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Ohio Report

Special Report

125th General Assembly

Thursday, June 26, 2003

Please note: Following are line item vetoes exercised by Governor Bob Taft to the biennial budget bill (HB 95) for Fiscal Years 2004-2005. The vetoes, issued Thursday, June 26, are subject to override by the Ohio General Assembly.

STATEMENT OF THE REASONS FOR THE VETO OF ITEMS IN AMENDED SUBSTITUTE HOUSE BILL 95

JUNE 26, 2003

Pursuant to Article II, Section 16 of the Ohio Constitution, which states that the Governor may disapprove any items in a bill making an appropriation of money, I hereby disapprove the following items contained in Amended Sub. House Bill 95 and set forth below the reasons for so doing. The text I am disapproving is identified in this message by reference to the corresponding page and boxed text of the bill.

ITEM NUMBER ONE

On page 1442, delete the boxed text.

MARCS Transfer

This item would transfer operational responsibility for the multi-agency radio communication system (MARCS) from the Department of Administrative Services (DAS) to the Department of Public Safety (DPS). DAS is responsible for the development, administration, and operations of the entire MARCS program and the legislature appropriated funds to DAS for those purposes. Granting operational control to a different department would cause significant inefficiency and delay in the final stages of implementing this important program. Therefore, a veto of this item is necessary to ensure cost-effective service to the users and, ultimately, the public.

ITEM NUMBER TWO

On page 1, delete the following boxed text, "125.05," "125.06," and "125.07."

On page 4, delete the following boxed text, "5513.01."

On page 9, delete the following boxed text, "125.05," "125.06," and "125.07."

On page 11, delete the following boxed text, "5513.01."

On page 122, delete the boxed text.

On page 123, delete the boxed text.

On page 124, delete the boxed text.

On page 125, delete the boxed text.

On page 1442, delete the boxed text.

On page 1443, delete the boxed text.

On page 1444, delete the boxed text.

On page 1769, delete the following boxed text, "125.05," "125.06," and "125.07."

On page 1771, delete the following boxed text, "5513.01."

Alternative Purchasing Mechanism Description

This item would allow state agencies to purchase services that cost more than \$50,000 or supplies that cost more than \$25,000 directly from the lowest of at least three solicited bidders rather than from or through DAS. The DAS process is designed to fully leverage the overall buying power of the State of Ohio. Although well intended, this item would undermine that leverage, alter the competitive bidding process, and shrink economies of scale in state purchasing. Therefore, this veto is in the public interest.

ITEM NUMBER THREE

On page 1857, delete the boxed text.
On page 1858, delete the boxed text.

Assessments on State Agencies, Boards, and Commissions

This item would freeze all rates that DAS assesses on all state agencies at June 30, 2003 levels. DAS rates are designed to cover the operating costs of the individual programs for which rates are established and to generate amounts equal to the appropriation levels set forth by the General Assembly. In order for DAS to be able to continue to provide cost-effective services and to fully cover the costs of those services, the department must be able to set, freeze, delay or raise rates at appropriate times. Therefore, this veto is in the public interest.

ITEM NUMBER FOUR

On page 1857, delete the boxed text.

Centralized Fleet Management

This item appropriates specific and exact amounts to be used in each fiscal year for the centralized fleet management program. DAS will comply fully with the provision in Am. Sub. H.B. 95 relative to changes in the fleet administration program, and will expend amounts necessary to achieve that compliance. Vetoing this item gives the department the administrative flexibility that is necessary for cost-effective and efficient administration of this program. Therefore, this veto is in the public interest.

ITEM NUMBER FIVE

On page 1858, delete the boxed text.

Cincinnati State Community College - William F. Bowen Earmark

This item would require the Commission on African American Males to provide a substantial portion (\$50,000) of its annual budget as a grant to the Cincinnati State Community College. The Commission requested this veto because an earmark of this magnitude would place a tremendous strain on the Commission and would put current staff and programs in jeopardy. The project, which appropriately honors William F. Bowen and African American legislators for their outstanding service to the citizens of Ohio, is undoubtedly a worthy and deserving cause, but is more appropriately considered in the context of the capital budget process. Therefore, this veto is in the public interest.

ITEM NUMBER SIX

On page 7, delete the boxed text.
On page 2066, delete the boxed text.
On page 2114, delete the boxed text.
On page 2120, delete the boxed text.

Creation of Belmont Community College

This item appears to be a drafting error. The item would require the Board of Regents to recognize Belmont Technical College as a municipal community college without following statutory procedures. In addition, this item contradicts Section 89.20 of this bill, which is consistent with current law and states that the Board of Regents shall consider a proposal from Belmont Technical College to convert to a community college. A veto of the identified text is necessary to clarify the process by which a proposal from Belmont Technical College to transition to a community college will be considered. Therefore, this veto is in the public interest.

ITEM NUMBER SEVEN

On page 1929, delete the boxed text.

STARS in OhioReads Line Item

This item earmarks \$2.1 million in FY 2004 and \$2.2 million in FY 2005 of OhioReads Grants for the STARS program, which places senior citizens as tutors in schools. The OhioReads Grants line item was already reduced 53 percent from the Executive Budget request. This earmark would further reduce the amount of grants available to schools for the continuation of their OhioReads programs. STARS duplicates OhioReads, at a much higher overhead cost, and benefits only a very small number of schools. OhioReads schools will continue to use senior citizens as tutors, and schools may offer a stipend to them, as currently offered by STARS. STARS schools will have the opportunity to receive an OhioReads grant. Therefore, this veto is in the public interest.

ITEM NUMBER EIGHT

On page 2063, delete the boxed text.

On page 2064, delete the boxed text.

Limitation on Uses of the Sales and Services Line Item

This item would limit the authority of the Board of Regents to charge and accept payment for the provision of certain goods and services requested by the public at large. The result of this change would be to eliminate revenue that the Board has long used to help offset the costs of providing these services. Therefore, this veto is in the public interest.

ITEM NUMBER NINE

On page 2061, delete the boxed text.

On page 2062, delete the boxed text.

Medina Learning Center

This item would require a \$100,000 earmark for the Medina Learning Center. This item is an inadvertent duplication of another \$100,000 earmark for the Medina County University Center. A veto is necessary to correct this drafting error. Therefore, this veto is in the public interest.

ITEM NUMBER TEN

On page 5, delete the following boxed text, "107.31," "107.32," and "107.33."

On page 12, delete the following boxed text, "107.31," "107.32," and "107.33."

On page 33, delete the boxed text.

On page 34, delete the boxed text.

On page 35, delete the boxed text.

On page 36, delete the boxed text.

On page 2146, delete the boxed text.

Facility Closure Commission

This item would establish a Facility Closure Commission. This item would infringe on the Executive Branch's ability to manage programs within existing resources and to plan and implement decisions in a timely manner. Therefore, this veto is in the public interest.

ITEM NUMBER ELEVEN

On page 2144, delete the boxed text.

Study of Pre-S.B. 2 Offenders

This item would duplicate efforts already underway at the Department of Rehabilitation and Correction (DRC) to review the sentences of certain inmates. DRC's current review is the result of, and consistent with, the mandate of the Ohio Supreme Court in *Layne v. Ohio Adult Parole Authority*, 97 Ohio St. 3d 456 (2002). Therefore, this veto is in the public interest.

ITEM NUMBER TWELVE

On page 517, delete the boxed text.

On page 519, delete the boxed text.

On page 532, delete the boxed text.

On page 536, delete the boxed text.

On page 541, delete the boxed text.

Enforcement Division Forfeiture Fund

This item would require Controlling Board approval on any deposit of moneys into the forfeiture fund of the Department of Taxation and would specify that moneys not approved by the Controlling Board for deposit into the fund be deposited into the Peace Officer Training Commission Fund instead. Since the department must obtain Controlling Board approval to spend money from the fund, it is unnecessary for the Controlling Board to also approve deposits into the fund. In addition, it is inappropriate for proceeds from a Taxation criminal investigation and prosecution to be given to another agency that had no involvement in the investigation and prosecution. Therefore, this veto is in the public interest.

ITEM NUMBER THIRTEEN

On page 1320, delete the boxed text.

Disqualification of Unemployment Compensation Determination

This item would provide that if a Medicaid home or community waiver service provider believes that an employee has attempted to deceive the provider about his or her past criminal record, the provider may discharge the employee with an automatic finding of "just cause" for termination and, without the opportunity to appeal that decision, thereby deny that employee unemployment compensation benefits. Accordingly, this item would violate federal due process requirements and would subject the State to possible sanctions from the U.S. Department of Labor. Therefore, this veto is in the public interest.

ITEM NUMBER FOURTEEN

On page 570, delete the boxed text.

Monitoring Funds Paid to Head Start Providers

This item would require county departments of job and family services to monitor the funds paid to Head Start providers. County departments cannot perform such a function effectively because they are not involved with the payments to the Head Start agencies. Instead, this function will be performed by the Department of Education; this function by county departments would be duplicative. Therefore, this veto is in the public interest.

ITEM NUMBER FIFTEEN

On page 1934, delete the boxed text.
On page 1982, delete the boxed text.

Jobs for Ohio Graduates Earmark

This item would require the Ohio Department of Job and Family Services (ODJFS) to reserve \$3.5 million each year for the Jobs for Ohio Graduates program and to enter into an interagency agreement for this program. ODJFS and the Department of Education already have discretion under current law to implement this program through an interagency agreement, and the Administration intends to provide funding support for this program. The item would remove that discretion, and would unnecessarily restrict the State's ability to address workforce development program needs using federal Workforce Investment Act funds. Therefore, this veto is in the public interest.

ITEM NUMBER SIXTEEN

On page 1153, delete the boxed text.
On page 1154, delete the boxed text.

Maximization of Federal Revenue

This item would require ODJFS to maximize its receipt of federal revenue. This item would eliminate the flexibility of ODJFS to review state programs as a whole and to decide the cost-effectiveness of a particular program as it relates to other programs and their generation of federal funding. Instead, this item could force ODJFS to divert state funds from other needed areas in order to meet the maximization mandate. Therefore, this veto is in the public interest.

ITEM NUMBER SEVENTEEN

On page 4, delete the following boxed text, "5111.082."
On page 5, delete the following boxed text, "9.75."
On page 6, delete the following boxed text, "5111.083."
On page 11, delete the following boxed text, "5111.082."
On page 12, delete the following boxed text, "9.75" and "5111.083."
On page 15, delete the boxed text.
On page 16, delete the boxed text.
On page 1271, delete the boxed text.
On page 1272, delete the boxed text.
On page 1273, delete the boxed text.
On page 1771, delete the following boxed text, "5111.082."
On page 2136, delete the boxed text.
On page 2137, delete the boxed text.

Prescription Drugs

This item would limit current ODJFS authority to utilize "prior authorization," a critical tool to manage Medicaid costs and quality of care, for certain classes of drugs related to mental health and HIV. It also would require ODJFS to create an advisory council to review and approve a potential contractor for Medicaid pharmacy benefit management—a requirement that would be burdensome and duplicative of existing public and legislative oversight of the Executive's authority to enter into contracts. These requirements would limit the authority of the department to contain Medicaid expenditures for prescription drugs, which represent the fastest growing expenses in Ohio's Medicaid program.

In addition, this item would require ODJFS to initiate a program aimed at utilizing retail pharmacists to manage the utilization of Medicaid prescription medications. ODJFS' public policy goal is to manage the costs and utilization of prescription medication, but this item cannot be implemented as written.

This item also would require state agencies to use a competitive bid process and to seek Controlling Board approval in order to enter into any multi-state prescription drug purchasing program. Although intended for application with respect to the State's Medicaid program, this item would unintentionally limit the State's ability to join any existing multi-state contracting programs, including, for example, those entered into for state employee health program purposes. Therefore, this veto is in the public interest.

ITEM NUMBER EIGHTEEN

On page 6, delete the following boxed text, "5111.161."
On page 12, delete the following boxed text, "5111.161."
On page 1285, delete the boxed text.
On page 1286, delete the boxed text.
On page 1287, delete the boxed text.
On page 1845, delete the boxed text.
On page 2155, delete the following boxed text, "5111.161."

Medicaid Care Management

This item would restrict the ability of ODJFS to implement strategies to manage the Medicaid funded health care and cost of elderly and disabled Medicaid consumers. The item would inappropriately limit the Ohio counties in which care management can be implemented, the ages of consumers who can participate, the timeframes, and the contracting mechanisms available. In addition, the item would require the department to develop a proscribed pilot program to serve chronically ill children and would place unnecessary restrictions on the program's design and providers. The item would eliminate the flexibility necessary to design the most effective care management programs. Therefore, this veto is in the public interest.

ITEM NUMBER NINETEEN

On page 4, delete the following boxed text, "5111.92."
On page 6, delete the following boxed text, "5126.058."
On page 11, delete the following boxed text, "5111.92."
On page 12, delete the following boxed text, "5126.058."
On page 1267, delete the boxed text.
On page 1316, delete the boxed text.
On page 1317, delete the boxed text.
On page 1388, delete the boxed text.
On page 1389, delete the boxed text.
On page 1771, delete the following boxed text, "5111.92."

Medicaid Administrative Claims

This item would require ODJFS to submit Medicaid claims to the federal government for administrative activities undertaken by county boards of mental retardation and developmental disabilities, mental health,

and alcohol and drug addiction. It is the Administration's intent to develop and implement Medicaid Administrative Claiming protocols for these systems. The item also is duplicative of existing mechanisms available to claim administrative reimbursement for authorized activities. The item would be contrary to established state policy and would conflict with federal law. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY

On page 1262, delete the boxed text.

Health Check Parental Notice

This item would require ODJFS to provide oral and written communication to parents of children enrolled in the Health Check program regarding the components of each examination and obtain parental consent prior to performing the health check examination. These requirements would duplicate existing parental notice. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-ONE

On page 1984, delete the boxed text.

On page 1985, delete the boxed text.

Statute Requiring Medicaid Coverage of Dental, Podiatry, and Vision Services for Adults

This item would require ODJFS to maintain the current amount, scope, and duration of Ohio's Medicaid dental, vision, and podiatry health care services. Since the General Assembly authorized adequate funding for this purpose, I have instructed ODJFS to continue to offer these services. However, this item would unnecessarily and inappropriately restrict the ability of ODJFS to manage these benefits efficiently and effectively on an ongoing basis. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-TWO

On page 1274, delete the boxed text.

On page 1275, delete the boxed text.

On page 1276, delete the boxed text.

On page 1277, delete the boxed text.

On page 1278, delete the boxed text.

On page 1279, delete the boxed text.

On page 1280, delete the boxed text.

On page 1281, delete the boxed text.

On page 1282, delete the boxed text.

On page 1283, delete the boxed text.

On page 1284, delete the boxed text.

On page 1285, delete the boxed text.

Medicaid Trusts

This item would codify existing Ohio Administrative Code sections regarding Medicaid trusts. This item would be an unnecessary duplication of existing restrictions and requirements. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-THREE

On page 1988, delete the boxed text.

Disability Assistance

This item would require ODJFS to use disability financial assistance to pay for services for residents of residential treatment centers certified by the Ohio Department of Alcohol and Drug Addiction Services (ODADAS). This item is in conflict with the purpose of disability financial assistance, which is to provide cash benefits, not services, to eligible recipients. The veto eliminates any confusion about the purpose of disability cash assistance while retaining the earmark of cash benefits for residents of ODADAS treatment centers. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-FOUR

On page 4, delete the following boxed text, "5111.251."
On page 6, delete the following boxed text, "5123.1910."
On page 11, delete the following boxed text, "5111.251."
On page 12, delete the following boxed text, "5123.1910."
On page 1299, delete the boxed text.
On page 1300, delete the boxed text.
On page 1301, delete the boxed text.
On page 1302, delete the boxed text.
On page 1303, delete the boxed text.
On page 1304, delete the boxed text.
On page 1305, delete the boxed text.
On page 1306, delete the boxed text.
On page 1307, delete the boxed text.
On page 1308, delete the boxed text.
On page 1309, delete the boxed text.
On page 1356, delete the boxed text.
On page 1361, delete the boxed text.
On page 1365, delete the boxed text.
On page 1369, delete the boxed text.
On page 1370, delete the boxed text.
On page 1771, delete the following boxed text, "5111.251."
On page 1986, delete the boxed text.
On page 2155, delete the following boxed text, "5111.251."
On page 2155, delete the following boxed text, "5123.1910."

Intermediate Care Facilities

This item would create a cap on the number of Medicaid beds that can be developed within Intermediate Care Facilities for people with mental retardation and developmental disabilities. This item would be contrary to federal law governing the Medicaid program, which requires a free choice among qualified providers.

This item would allow new Intermediate Care Facility/Mental Retardation beds to be developed despite the current statutory moratorium on new licensed beds. This item would create a substantial unbudgeted fiscal liability. It also would be inconsistent with the stated goal of the Administration, and the desire of consumers, to create more community alternatives to institutional services. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-FIVE

On page 2, delete the following boxed text, "2151.352."
On page 10, delete the following boxed text, "2151.352."
On page 386, delete the boxed text.
On page 387, delete the boxed text.
On page 2025, delete the boxed text.

Appointed Counsel

This item would eliminate the statutory right to appointed counsel for indigent parties in juvenile court child custody cases. The change would have a serious and detrimental impact on Ohio's legal aid programs and, ultimately, on low-income parents and children.

This item also would freeze reimbursement rates for appointed counsel for indigent defendants at the maximum rates in effect on March 1, 2003. There are several factors that can change within a year that could result in the necessity to raise or lower reimbursement rates. The actual reimbursement rates for this purpose have in the past been governed, and should continue to be governed, by the total level of appropriations provided for in the bill. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-SIX

On page 5, delete the following boxed text, "3506.20."

On page 12, delete the following boxed text, "3506.20."

On page 780, delete the boxed text.

Implementation of the Help America Vote Act

This item would limit the Secretary of State's discretion to implement the Help America Vote Act. Delayed compliance with the Act would interfere unnecessarily with the timely upgrades that many county voting systems need. Understanding that even the best efforts of some counties will be insufficient to meet the federal deadlines, Secretary Blackwell has stated publicly that he will seek a waiver of those deadlines, as appropriate. In addition, the purchase of voting equipment will be subject to Controlling Board approval. Therefore, at Secretary Blackwell's request, I am vetoing this item.

ITEM NUMBER TWENTY-SEVEN

On page 1885, delete the boxed text.

Court of Claims Expenditures

This item would restrict the Court of Claims expenditures for FY 2005. The result of the item would be a substantial reduction of the Court of Claims appropriation for FY 2005. At the request of Chief Justice Moyer, I am vetoing this item.

ITEM NUMBER TWENTY-EIGHT

On page 1, delete the following boxed text, "121.41"

On page 9, delete the following boxed text, "121.41"

On page 60, delete the boxed text.

On page 61, delete the boxed text.

On page 62, delete the boxed text.

On page 1769, delete the following boxed text, "121.41"

Inspector General

This item would expand the authority of the Inspector General. The item would allow the Inspector General to investigate the Ohio Historical Society, the five Ohio retirement systems, and the Ohio retirement study council. The item also would allow the Inspector General to accept from private parties, state agencies, or other entities reimbursement of the costs of investigations that result in judicial or administrative proceedings against the parties, agencies, or entities.

The Historical Society is a private, nonprofit organization that funds its programs, in part, with state funds, just as many other nonprofit organizations do. The society is subject to oversight by a board of trustees, to auditing by the Auditor of State, to state ethics laws as enforced by the Ohio Ethics Commission, and, as a

charitable organization, to enforcement by the federal Internal Revenue Service and the Ohio Attorney General.

The retirement systems and the retirement council are subject to state ethics laws and the trustees that serve these entities owe a legally enforceable fiduciary duty to the beneficiaries of each system. State law already has established entities to oversee the policies and operations of the retirement systems. The Ohio Retirement Study Council, a majority of whom are legislators, has oversight authority over the retirement funds. The Auditor of State and the Attorney General serve as members of the boards of the pension funds and the Auditor of State had audit authority for the systems. In addition, the Securities and Exchange Commission regulates the retirement systems' investment activities.

The Administration is committed to maintaining the highest ethical standards for state government. Investigation of the named entities by the Inspector General, however, is unnecessary. A veto of this entire item is necessary to avoid the potential conflicts and appearances of impropriety that may come from allowing the Inspector General to accept reimbursement from outside parties. I would, however, work with the General Assembly to provide additional, reasonable oversight and enforcement tools to the Ohio Retirement Study Council and I would welcome such measures. Therefore, this veto is in the public interest.

ITEM NUMBER TWENTY-NINE

On page 6, delete the following boxed text, "4511.198."

On page 12, delete the following boxed text, "4511.198."

On page 1077, delete the boxed text.

On page 1078, delete the boxed text.

Blood Alcohol Limit

This item is a drafting error. The Conference Committee inadvertently left a provision in the bill that would restore Ohio's .10 percent prohibited blood alcohol limit for the operation of motor vehicles, if the federal law requiring states to enact a .08 percent blood alcohol limit would be declared invalid or repealed. Vetoing this item reflects the intent of the Conference Committee. Therefore, this veto is in the public interest.

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