Fund

- Creates the Jail Facility Building Fund in the state treasury.

OFCC interest in real property

- Provides that the OFCC has an interest in real property purchased with moneys in the county's project construction fund.
- Provides that, once obligations issued to finance a project are no longer outstanding, any interest held by the OFCC is transferred to the county.

Project completion

- Requires the OFCC to issue a certificate of completion to the board or the MCJFC upon completion of the project.
- States a project is considered complete when the construction is complete, the board or MCJFC has received a permanent certificate of occupancy, the OFCC has completed a

final accounting, litigation has been resolved, and construction management services have been delivered and the OFCC has canceled any remaining related encumbrance.

- Provides that a certificate of completion may be issued without the immediately above conditions being met as long as the circumstances preventing the conditions from being satisfied are minor.
- Permits the OFCC to issue a certificate of completion to an unwilling board, if the construction manager for the project verifies the project is complete, and the OFCC determines the facilities have been occupied for a year.
- Requires any project funds, upon such issuance of a certificate of completion, to be returned to their proper place within 30 days and, if not returned within 60 days, requires the Auditor of State to recover the money from the county.
- Provides that the OFCC's ownership interest in the project ceases upon the issuance of the certificate of completion.

Corrective action program

- Establishes the corrective action program to provide funding for the correction of defective or omitted work found on any project under the bill's provisions.
- Provides that the county must notify the OFCC Director of the defect or omission within five years of the project completion date to receive funding from the corrective action program.
- Requires the OFCC and the DRC to establish rules providing for application and granting of assistance under this program, with the requirement that remediation efforts first focus on engaging the contractors who originally worked on the project.
- Requires the county or counties to contribute a portion of the cost of corrective action, to be determined in the same manner as the basic project cost.
- Requires the state to seek recovery from the responsible party, if any, and requires any recovery to first be applied to the county's portion, and then the state portion.

Technical amendments

- Deletes an outdated provision of law that allowed Lawrence County to place inmates in the Ohio River Valley Facility.

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DETAILED ANALYSIS

This bill creates a system in which the state helps counties finance the cost of building or renovating jail facilities. It is loosely modeled after the school facility construction financing system found in Chapter 3318 of the Revised Code. The bill requires the Department of Rehabilitation and Correction (DRC) and the Ohio Facilities Construction Commission (OFCC) to develop a funding formula that ranks counties according to their needs, taking into account the jail facilities needs of the county and the county's ability to raise the necessary funds. The formula is used to determine which counties have the highest priority, and for how much assistance an applying county is entitled. (See "**Flowchart summary**," below).

Funding formula – project approval

The process begins when a board of county commissioners, or a multi-county jail facilities commission (MCJFC) in the case of an application for a multi-county jail facility (see "**Multi-county jail facilities**," below), requests a needs assessment from the DRC.[1] Each county is entitled to only one needs assessment per year.[2]

[1] R.C. 342.02, with conforming changes in 307.01, 307.021, 307.93, 341.12, and 2301.51.

[2] R.C. 342.02(A).

Anything a board may do under this section, an MCJFC may do as well. In general, any right or duty a board of county commissioners has under these new sections, an MCJFC also has.

Needs assessment

The DRC, as part of its needs assessment, must conduct an on-site evaluation of the applicable jail facilities, assessing the county's need to construct or acquire new jail facilities, or the county's need to add to, reconstruct, or renovate existing facilities. If the board so requests, the DRC also must examine any needs assessment the county has already conducted, and any master plans the board has developed to meet its needs.[3] The DRC must assess the following factors: the county's need for additional jail facilities; the number of jail facilities needed and the basic project cost of constructing, acquiring, reconstructing, or making additions to each facility; the amount of the basic project cost that the county can supply (see "**County funding – county's portion of the basic project cost**" below); the amount to be supplied by the state and the amount of the state's portion to be encumbered; and the annual, monthly, or daily cost of operating the facility once it is operational. The DRC may determine ranking cost for each county involved in a multi-county jail facility project.[4] The DRC can limit the amount of on-site evaluations it conducts each year based upon money available for that year.[5]

The DRC, in conjunction with the OFCC, must develop a set of minimum standards by which jail facilities must comply. These are in addition to any standards already required under Ohio law. A county jail facility's compliance with these standards is used to determine need for renovation or construction.[6]

Funding formula

The DRC and the OFCC must develop the funding formula. It is a percentile ranking, and is based on the following factors: a county's compliance with the jail facilities standards developed by the DRC and the OFCC, the results of the DRC's needs assessment and on-site evaluation of the county, the total value of all property in the county listed and assessed for taxation on the tax list and the sales tax revenue capacity in each county, and projections of use and other means of estimating the size and costs of the needed jail facilities.[7]

The DRC may approve a project only if it determines, based upon evidence submitted, that the project conforms to the DRC's and OFCC's jail facilities standards, and that the project keeps with the needs of the county pursuant to the needs assessment. The DRC may make an

[3] R.C. 342.02(B)(1).

[4] R.C. 342.02(B)(2) and (3).

[5] R.C. 342.02(E).

[6] R.C. 342.02(C) and 5120.10.

[7] R.C. 342.02(D).

exception where sparsity of population, topography, or other factors make larger facilities impracticable. If the board or DRC is in favor of renovation rather than a new construction, the renovation's cost must be less than or equal to what the cost of a new construction would be. The renovation may only be approved if the DRC finds that it meets the requirements as stated in this paragraph, and if the DRC finds it will be operationally efficient.[8]

County funding – county's portion of the basic project cost

The DRC may only approve a project submission from a county or MCJFC upon evidence that the county or counties can adequately fund the county's portion of the basic project cost, and the operation and maintenance of the proposed facilities. The county may use the following means to generate the necessary revenue: unencumbered funds, bonds, local donated contributions (see below), bond issues or property taxes levied specifically to cover the county's portion of the basic project cost, or the proceeds of any other tax levy that may be lawfully used for that purpose, i.e., general criminal justice service and jail facility levies that counties are authorized to levy under continuing law.[9] The county auditor must certify any evidence of this nature before it may be accepted by the DRC. The county may not submit as evidence any plan to rent out a portion of the jail facility to other political subdivisions.[10]

The county's portion

The county's portion of the basic project cost is equal to 1% times the percentile in which the county ranks according to the DRC's ranking, for the fiscal year preceding the fiscal year in which the Controlling Board approved the project. The share is calculated as of the date of the Controlling Board's approval. But the county's portion may not be greater than 95% of the total basic project cost. A county's share is calculated differently, however, if the county previously had a project approved.[11]

The county's portion – previously approved project

If the county previously had a project approved within the last 20 years (as of the date of the Controlling Board's approval), the county's portion of the basic project cost is the lesser of following: the project cost calculated normally (in accordance with "**The county's portion**" above), or the greater of: the required percentage of the basic project costs for the new project (or if the project is a multicounty jail facility, the county's required percentage of the basic project costs pursuant to an MCJFC agreement), or the percentage of the basic project cost paid by the county for the previous project.[12]

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[8] R.C. 342.03.

[9] R.C. 5705.19(LL) and 5705.233, not in the bill.

[10] R.C. 342.04(A).

[11] R.C. 342.04(B) and (C).

[12] R.C. 342.04(D).

Jail facility property taxes and bonds

The bill permits a county to levy a property tax in excess of the ten-mill limitation to fund maintenance and operating expenses of a jail facility ("operating levy"), to pay debt charges on bonds issued for the county's share of the basic project cost ("bond levy"), or a combined question that includes both ("combined levy"). A county may only levy such a tax after it has received conditional approval from DRC for the construction, acquisition, reconstruction, or expansion of a jail facility, and must obtain voter approval within 13 months after receiving DRC's conditional approval.[13]

An operating levy proposed under the bill may be for any number of years or a continuing period of time.[14] In contrast, a bond levy may only extend for the maximum number of years over which the principal of the issued bonds may be paid.[15]

To levy any of these taxes, the board of county commissioners must adopt a resolution specifying not only the purpose, rate, and duration of the tax, but also the percentage of the basic project cost to be supplied by the county and by the state, and, if a multicounty jail facility is the subject of the tax, the name and the percentage of the basic project cost to be supplied by each contracting county.[16] The procedure for submitting the tax to voters is the same as for other voted levies, i.e., levy information is certified to the board of elections, and the board prepares an election notice and ballot language.[17] A combined levy will appear on the ballot as a single question, so voters must either approve or disapprove both the operating and the bond levy.

The county may proceed with the collection of any tax and the issuance of any bonds approved by voters.[18] Similar to many other property tax levies, the county may anticipate a fraction of its proceeds and issue anticipation notes.[19]

An operating levy may be renewed, increased, decreased, or replaced using the processes required under continuing law for other voted levies. If the operating levy is for a continuing period, voters may submit a petition to reduce the levy's rate, similar to most other continuous levies.[20]

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[13] R.C. 342.05(C) and 5705.234(B).

[14] R.C. 5705.234(C)(1).

[15] R.C. 5705.234(C)(2).

[16] R.C. 5705.234(C)(3) to (5).

[17] R.C. 5705.234(D) to (F).

[18] R.C. 5705.234(G).

[19] R.C. 5705.234(H).

[20] R.C. 5705.261, not in the bill.

County sales and use taxes for jail operations

The bill allows for certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of such facilities. Under continuing law, any county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) may levy up to a 0.5% sales and use tax to be used exclusively for detention purposes, i.e., the construction, acquisition, equipping, or repairing of detention facilities. The bill expands this list of purposes to which proceeds from the 0.5% sales and use tax can be applied to include the operation of jail facilities.[21]

Under continuing law, a county is only able to levy this detention services tax to the extent the rate of the tax, when added to the rate of a transit authority sales and use tax levied in the county, does not exceed 1.5%. Thus, for example, if the county's transit authority levies a 1.25% sales and use tax, then the county could only levy a 0.25% jail facility sales and use tax.

Local donated contributions

The bill allows a county to fund all or part of the basic project cost of constructing a jail facility, or operating or maintenance costs, with local donated contributions. Local donated contributions include: money donated to a board of county commissioners from an entity other than the state, which the board has the authority to spend on, and has pledged to spend on, jail facilities; an irrevocable letter of credit issued on behalf of a county that has been approved by the OFCC and the DRC; any cash a county has on hand that the board has encumbered for payment of the county's share, if approved by the OFCC and DRC; and any moneys spent by an outside source for the purpose, provided that the board, the OFCC, and the entity have entered into a written agreement requiring audits and having other provisions regarding credit.

The contributions may be used to offset any of the amount of bonds required to be issued or taxes required to be levied, with OFCC approval.[22]

Controlling Board approval

If the DRC has determined that the project conforms to OFCC and DRC standards, and that the project keeps with the needs of the county as determined by the needs assessment, and that the county can generate adequate revenue to fund the basic project cost, operations, and maintenance, the DRC may make a determination in favor of constructing, acquiring, reconstructing, or making additions to a jail facility. When the DRC makes this determination, the project is conditionally approved. The project then must go to the Controlling Board.

The Controlling Board then must approve or reject the DRC's determination, the amount of the state's portion of the basic project cost, and the amount of the state's portion to be encumbered in the current fiscal year. If approved, the DRC must certify the approval to the board of county commissioners or the MCJFC, and then encumber the funds from the

[21] R.C. 5739.021.

[22] R.C. 342.07.

appropriations for that year. The basic cost may not exceed the cost as determined by the DRC in its specifications for plans and materials for jail facilities.[23]

The Controlling Board may not approve a project for a county that previously has had a facility built or renovated under this process, and that has levied a tax[24] for the purpose of qualifying for that previous assistance, within the last 20 years, unless the county demonstrates to the DRC that the county has experienced, since approval of its prior project, an exceptional increase in need beyond the county's design capacity under that prior project. The DRC may waive design specification it has adopted for the project while assessing an application for additional assistance to renovate jail facilities which were renovated or built under a prior project. If the DRC determines that current facilities are adequate to fit the county's needs, the DRC may reject the county's application.[25]

Once the Controlling Board's approval has been granted, the board of county commissioners has 120 days to accept the approval. Additionally, if the county must issue bonds or a levy to generate its required revenue, the voters must approve the bond issue or levy within 13 months of the Controlling Board's approval. If the approval lapses (the bond issue or levy fails, or the board fails to accept the approval), the amount reserved and encumbered for the project is released. If this happens, the county has first priority for project funding as the funds become available.[26]

Written agreement between the OFCC and the board of county commissioners

When the county has raised adequate funds, the OFCC and the board of county commissioners, or the MCJFC if applicable, must enter into a written agreement regarding the project. The agreement must have the following provisions:

- The county's sale and issuance of bonds or notes, as soon as practicable after the execution of the agreement, in an amount equal to the county's portion of the basic project cost;
- Transferring the funds to the county's project construction fund, and disposal of any balance left in the fund upon project completion;
- Dividing ownership of the project during the period of construction between the OFCC and the county in proportion to their respective contributions;
- Maintenance of the state's interest in the project until any obligations issued for the project are no longer outstanding;

[23] R.C. 342.05(A).

[24] R.C. 5705.234.

[25] R.C. 342.05(B).

[26] R.C. 342.05(C).

- The insurance of the project by the county, provided it is part of the basic project cost;
- Certification by the Director of Budget and Management that the funds are available and have been set aside;
- Authorization of the board to advertise for and receive construction bids, and award contracts in the name of the state, subject to approval by the OFCC;
- Disbursement of moneys from the county's project account upon the issuance of OFCC vouchers for work done, to be certified by the county auditor to the OFCC;
- Termination of the contract if the board does not deposit bond proceeds into the county's project construction fund, or if no bids have been taken within a period determined by the OFCC;
- Requiring the county to maintain the project in accordance with a plan approved by the OFCC;
- Requiring that the state and county spend their portion of the funds simultaneously in proportion to the county and state's respective shares (with a provision allowing the county to spend more to maintain a federal tax status, if desired);
- Stipulation that the OFCC may prohibit the board from proceeding with any project if it determines that the site is not suitable for construction purposes; and
- Stipulation that, unless otherwise authorized by the OFCC, any contingency reserve portion of the construction budget must be used only to pay costs resulting from unforeseen job conditions, to comply with rulings regarding building and other codes, to pay costs related to design clarifications or corrections to contract documents, and to pay the costs of settlements or judgments related to the project.[27]

After entering into an agreement, the county must then issue its bonds or notes in anticipation of the agreement, and deposit the proceeds in the county's project construction fund. Then, with OFCC approval, the county must employ qualified professionals to prepare preliminary plans, working drawings, specifications, estimates of cost, and other data the county or OFCC considers necessary. Once the plans are prepared and approved by the board, the board must submit the plans to OFCC for approval, modification, or rejection. The OFCC may only approve the plans if the plans and materials proposed for use in the project comply with specifications and standards established by the OFCC and DRC. Upon approval, the board must have the qualified professionals prepare the working drawings, specifications, and estimates of cost.

[27] R.C. 342.06.

If the plans propose to locate a facility within one mile of a highway or state route, the plans must also be submitted to, and approved by, the Department of Transportation.[28]

Construction bids

Once the working drawings, specifications, and estimates of cost have been approved by the board and the OFCC, the county must advertise for construction bids in accordance with competitive bidding requirements. The OFCC must supply the form for bidders to use.

Once the bids are received, the OFCC must prepare a revised estimate of the basic project cost based upon the lowest responsible bids received. If the revised estimate exceeds the estimated basic project cost previously approved by the Controlling Board, the project may not go forward until the Controlling Board and the OFCC approves the revised project cost. The project must then be awarded to the lowest responsible bidder, subject to the approval of the OFCC, not later than 60 days after the date on which the bids are opened. The successful bidder must enter into a contract not later than ten days after the successful bidder is notified of the award of the contract.

Subject to OFCC approval, the board may reject all bids and readvertise. These contracts must be executed by the board and county auditor in the name of the state.

Subcontractors, materials suppliers, laborers, mechanics, or persons furnishing material or machinery for the project are afforded the same remedies under the bill, as they are in the Uniform Commercial Code (UCC). Under the UCC in Ohio, the persons in this paragraph may make a claim for unpaid funds by filing an affidavit with the contracting public authority. Any affidavits so filed must be filed with the board or the MCJFC, if applicable.[29]

Appropriations

For each jail facilities project undertaken, the OFCC each year must determine the amount of state appropriations to be encumbered based on the project's estimated construction schedule for that year. The OFCC must grant priority to continuing projects rather than projects for which initial funding is sought.[30]

The OFCC is in charge of requesting that the Controlling Board transfer the necessary amounts, as appropriated by the General Assembly, to the county's project construction fund, from time to time as necessary. Any investment earnings of the fund is credited to the fund.[31]

[28] R.C. 342.08.

[29] R.C. 342.09; R.C 307.86 and 1311.26, neither in the bill.

[30] R.C. 342.10.

[31] R.C. 342.11(A).

County construction funds

The county auditor may disburse funds from the county's project construction fund, including investment revenue, only upon OFCC approval. The OFCC may issue vouchers against the fund as necessary for payment of the project.

The board of county commissioners may, by resolution, use the investment earnings of the fund which are attributable to the county's contribution, to pay for costs related to, but not included in, the basic project cost. But if the county takes this option, and then subsequently the project cost unexpectedly exceeds the amount that is in the project construction fund, the board must restore any investment earnings so used back to the fund. The county may not receive any additional state funds until the board does so.[32]

Once a certificate of completion has been issued (see "**Certificates of Completion**" below), and at the board's discretion, the investment earnings may be retained in the project construction fund for future project use, transferred to a special treasury fund for use in maintaining the jail facilities, or transferred to the county's project improvement fund. Any investment earnings remaining attributable to the state's contribution to the fund goes back to the OFCC for expenditures on jail facilities. Any other remaining surplus goes back to the county and OFCC, proportionate to their contributions. The OFCC must likewise spend this money on jail facilities.[33]

Multi-county jail facilities

The bill also allows two or more counties to build a multi-county jail facility and, at their discretion, create a multi-county jail facilities commission. The counties may create an MCJFC by adding terms to the agreement between the county and the OFCC, described above, or with a supplemental agreement. The agreement is subject to the approval of the DRC, and must do all of the following:

- Prescribe the structure, management, and responsibilities of the MCJFC;
- Provide a process to establish the MCJFC's annual budget, including that each board of each county must approve the budget;
- Apportion the annual operating costs of the MCJFC to each member county;
- Designate the expenditure of funds from the county jail facilities construction fund of each member county;
- Provide for the timing of necessary elections in each county;
- Provide that each contracting board fulfill its obligations regarding jail facilities once an agreement is reached;

[32] R.C. 342.11(B).

[33] R.C. 342.11(C).

- Allocate interest in real property purchased with moneys in each county's project construction fund; and
- Address amendments to the contract.

The contracting counties may apportion the costs according to their need as ranked by the DRC, and each county must fund its portion of the cost as described in previous sections. If any necessary tax levies or bond issuances fail, or fail to materialize within 90 days of the most recent election in which a different county approved a tax levy or issuance of bonds, the other contracting counties are not obliged to pay any portion of the cost of the county in which the levy or issuance failed.[34]

Jail Facility Building Fund

The bill also creates in the state treasury the Jail Facility Building Fund, which consists of any moneys appropriated to the fund by the General Assembly, as well as any grants, gifts, or contributions received by the OFCC for the purpose. All investment earnings of the fund are credited to the fund. These moneys may only be used for the purposes of the bill's provisions as the General Assembly prescribes.[35]

OFCC interest in real property

The bill also provides that the OFCC has an interest in real property purchased with moneys in the county's project construction fund as long as obligations under the fund are outstanding. Once the obligations issued to finance a jail facilities project are no longer outstanding, the OFCC's interest is transferred to the county.[36]

Project completion

Once the project is completed, the OFCC must issue a certificate of completion to the board or MCJFC. A project is not considered complete until all facilities are completed and the board has received a permanent certificate of occupancy for each building, the OFCC has completed a final accounting of the county's project construction fund and has determined that all payments were made properly, any litigation concerning the project has been finally resolved with no chance of appeal, and the OFCC has delivered all construction management services and canceled any remaining encumbrance of funds for those services.[37]

However, the OFCC may forgo these conditions and issue a certificate of completion if it determines that the circumstances preventing the conditions from being satisfied are so minor in nature that the project should be considered complete. For example, the OFCC could issue a

[34] R.C. 342.12.

[35] R.C. 342.13.

[36] R.C. 342.14.

[37] R.C. 342.15(A).

certificate if it determines that a frivolous lawsuit is minor, or if there is an existing debate about a small amount of funds.

The certificate may specify terms and conditions for the resolution of any pending lawsuits, as well as any remaining responsibilities for the construction manager, or for the board regarding any construction or work yet to be complete. Regarding the last item, the OFCC must oversee remaining construction, and may require the board to report its progress and account for expenditures.[38]

The bill also allows the OFCC to issue a certificate of completion to an unwilling board or MCJFC, and close out the project. The OFCC may only do this if two conditions are met: the construction manager for the project verifies that all facilities to be constructed under the project have been completed, and the OFCC determines that those facilities have been occupied for at least one year. If this happens, the board must return all funds due to the OFCC within 30 days after receiving the certificate. If the funds are not returned within 60 days, the Auditor of State must issue a finding for recovery against the county and request that the Attorney General commence a collection action.[39]

Once the certificate of completion has been issued, the OFCC's ownership of and interest in the project ceases, unless otherwise specified in the terms of the agreement between the board and the OFCC.[40]

Corrective action program

The bill also establishes the corrective action program, which provides funding for the correction of work undertaken under the bill to correct any deficiencies or omissions discovered after occupancy of the facilities. In order to receive any funding, the county must notify the OFCC Director of any deficiencies or omissions within five years of the date of occupancy, which is likely the date of the certificate of occupancy.

The OFCC and the DRC must develop application procedures and deadlines for counties to apply for program assistance, as well as definitions for "defective" and "omitted." The DRC and OFCC guidelines must require that remediation efforts focus first on engaging the respective contractors that designed and constructed the areas that have design or construction-related issues. The OFCC must assess the deficient work and determine who is responsible for the deficient work and, if applicable, seek cost recovery from the responsible parties, such as contractors.

The county must contribute a portion of the cost of corrective action, commensurate with county's contribution to the project as a whole. If the county cannot contribute this much,

[38] R.C. 342.15(B).

[39] R.C. 342.15(C); R.C. 117.42, not in the bill.

[40] R.C. 342.15(D).

the board may apply to the OFCC for additional assistance. Any remediation expenses must first be applied to the county's portion of the cost of the corrective action, then the state portion.

If the work needing correction or remediation is part of a project not yet completed, the OFCC may increase the project budget and use corrective action funding to provide the state portion. If the project is completed and funds have already been retained or transferred, the OFCC may enter into a new agreement to address the corrective action.[41]

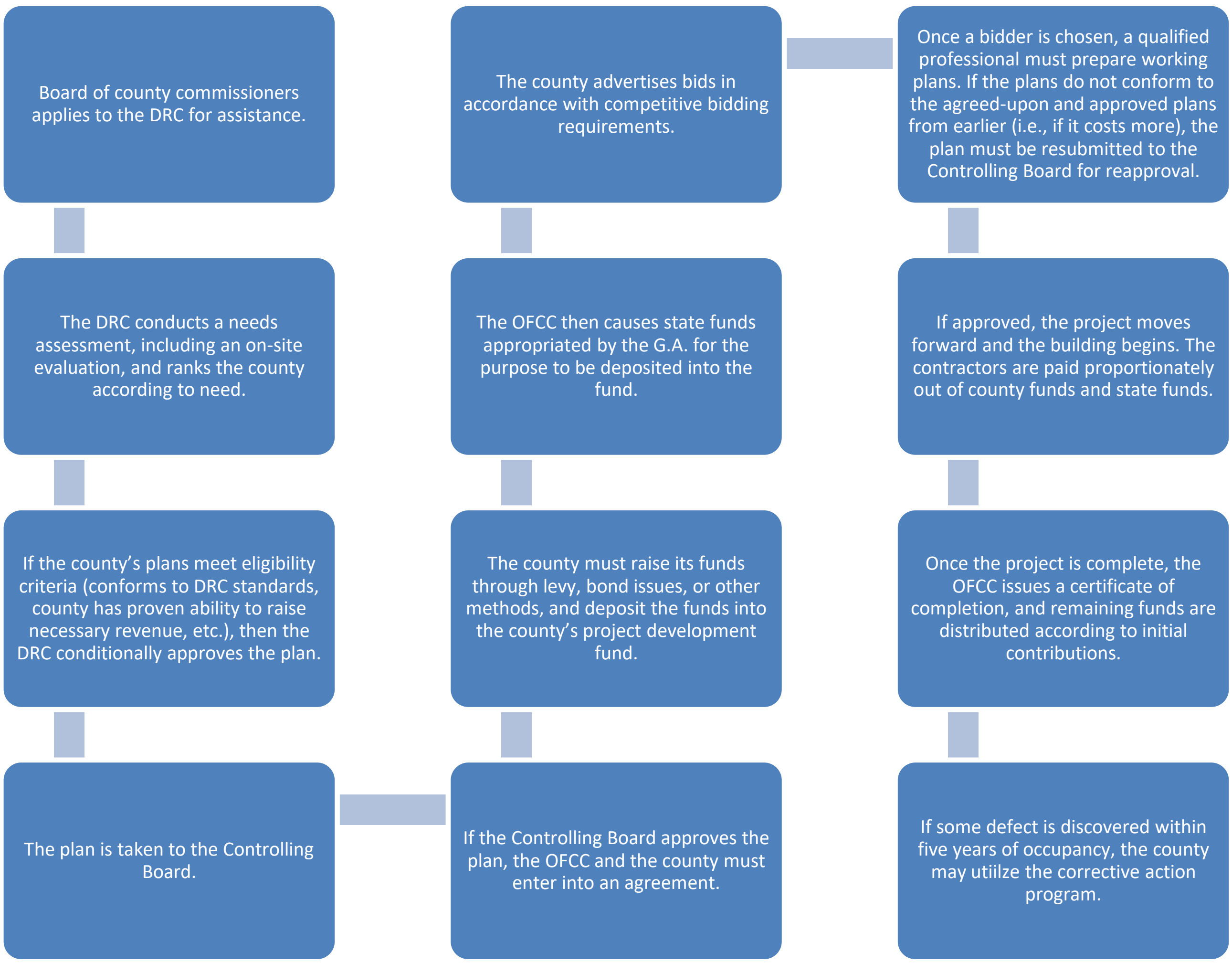
Technical changes

The bill makes a technical change, deleting outdated portions of the Revised Code that allowed Lawrence County to use the Ohio River Valley Facility located in Franklin Furnace.[42]

[41] R.C. 342.16.

[42] R.C. 307.93 and 341.12; R.C. 341.121, repealed by the bill.

Flowchart summary



HISTORY

Action	Date
Introduced	02-10-21

H0101-I-134/ts