

TED STRICKLAND
GOVERNOR
STATE OF OHIO

VETO MESSAGE

STATEMENT OF THE REASONS FOR VETOES OF ITEMS IN AMENDED SUBSTITUTE HOUSE BILL 562

June 24, 2008

Article II, SECTION 16 of the Ohio Constitution authorizes the Governor to veto any item or items in any bill making an appropriation of money. I have boxed and initialed text in Amended Substitute House Bill 562 that I have disapproved. All remaining text in the bill is approved. The reasons for my vetoes are set out below.

Introduction

The \$1.3 billion capital and corrections bill reflects our continuing efforts to make Ohio an attractive place for increased economic development and job-creating opportunities. We know that by upgrading our infrastructure and by funding projects that improve our communities, we greatly enhance the quality-of-life of Ohioans and increase our ability to grow and keep jobs in the state.

The bill also addresses a significant shortfall in the state's biennial operating budget caused by a weakening national economy, a spike in oil prices, the housing crisis and slowing retail sales. As we deal with the current economic situation, the administration remains committed to living within our means while investing in the things that are truly important to Ohioans.

A. Closure of State Mental Health Facilities

**SECTION 751.30 – SIX MONTH MORATORIUM ON CLOSURE OF STATE
MENTAL HEALTH FACILITIES**

This provision delays the July 1, 2008 planned closure of the Cambridge and Dayton state mental health facilities. The administration recognizes the hardship these closures represent for these communities, but, unfortunately, the projected cost savings for FY2009 is based on the July 1, 2008 closure date. The state will continue working with local communities to explore alternative uses for the facilities. Therefore, this veto is in the public interest.

Item Number 1*

On page 895, delete the boxed text.

On Page 904, delete “751.30,”.

B. Durable Medical Equipment (DME) Rate for Medicaid Reimbursement

SECTION 5111.0210

The proposed language will restrict the ability of the Department of Job and Family Services to set rates in a prudent manner and stands in the way of the department’s ability to efficiently manage the Medicaid program and lower costs.

This provision proposes the use of an invalid rate-setting methodology, using self-reported, unaudited cost report data that could lead to fraud and abuse. Beginning July 1, 2009, the state would be required to use this new, untested methodology to set rates for 52 categories of durable medical equipment, which would lead to millions of dollars in increased Medicaid spending. The fiscal impact of this methodology would increase annually. Therefore, this veto is in the public interest.

Item Number 2

On page 519, delete the boxed text.

On pages 3, 5, and 903, delete “5111.0210,”.

C. Home Health Care Bargaining

SECTION 107.19

The proposed language would essentially rescind Executive Order 2007-23S, which helps professionalize the home care workforce by allowing independent home care providers the opportunity to select an exclusive representative. Additionally, it gives the providers a stronger voice in advocating for quality benefits, compensation, and health and safety issues, similar to their counterparts in the nursing home industry. Increasing the quality of the home care workforce brings more balance to the long-term care system

in Ohio and saves state resources. Additionally, a high-quality workforce has a positive effect on the quality of services that are provided to Ohio's elderly and disabled citizens.

This provision refers to and relies upon a letter presenting the views of various staff members at the Federal Trade Commission and expressly recognizes that those views do not necessarily represent the views of the Commission as a whole or any individual Commissioners. That letter is particularly flawed with respect to its analysis of the applicability of the "state action" doctrine, conveniently ignoring the fact that the State of Ohio is a party to collective bargaining negotiations under the Executive Order. The Executive Order in no way authorizes home health care providers to implement any change in the terms or conditions of their work without the direct involvement and oversight of the State. The Executive Order provides real advantages to the people of Ohio and should continue to be fully implemented. Therefore, this veto is in the public interest.

Item Number 3

On page 17, delete the boxed text.

On pages 3 and 5, delete "107.19,".

On page 901, delete the boxed text.

D. Use of Budget Stabilization Funds

SECTION 515.40 BUDGET STABILIZATION FUND TRANSFERS

This provision reverses several measures proposed by the administration and its agencies to keep the FY2008-FY2009 budget in balance.

On January 31, 2008, I issued Executive Order 2008-01S, "Implementing Expenditure Reductions and Spending Control Strategies Necessary to Maintain a Balanced Budget," in light of anticipated revenues for FY2008 – FY2009 falling short of expectations by between \$733 million and \$1.9 billion. The factors contributing to the budget shortfall include a weakening national economy, increasing oil prices, the housing crisis, and slowing retail sales.

In response to the Executive Order, agencies worked in collaboration with the Office of Budget and Management to craft budget recalibration plans that effectively protect the priorities of the state's biennial operating budget (H.B. 119), maintain core operations of agencies, and meet the administration's responsibility for maintaining a balanced budget.

The economic challenges identified in January have continued. The administration took the necessary action to manage these risks without using resources in the budget stabilization fund because of the potential for more persistent, long-term economic challenges that could negatively impact FY2009, FY2010 and FY2011.

Additionally, the directed use of the budget stabilization fund by the General Assembly is an intrusion in the executive and management prerogatives of the administration. With the potential for more economic challenges in the future, it is premature to draw resources from the budget stabilization fund at this time. Finally, this veto will not affect the ability of the state to protect the health, safety and welfare of the public. Therefore, this veto is in the public interest.

Item Number 4

On page 783, delete the boxed text.

On page 784, delete the boxed text beginning with the words “Department of Agriculture” and ending with the words “expenditure.”.

On page 904, delete “515.40,”.

E. Automated Title Processing Fund/Title Defect Rescission Fund

SECTION 515.60 – CASH TRANSFER FROM AUTOMATED TITLE PROCESSING FUND TO TITLE DEFECT RESCISSION FUND

The Ohio Constitution, Article XII, §5a prohibits the use of motor vehicle licensing fees or taxes for purposes other than those explicitly set forth in the Constitution. This provision, however, would result in moneys being transferred for purposes outside those provided for in the Constitution. Therefore this veto is in the public interest.

Item Number 5

On page 785, delete the boxed text.

On page 904, delete “515.60,”.

F. Funding of Statewide Community Capital Projects and Programs

SECTION 231.10.20 COMMUNITY ASSISTANCE PROJECTS

This proposed \$6.3 million Montgomery County earmark for the Crisis Care Center at Twin Valley Behavioral Health would represent 79 percent of the state’s total \$8 million going to one particular area.

The funds in C58001 will be used by the Ohio Department of Mental Health for various community capital projects and programs, including the development of affordable housing with appropriate supportive services, developing treatment-oriented residential facilities, interdepartmental planning and development of service and facility needs for groups of people with a severe mental disability, developing consumer-oriented,

cooperative community services sites, and developing decentralized outpatient service facilities.

The total amount allocated for these projects for statewide use is \$8 million. Because the need across the state is more than \$8 million, the department must work with local boards who have applied for these funds to prioritize their use.

In particular, the Ohio Department of Mental Health plans to more highly prioritize funds for counties impacted by the closure of two mental health facilities on July 1, 2008 – particularly Montgomery and Guernsey counties. Communication and planning is ongoing with local alcohol, drug and mental health boards to develop well-suited capital project priorities.

This earmark would create an inequitable distribution of funds statewide. Therefore, this veto is in the public interest.

Item Number 6

On page 747, delete the boxed text.

G. Interest Retention for the Drug Law Enforcement Fund

SECTION 5502.68 (A)

This provision allows the Drug Law Enforcement Fund to retain interest it generates.

A long-standing financial management practice of the state is to allocate interest proceeds to the state general revenue fund. Allocating interest proceeds to the general revenue fund provides for the efficient administration of the state's resources and budgetary flexibility. Therefore, this veto is in the public interest.

Item Number 7

On page 540, delete the boxed text.

H. Making Appropriate Use of Excess Department of Education Funds

SECTION 269.30.30

At this time of limited resources, it is important that the administration preserve the ability to transfer any unused and lapsed funds to effectively and efficiently manage Ohio's state budget. This provision will allow for any unused appropriations to be redistributed to nonpublic schools beyond the per student allocation established in House Bill 119. This veto action provides for the efficient administration of state resources and budgetary flexibility while continuing the per child reimbursement commitment from H.B. 119. Therefore, this veto is in the public interest.

Item Number 8

On page 804, delete the boxed text.

On pages 791 and 853, delete the boxed text.

On pages 3 and 904, delete “269.30.30.”.

I. ODOT Business Logo Sign Program

SECTION 4511.101 (B)(2)

Currently, the Department of Transportation contracts with a private vendor to operate the business logo sign program, with the program manager keeping any profits. No money is returned to the state. Facing significant financial challenges, ODOT is taking steps to find innovative ways to capture value created by our system and return it to our citizens through transportation investments. As introduced, House Bill 562 directed that money collected from businesses participating in the program, in excess of direct and indirect costs, would be deposited into a newly-created Motorist Service Sign Fund in the state treasury for use by the Director of ODOT for transportation purposes. Modification of the sign program to generate additional revenue for investment in infrastructure is one of the tools the Department has identified to help the state meet its transportation commitments.

In its current form, the bill eliminates the Motorist Service Sign Fund and reallocates the revenue generated from the business logo sign program for transportation purposes to the Department of Public Safety for operating expenses of the State Highway Patrol. Diverting this new revenue from the transportation infrastructure will have an adverse impact on completing projects.

Further, at the direction of the General Assembly, a State Highway Patrol funding task force is currently studying the funding for the State Highway Patrol and will offer recommendations for “a dedicated and stable long-term funding source” to the Governor and the General Assembly by June 30, 2008. Reallocating transportation revenues to fund another state agency is not an appropriate use of these funds and is premature, as the task force has not completed its work. Therefore, this veto is in the public interest.

Item Number 9

On page 456, delete the boxed text.

J. “Wine at Home” Parties

SECTION 4303.25 – “Wine at Home” Parties

Until the recent passage of Senate Bill 150, certain vendors were interpreting Ohio statute to allow them to solicit sales of wine for later direct shipment by mail at parties in private homes without a permit. The aim of the recent statutory change was to clarify that these activities are not lawful in Ohio. S.B. 150 received extensive debate and overwhelming legislative support, and the provision added to H.B. 562 would reverse these agreed-upon changes.

Because there are no liquor permits issued where the “wine at home” parties take place, there is no ability for regulation or oversight of the activities by the Ohio Division of Liquor Control, the Department of Public Safety, Investigative Unit, local law enforcement and the Department of Taxation. The Administration has expressed its willingness to work with affected companies and identify the necessary permits and changes to business practices that would allow them to continue to operate in Ohio. However, the state must preserve its ability to oversee and regulate these sales. Therefore, this veto is in the public interest.

Item Number 10

On page 446, delete the boxed text.

On pages 2, 733 and 902, delete the boxed text.

On page 5, delete “4303.25,”.

K. Ohio School Facilities Commission Segmentation Proposal

SECTION 3318.01

SECTION 3318.03

SECTION 3318.032

SECTION 3318.034

SECTION 3318.04

This language would enable a school district to implement a classroom facilities project in parts or “segments,” which is currently allowed for large urban districts served through the Ohio School Facilities Commission’s Accelerated Urban Initiative. Unlike the Accelerated Urban Initiative, this provision defines each segment as a separate project and, consequently, requires the OSFC to recalculate a district’s local share each time it implements a new segment.

Recalculating a district’s local share means that a district can receive a reduced local share if its wealth, as captured by the OSFC’s equity list, declines in relation to other school districts throughout the state. Implementing this language would result in inequitable treatment between Ohio’s urban districts and the districts that use this segmenting language.

For this reason, this veto is in the public interest.

Item Number 11

On pages 272, 274, 276, 277, 279 and 280, delete the boxed text.

L. Expansion of Exceptional Needs Program (ENP)

SECTION 3318.37

This provision expands the Exceptional Needs Program from 75 percent of school districts to include 100 percent of Ohio's school districts. The ENP program helps school districts address health and safety needs associated with a specific building instead of addressing the entire classroom facilities needs of the district under the Classroom Facilities Assistance Program (CFAP).

This expansion has the potential to reduce the amount of funding available through the normal CFAP process. Additionally, this expansion is unnecessary because wealthier districts can already participate in the Expedited Local Partnership Program and will be reimbursed for the state share of these expenses when their district comes up on the equity list. Therefore, this veto is in the public interest.

Item Number 12

On pages 282 and 283, delete the boxed text.

On page 284, delete the boxed text beginning with the words, "the increased" and ending with the words "kindergarten through twelve."

On pages 1, 4, 732 and 903, delete "3318.37,".

M. Expanding Definition of Trade Secrets

SECTION 1333.61

SECTION 3318.90

This language would expand the definition of a trade secret in the Ohio Revised Code to include payroll records. The language would also place new restrictions on the School Facilities Commission in dealing with payroll records for contractors or sub-contractors that bid on state-assisted school facilities projects. The Commission would face more stringent restrictions in handling payroll records than any other agency that uses contractors to conduct public works projects for the state. This language would also allow contractors, subcontractors, and employees to seek damages from the Commission if it does not abide by these new restrictions.

The administration strongly believes that no state agency should release personally identifiable information and will continue its efforts to ensure that this information remains safe. Nothing in the proposed language would inhibit the School Facilities Commission or any state agency from the continued practice of withholding or redacting

protected personal and/or financial information, including Social Security numbers. Therefore, this veto is in the public interest.

Item Number 13

On pages 115 and 116, delete the boxed text.

On pages 1, 4, 732 and 903, delete "1333.61,".

On page 284, delete the boxed text beginning with the words "Sec. 3318.90" and ending with "Revised Code.".

On pages 3,5 and 903, delete "3318.90,".

I signed this veto message on June 24, 2008 in Columbus, Ohio and transmitted it, today, with copies of the disapproved text, to the Clerk of the Ohio House of Representatives.

In order to signal my approval of the text not disapproved by me, I have, today, also filed the enrolled and engrossed original copies of the bill with the Secretary of State.

Ted Strickland, Governor

I acknowledge receipt of an original copy of this veto message, along with a copy of the disapproved text in the bill on June 24, 2008.

Name of Officer

Title of Officer

Date and Time of Receipt