

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

<b>OHIO A. PHILIP RANDOLPH INSTITUTE, <i>et al.</i></b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>Case No. 2:16-cv-00303</b>
	:	
<b>v.</b>	:	<b>JUDGE GEORGE C. SMITH</b>
	:	
<b>SECRETARY OF STATE, JON HUSTED</b>	:	<b>Magistrate Judge Deavers</b>
	:	
<b>Defendant.</b>	:	

---

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS' REQUEST FOR A  
TEMPORARY RESTRAINING ORDER**

---

MICHAEL DEWINE  
Ohio Attorney General

STEVEN T. VOIGT (0092879)  
Principal Assistant Attorney General  
JORDAN S. BERMAN (0093075)  
Assistant Attorney General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (614) 466-2872 | Fax: (614) 728-7592  
steven.voigt@ohioattorneygeneral.gov  
jordan.berman@ohioattorneygeneral.gov

*Counsel for Defendant  
Secretary of State Jon Husted*

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	v
INTRODUCTION .....	1
I. PROCEDURAL HISTORY .....	3
II. LEGAL ARGUMENT .....	4
<b>A. Plaintiffs are not likely to succeed in proving entitlement to the extraordinary, burdensome remedy they demand, rather than the reasonable relief that the Secretary has voluntarily proposed.....</b>	<b>5</b>
<b>1. The only legally compelled remedy is an end to the Supplemental Process.....</b>	<b>5</b>
<p>The only issue to be decided is the proper remedy following the Sixth Circuit’s decision. Any remedy must be narrowly tailored and should defer to the state officials who administer the election process. In addition, Plaintiffs cannot compel the State to implement past-looking remedies pursuant to the Eleventh Amendment, which bars claims against States for retrospective relief. The only legally compelled remedy is to end the Supplemental Process, which the Secretary has already done.</p>	
<b>2. The Secretary has gone beyond what the law compels and has proposed a reasonable and workable remedy that builds on the Secretary’s prior efforts to maximize voter registration and participation .....</b>	<b>6</b>
<p>The proposed Directive the Secretary filed with the Court sets forth a process to allow individuals removed from the registration roll through the Supplemental Process in 2015 to vote, if certain qualifications are met. This remedy goes further than required, and is reasonable and workable.</p>	
<b>3. Ohio, a national leader in voting, has taken other steps to encourage registration.....</b>	<b>9</b>
<p>Ohio provides ample registration and voting opportunities. Any individuals removed through the Supplemental Process who remain eligible but unregistered likely were contracted through Ohio’s efforts to educate unregistered voters about their status and encourage them to register.</p>	

**4. Plaintiffs' proposed remedy is unprecedented and unworkable .....10**

**a. Mailing provisional ballots is contrary to Ohio law, burdensome, and would require unprecedented, significant election law changes .....11**

For the first time in any pleading, Plaintiffs propose provisional voting by mail, something that is not provided for in Ohio law. This would be a fundamental alteration to Ohio's voting procedures and poses substantial logistical and administrative hurdles because it is something boards of elections have never done, except in only a limited, rare circumstance.

**b. Expanding the Secretary's Directive's provisional ballot process to the voter maintenance that occurred in 2011 and 2013 would be burdensome and subject to reliability and uniformity issues .....15**

Compelling reasons support limiting any relief to those removed pursuant to the 2015 Supplemental Process as proposed by the Secretary. Plaintiffs' proposal to expand this process to the 2013 and 2011 Supplemental Processes would be burdensome and result in questions about the reliability of the process.

**c. Including a process to count provisional ballots of individuals who have relocated is beyond the scope of relief Plaintiffs requested and would create administrative burdens .....17**

Contrary to their representations to this Court and the Sixth Circuit, Plaintiffs now propose that boards of elections count not only those individuals at the same address as their last registration, but also those who have moved within the county. Plaintiffs' proposal would create unprecedented additional burdens for the boards.

**d. Plaintiffs' demand for television and radio advertisements before the November election should also be denied .....19**

Complying with Plaintiffs' demand for television and radio advertisements before the November election is financially and logistically unfeasible this close to the Election Day.

**B. The Balance of the Harms and the Public Interest Favor the Secretary’s Directive .....20**

Plaintiffs cannot show irreparable harm because they waited over two decades from the implementation of the Supplemental Process to file their lawsuit. And despite compelling reasons and legal authority supporting prospective-only relief, the Secretary has proposed a remedy that undermines any concern of irreparable harm. In contrast, election officials would be subject to ongoing irreparable harm based on the substantial burdens of Plaintiffs’ proposal. Ohio also has a strong interest in establishing voting procedures that it knows can be implemented in a practical and consistent manner. Finally, the public interest is harmed by the potential chaos of Plaintiffs’ plan and substantial last-minute changes to election laws.

**C. Plaintiffs’ Effort to Introduce Settlement Discussions Should be Rejected ...24**

The Court should not consider any concepts and proposals discussed during the parties’ settlement negotiations. It is wholly improper for Plaintiffs to infer the content of those discussions in a public filing.

**III. CONCLUSION .....25**

**CERTIFICATE OF SERVICE .....26**



## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Bounds v. Smith</i> , 430 U.S. 817 (1977).....	5
<i>Bullock v. Carter</i> , 405 U.S. 134 (1972).....	23
<i>Cnty. Mental Health v. Mental Health &amp; Recovery</i> , 395 F. Supp. 2d 644 (S.D. Ohio 2004) .....	6
<i>Colon-Marrero v. Conty-Perez</i> , 703 F.3d 134 (1st Cir. 2012).....	10
<i>Crawford v. Marion Cnty. Election Bd.</i> , 553 U.S. 181 (2008).....	13, 14, 18, 23
<i>Deuel v. Dalton</i> , No. 3:11-cv-466, 2012 WL 1155208 (M.D. Tenn. Apr. 4, 2012) .....	6
<i>Dudum v. Arntz</i> , 640 F.3d 1098 (9th Cir. 2011) .....	23
<i>Edelman v. Jordan</i> , 415 U.S. 651 (1974).....	6
<i>Eid v. Saint-Gobain Abrasives, Inc.</i> , 377 F. App'x 438 (6th Cir. 2010) .....	24
<i>Eu v. San Francisco Cnty. Democratic Cent. Comm.</i> , 489 U.S. 214 (1989).....	23
<i>Forry, Inc. v. Neundorfer, Inc.</i> , 837 F.2d 259 (6th Cir. 1988) .....	20
<i>Friendship Materials, Inc. v. Mich. Brick, Inc.</i> , 679 F.2d 100 (6th Cir. 1982) .....	20
<i>Griffin v. Roupas</i> , 385 F.3d 1128 (7th Cir. 2004) .....	23
<i>Jolivette v. Husted</i> , 694 F.3d 760 (6th Cir. 2012) .....	5

<i>Leary v. Daeschner</i> , 228 F.3d 729 (6th Cir. 2000) .....	4
<i>Lewis v. Casey</i> , 518 U.S. 343 (1996).....	5
<i>Maryland v. King</i> , 133 S. Ct. 1 (2012).....	21, 22
<i>Ohio Democratic Party v. Husted</i> , No. 16-3561, slip op. (6th Cir. Aug. 23, 2016).....	5, 9
<i>Overstreet v. Lexington-Fayette Urban Cnty. Gov’t</i> , 305 F.3d 566 (6th Cir. 2002) .....	4
<i>Pierre v. Univ. of Dayton</i> , 143 F. Supp. 3d 703 (S.D. Ohio 2015) .....	20, 21
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006).....	23
<i>Ramsden v. Husted</i> , Case No. 4:16-cv-641 (N.D. Ohio Mar. 17, 2016) .....	9
<i>Respect Maine PAC v. McKee</i> , 622 F.3d 13 (1st Cir. 2010).....	21, 23
<i>S&amp;M Brands, Inc. v. Cooper</i> , 527 F.3d 500 (6th Cir. 2008) .....	6
<i>Serv. Emps. Int’l Union Local 1 v. Husted</i> , 698 F.3d 341 (6th Cir. 2012) .....	23
<i>Timmons v. Twin Cities Area New Party</i> , 520 U.S. 351 (1997).....	23
<i>Winter v. NRDC, Inc.</i> , 555 U.S. 7 (2008).....	4
<b>Statutes</b>	
National Voter Registration Act .....	3
Ohio Rev. Code § 3503.10.....	10
Ohio Rev. Code §3503.16(G) .....	13, 22
Ohio Rev. Code § 3505.18 – 3505.183.....	12

**Other Authorities**

Eleventh Amendment.....6

## INTRODUCTION

Election Day in Ohio is 22 days away and early voting has already begun. On October 13, 2016, the Secretary proposed a reasonable, workable Directive that comports fully with the Sixth Circuit's recent decision, and indeed, exceeds what the law requires. The Secretary's Directive would allow individuals removed from the registration roll in 2015 through the Supplemental Process who are otherwise eligible to vote to cast a provisional ballot that will count.

Instead of responding to the Secretary's proposed Directive, Plaintiffs filed a motion for a temporary restraining order demanding large-scale changes to Ohio's election system.

Plaintiffs contend that their proposal is "modestly" different than the Secretary's proposed Directive. A simple read of Plaintiffs' complex proposal proves otherwise. Plaintiffs' proposal would overhaul numerous aspects of Ohio's election process. It would create an entirely new and unprecedented mode of voting—*provisional ballots by mail*. Implementing this process would require Ohio to develop new forms, new instructions, and new procedures. The Secretary's Office would have to teach 88 different county boards how to implement these new forms, instructions, and procedures. And the Secretary would need to develop new checks to ensure the integrity of the process. All as early voting for the presidential general election is already underway.

The provisional-ballot-by-mail proposal is not the only problematic component of Plaintiffs' proposal. Some of the proposals put forward by Plaintiffs, such as buying radio and television advertisements, are simply impossible to implement before the November election. Others, like counting provisional ballots for names removed from the registration roll prior to 2015, would be impracticable based on document retention schedules and for other reasons.

The extensive modifications to Ohio's election system that Plaintiffs seek are unworkable, especially this close to the election. To be blunt, the remedy sought by Plaintiffs could result in chaos. Adding complexity and additional steps to any election system increases burden. At some point, overlaying one new burden after the next, particularly so close to a busy election, reaches the level where changes will result in errors or are otherwise impossible to implement, at least in a reliable manner.

Plaintiffs fall far short of justifying the extraordinary remedy they seek. Contrary to Plaintiffs' assertions, neither the NVRA nor the Sixth Circuit's decision in this case licenses Plaintiffs to rewrite Ohio's voting system. To the contrary, the Sixth Circuit's ruling, on which Plaintiffs hinge their claim to relief, requires merely that the Secretary of State end the Supplemental Process challenged in this case. The Secretary has already done so.<sup>1</sup> Plaintiffs are entitled to nothing more.

Beyond the weak merits of Plaintiffs' claims, the remaining equitable factors similarly weigh against Plaintiffs' request for an emergency injunction. Importantly, Plaintiffs challenged a process that has been in place in Ohio for 22 years, since 1994, through the terms of both Republican and Democrat Secretaries of State. Plaintiffs' delay challenging this process weighs heavily against overhauling Ohio's election system, just weeks before a major election.

As a final point, it is necessary to clarify that Plaintiffs' insinuation throughout their Motion that the Secretary was responsible for a breakdown in settlement negotiations is false. On page 5 and elsewhere in Plaintiffs' Motion, Plaintiffs wrongly state that the Secretary was "unwilling" to enter into a settlement agreement. Not only are these characterizations untrue,

---

<sup>1</sup> The Secretary reserves the right to file a petition for review with the Supreme Court of the United States and to reinstate the Supplemental Process in the event the Supreme Court reverses the Sixth Circuit.

providing statements in a public filing related to confidential settlement discussions violates well-established law. The Court should disregard Plaintiffs' accusations.

Plaintiffs fail to justify the relief they seek, and the Secretary asks this Court to deny Plaintiffs' request for a temporary restraining order.

## **I. PROCEDURAL HISTORY**

Plaintiffs Ohio A. Philip Randolph Institute and the Northeast Ohio Coalition for the Homeless sued the Secretary of State on April 6, 2016, and later amended their complaint in May to add Plaintiff Larry Harmon (collectively "Plaintiffs"). Compl., doc. 1; Am. Compl., doc. 37. The amended complaint contains two counts: (1) that Ohio's Supplemental Process cancels registrations in a way barred by the National Voter Registration Act, and (2) that Ohio's confirmation notices do not contain information required by the Act. Doc. 37 at 15-17. This Court rejected both claims on the merits. Order, doc. 66. In particular, this Court concluded that "the unambiguous text" of the Act "specifically permits the Ohio Supplemental Process." *Id.* at 17.

Plaintiffs appealed to the Sixth Circuit, asking the Court to vacate the judgment and require the Secretary of State to either reinstate all voters removed through the Supplemental Process or "to count all provisional ballots cast by eligible voters whose registrations have been cancelled by operation of the Supplemental Process and who continue to reside at the same address." Sixth Cir. No. 16-3746, doc. 24, at 54. On September 23, 2016, the Sixth Circuit held that "Ohio's Supplemental Process violates Section 8, subsection (b)(2) of the NVRA." Sixth Cir. No. 16-3746, doc. 39-2, at 16. The Sixth Circuit did not prescribe a specific remedy but reversed the judgment and remanded to this Court "for further proceedings consistent with this opinion." *Id.* at 21.

On October 13, 2016, the Secretary filed a motion with this Court seeking approval to implement a remedy that would allow individuals removed from the registration roll through the Supplemental Process in 2015 to vote, assuming certain qualifications are met. Def's Mtn., doc. 72. Late in the evening on October 13, Plaintiffs filed a motion for a temporary restraining order and an order to show cause why a preliminary injunction should not issue. Pl's Mtn., doc. 74. Plaintiffs seek an order requiring the Secretary, for the November 2016 election, to instruct county boards to count provisional ballots cast by individuals removed from the registration roll pursuant to the Supplemental Process, including individuals who have not engaged in any voter activity since 2005. *Id.* at 10. Plaintiffs also for the first time request extending the relief sought to individuals who have moved within a county or who elect to vote by mail. *Id.* at 10-11. This Court should deny Plaintiffs' motion and implement the remedy set forth in the Secretary's October 13, 2016 motion.

## **II. LEGAL ARGUMENT**

A temporary restraining order is "an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). To obtain injunctive relief, a plaintiff must prove that (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable injury if the order is not granted; (3) the balance of equities tips in favor of the plaintiff; and (4) the public interest will be served by granting the order. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The proof required to obtain a temporary restraining order is "much more stringent than the proof required to survive a summary judgment motion." *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). A plaintiff

must establish a “strong” likelihood of success. *Jolivette v. Husted*, 694 F.3d 760, 765 (6th Cir. 2012) (quotation omitted). Plaintiffs fall far short of satisfying this heavy burden.

**A. Plaintiffs are not likely to succeed in proving entitlement to the extraordinary, burdensome remedy they demand, rather than the reasonable relief that the Secretary has voluntarily proposed.**

**1. The only legally compelled remedy is an end to the Supplemental Process.**

At this stage in the proceedings, the sole issue to be decided is the proper remedy following the Sixth Circuit’s decision. In this regard, the Court does not write on a blank slate. Courts have developed guidelines and limitations that constrain the bounds of any permissible remedy. Two of these principles are particularly relevant in this case. First, any remedy must be narrowly tailored to the precise violation with deference to the state officials who administer the election process. Broad injunctions that go beyond the violation they purport to remedy fail. As recently as August, the Sixth Circuit reversed an injunction of Ohio’s early voting statutes and cautioned against “asking the federal courts to become entangled, as overseers and micromanagers, in the minutiae of state election processes.” *Ohio Democratic Party v. Husted*, No. 16-3561, slip op. at 2 (6th Cir. Aug. 23, 2016). Similarly, the Supreme Court has cautioned against federal courts getting “enmeshed in the minutiae” of state operations without giving “adequate consideration to the views” of state officials. *Lewis v. Casey*, 518 U.S. 343, 362 (1996); *see also Bounds v. Smith*, 430 U.S. 817, 818 (1977) (approving a district court’s decision to request a proposal from the State rather than “dictate precisely what course the State should follow”). In *Lewis*, the Supreme Court held that the district court erred in imposing an “inordinately—indeed, wildly—intrusive” injunction on state prison officials rather than leaving the officials with the primary responsibility for devising a remedy. 518 U.S. at 362; *see also id.*



at 387 (Thomas, J., concurring) (“State prisons should be run by the state officials with the expertise and the primary authority for running such institutions.”).

Second, the Eleventh Amendment bars claims against States for “retroactive” relief. *Edelman v. Jordan*, 415 U.S. 651, 678 (1974); *Cnty. Mental Health v. Mental Health & Recovery*, 395 F. Supp. 2d 644, 651 (S.D. Ohio 2004). The Eleventh Amendment precludes a “declaration that *past* acts” of a state “violated federal law.” *Deuel v. Dalton*, No. 3:11-cv-466, 2012 WL 1155208, \*5 (M.D. Tenn. Apr. 4, 2012). Likewise, the Amendment bars an injunction against a state when there is no allegation of “an ongoing violation of federal law.” *Id.* at \*6; *see also S&M Brands, Inc. v. Cooper*, 527 F.3d 500, 509 (6th Cir. 2008) (barring a claim based on a past decision that involved interpretation of a state statute). Thus, Plaintiffs cannot compel the State to implement past-looking remedies.

Applying these legal principles here, the only remedy that can appropriately be compelled is ending the Supplemental Process that was challenged in this case and determined to violate the NVRA. Critically, Plaintiffs do not cite a single legal authority holding otherwise.

**2. The Secretary has gone beyond what the law compels and has proposed a reasonable and workable remedy that builds on the Secretary’s prior efforts to maximize voter registration and participation.**

The Secretary has gone beyond the purely prospective relief compelled by the law to propose voluntarily a reasonable and workable remedy that protects the integrity of the election process, takes into consideration the burdens on the boards of elections and election officials, and minimizes the risk for confusion. The Secretary set forth this proposal in a directive filed with this Court along with a motion requesting that the Court issue an Order requiring the implementation of the Directive. Doc. 72.

This Directive, which the Secretary has titled the “*APRI* exception,” sets forth a process that allows individuals removed from the registration roll through the Supplemental Process in 2015 to vote, assuming certain qualifications are met. *See* doc. 72, Ex. A. Specifically, the Directive establishes that for purposes of the November 8, 2016 General Election, and all other elections through January 13, 2019, a provisional ballot cast during the in-person absentee voting period or on Election Day by an individual who is not registered to vote in Ohio will be counted if: 1) the individual’s voter registration was cancelled in 2015 pursuant to the Supplemental Process; 2) the individual’s provisional ballot affirmation reflects the same address at which the individual was last registered to vote in Ohio at the time of cancellation; 3) the board does not have information that the individual is deceased, incarcerated on a felony conviction, or adjudicated incompetent by a probate judge; and 4) the individual’s provisional ballot affirmation and ballot otherwise comply with all applicable laws and directives. *Id.*

The Directive is the product of “careful thought and deliberation.” Damschroder Dec. at ¶ 34 (**Ex. A**). Any change to election procedures so near to Election Day and after early voting has started is obviously disfavored and burdens Ohio’s boards and election officials during the busiest time of the year. Nevertheless, after deliberation, the Secretary’s Office determined that the Directive will be manageable. *Id.* at ¶¶ 27, 34. The Secretary was also hopeful that the proposed Directive would put an end to this litigation and the uncertainty and burden caused by more litigation so close to a major election. But unfortunately, this did not happen.

The reasonable process in the Directive would ensure that individuals, such as Plaintiff Larry Harmon, who were cancelled in 2015 after receiving a confirmation card in 2011 because of a lack of voter activity since 2008, will be permitted to cast a provisional ballot, which would count should the qualifications set forth in the Directive be met. Notably, Plaintiffs requested

an identical process in their filings. *See* Pls.’ Motion, doc. 39, at 3 (requesting that the Court “[r]equir[e] Defendant Secretary of State Husted . . . to count all provisional ballots cast in any federal election by voters whose registrations have been cancelled by operation of the Supplemental Process and who continue to reside at the same address”) & Appellant Brief, Sixth Cir. No. 16-3746, doc. 24 at 54 (requesting that the Court “requir[e] the Secretary of State . . . to count all provisional ballots cast by eligible voters whose registrations have been cancelled by operation of the Supplemental Process and who continue to reside at the same address”).

The process set forth in the Directive is also beneficial because it extends beyond the upcoming general election in November 2016 to January 13, 2019 (the last day of the Secretary’s term), thereby maximizing voter participation while minimizing, to the extent possible, further changes to election administration in the coming years. *See* doc. 72, Ex. A. Extending the remedy beyond the November 8, 2016 General Election allows the Court to avoid having to revisit this issue again and prevents needless additional litigation. Such a result promotes judicial efficiency and allows the Secretary and the boards of elections to focus on implementing a consistent and effective process.

Importantly, while compelling reasons and legal authority support a prospective-only remedy that would consist only of replacing the Supplemental Process with a different process going forward, in the interest of resolving this litigation, the Secretary has proposed the equitable and practical remedy in the Directive. The process set forth in the Directive is a reasonable compromise that goes farther than required but also protects the integrity of Ohio’s voting system.

**3. Ohio, a national leader in voting, has taken other steps to encourage registration.**

The Secretary's proposed directive is particularly reasonable in the context of the ample voting and registration opportunities in Ohio. The Sixth Circuit recently observed that "Ohio is a national leader when it comes to early voting opportunities." *Ohio Democratic Party*, slip op. at 2. Likewise, in March of this year, an Ohio district court stated that "Ohio's voter laws provide . . . broad access." *Ramsden v. Husted*, Case No. 4:16-cv-641, doc. 11 at 8 (N.D. Ohio Mar. 17, 2016).

This past summer, Ohio partnered with the Electronic Registration Information Center ("ERIC"). See Damschroder Dec. at ¶ 35. ERIC is a national, non-profit organization with twenty member States, focused on voter registration. *Id.* As a result of this partnership with ERIC, the Secretary was able to identify and reach out to about 1.6 million Ohioans who were not registered to vote. *Id.* The Secretary's Office contacted those individuals and encouraged them to register to vote and to become active and engaged voters. *Id.* If there were any eligible voters who were removed through the Supplemental Process who remain eligible but unregistered, those individuals likely would have been included among those who were contacted as part of this initiative.

ERIC is not the first effort by the Secretary to educate unregistered voters about their registration status and encourage them to register. By way of example, in February 2015, the Secretary established baselines for online voter access to information that all boards are required to implement. Among these requirements, boards are required to provide a mechanism to allow voters to identify the address where they are registered to vote and a link to a voter registration form. See Dir. 2015-02 (**Ex. B**). In addition, the Secretary's office also holds "regional office hours" where liaisons encourage voting, distribute registration forms, and provide information

about voting in Ohio. *See* Husted, Press Release, 9/29/15 (**Ex. C**). In Ohio, voter registration forms are available at, among other places, state agencies, public high schools, vocational schools, public libraries, and the offices of county treasurers. Ohio Rev. Code § 3503.10.

These state efforts must be considered when examining any proposed remedy. The First Circuit decision in *Colon-Marrero* persuasively makes this point. *Colon-Marrero v. Conty-Perez*, 703 F.3d 134, 139 (1st Cir. 2012). There, the court overturned Puerto Rico's list maintenance process that removed voters from the roll after missing *a single* election, a procedure that is much more aggressive than Ohio's Supplemental Process. *Id.* at 136. When considering a remedy, the First Circuit noted that Puerto Rico had published notices urging voters to reactivate their registrations. *Id.* at 139. The court also said that the plaintiffs' requested remedy (unilateral reinstatement by the State) would "disrupt long-standing election procedures," was not prudent in part because there were only 18 days left before election day, and anyone removed from the list had "ample opportunity to reactivate . . . voting status." *Id.*

Ohio—by joining ERIC, implementing online look-up tools, holding regional office hours to encourage registration, and distributing registration forms—has gone much farther than merely publishing notices, as Puerto Rico did. Just as Puerto Rico's efforts to encourage registration were relevant when the *Colon-Marrero* Court denied the automatic reinstatement requested by the plaintiffs there, Ohio's leadership is likewise relevant, and it strongly reinforces that the Secretary's proposed Directive is reasonable.

#### **4. Plaintiffs' proposed remedy is unprecedented and unworkable.**

In contrast to the Secretary's reasonable remedy, Plaintiffs' proposed remedy contravenes both the law and common sense. Their requested relief is not narrowly tailored to the constitutional issue at hand. Plaintiffs request, for the first time in any pleading, not only

requests the ability for in-person provisional voting, but also for provisional voting *by mail*, which is not provided for in Ohio law. Plaintiffs also request that boards of elections count votes by individuals cancelled pursuant to the Supplemental Process even if those individuals have engaged in no voter activity since 2005. This implicates administrative hurdles and raises questions about the reliability of the relevant records. Finally, Plaintiffs request, also for the first time in any pleading, that boards of elections count not only those individuals at the same address as their last voter registration but also those who have moved within the county.

These requests represent a dramatic expansion of Plaintiffs' requested relief and do not provide adequate deference to the state officials left to implement the remedy in the weeks before the presidential election. Accordingly, this Court should deny Plaintiffs' requested relief.

**a. Mailing provisional ballots is contrary to Ohio law, burdensome, and would require unprecedented, significant election law changes.**

Plaintiffs' request to mail provisional ballots to those removed pursuant to the Supplemental Process goes beyond their representations to this Court and the Sixth Circuit and is neither practical nor required by law. Throughout this litigation, Plaintiffs' repeatedly emphasized that they were *not* asking for such wholesale alterations to Ohio's election procedures. Rather, they said they were asking for reinstatement or a change in how provisional ballots are counted:

Additionally, neither reinstatement of all voters whose registrations were unlawfully cancelled nor the counting of provisional ballots cast by such voters would change how the election is conducted on Election Day. . . . The alternative remedy of counting provisional ballots *would only impact the rules by which county boards of election count provisional ballots*, a process which occurs over a period of up to 21 days after the election.

Pl's Opp., doc. 52, at 29-30 (emphasis added). Before the Sixth Circuit, Plaintiffs again requested that their requested relief was "narrowly tailored and easily administered. *It merely*

*requires special handling of the provisional ballots* cast by voters who are not on the voter rolls.” Appellant Reply, Sixth Cir. No. 16-3746, doc. 35, at 30 (emphasis added). They went on to note how “poll workers are already required to offer provisional ballots to voters who appear at the polls but are not on the rolls,” and thus “this remedy would require no change at all to Election Day procedures.” *Id.* In short, Plaintiffs repeatedly limited their requested relief regarding provisional ballots to a matter of how pre-existing in-person provisional ballots would be evaluated.

Now, Plaintiffs go far beyond what they requested in this litigation and demand fundamental alterations to Ohio’s voting procedures. In their Motion for a Temporary Restraining Order, Plaintiffs try to downplay the scale of their newly requested relief. Plaintiffs assert that their requested relief is “very straightforward” because “[c]ounties are *already* required to provide any individual who appears to vote and whose name does not appear on the registration rolls with a provisional ballot.” Doc. 74 at 11 (“Counties *already must determine whether each provisional voter is qualified to vote.*”). But Plaintiffs’ discussion of how *in-person* provisional ballots are examined after Election Day does little to address requesting, for the first time, that Ohio devise a procedure to mail provisional ballots in response to an absentee vote-by-mail request from an unregistered voter. This process has never been in place for any election in Ohio.

Plaintiffs’ demand for mailing provisional ballots is contrary to Ohio law. Ohio law provides for *in-person* provisional ballots, pursuant to Ohio Rev. Code § 3505.18 – 3505.183. The lone exception when a board can mail a provisional ballot is extremely limited and rare. As the Director of Summit County’s Board of Elections explained:

Ohio law generally prohibits the sending and/or casting of a provisional ballot by mail. The only circumstance a provisional ballot can be mailed is when an

individual is disabled or confined and would otherwise receive a provisional ballot. *See* Ohio Rev. Code § 3503.16(G). This circumstance very rarely occurs.

Masich Dec. at ¶7 (**Ex. D**); *see also* Shubat Dec. at ¶7 (**Ex. E**); Ohio Rev. Code §3503.16(G); Directive 2016-37 (**Ex. F**). Thus, any remedy that includes mailing provisional ballots would be a fundamental shift, not provided for in state law, shortly before a presidential election and after early voting has already begun.

Plaintiffs' demand would be burdensome. As a practical matter, since county boards have never before been asked to mail provisional ballots, aside from only in rare circumstances, logistical and administrative hurdles would pose a substantial problem at this late date. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (noting the importance of “reducing administrative burdens”) (citing *Bullock v. Carter*, 405 U.S. 134, 147 (1972)). Assistant Secretary of State Matthew W. Damschroder provided a declaration explaining some of the required changes:

[B]oards would not have on hand carrier envelopes intended to deliver the provisional envelope, a ballot, and a courtesy reply envelope large enough for the voter to enclose his or her provisional envelope. Further, boards would need to immediately print additional provisional ballots and prepare instructions to include with the provisional ballot mailing to inform voters why they are receiving a provisional ballot by mail. This provisional ballot mailing may be especially confusing to voters who have already received a notice of an absentee ballot deficiency from the county board of elections. After all, the early voting period has begun, and boards are processing absentee ballot applications. While the Secretary issued a Directive on Friday pursuant to this Court's Order in the above-captioned case instructing county boards to not reject absentee ballot applications due to lack of voter registration, some notices regarding absentee ballot deficiencies likely were already issued. Finally, the postage required of a voter to affix to the larger envelope in order to return a provisional ballot by mail would be significantly more than the cost to return an absentee ballot by mail.

Damschroder Dec. at ¶ 32. In sum, mailing provisional ballots would be exceptionally burdensome at this late date because (1) the necessary envelopes, ballots, and instructions do not



exist, (2) in the short time before the November election, boards and election officials would need to be trained on the new procedure, and (3) the new procedure would cause confusion.

Plaintiffs have not explained what is supposed to happen with absentee-ballot-mail requests that have already been processed and denied. Unlike mailing a provisional ballot, which is limited to narrow circumstances, voting an *absentee* ballot by mail is a different process and is more broadly used. Absentee voting, of course, is limited to individuals who appear on the registration roll. Absentee ballot forms and envelopes are different than the forms and envelopes for provisional ballots. Masich Dec. at ¶ 7. Boards and election officials are trained and well-versed in the absentee-vote-by-mail procedure

Even with the Secretary's Friday Directive, issued pursuant to this Court's Order, instructing county boards of elections not to reject absentee ballot applications based on a lack of voter registration, tens of thousands of these absentee mail requests already have been processed. Under Plaintiffs' proposal, the boards would need to divert time and resources to sift through rejected absentee ballots to send individuals provisional ballots, using instructions, forms, and envelopes that do not exist. This drastic change, a different procedure than any procedure used in Ohio, obviously creates risks for error, mistake, and even potential fraud. *See Crawford*, 553 U.S. at 196; Damschroder Dec. at ¶ 7 ("Given the high volume of voters voting in person on Election Day and key tasks that need to be completed to prepare for Election Day, boards of elections are extremely busy in the weeks immediately preceding any Election Day."); Masich Dec. at ¶ 8 ("Board staff workload is already at full capacity. Board staff has been working eleven hour days before the start of absentee voting to process and assemble absentee ballots for mailing."). It would certainly harm voter confidence in the integrity of the system.

For all these reasons, Plaintiffs' unprecedented proposal to mail provisional ballots should be denied.

**b. Expanding the Secretary's Directive's provisional ballot process to the voter maintenance that occurred in 2011 and 2013 would be burdensome and subject to reliability and uniformity issues.**

Plaintiffs request that the process in the Secretary's Directive should also be applied to names removed through the Supplemental Process in 2013 (confirmation cards sent in 2009) and in 2011 (confirmation cards sent in 2007).<sup>2</sup> Plaintiffs' demand would be burdensome and raises questions about reliability and uniformity.

Compelling reasons support limiting this procedure to the 2015 Supplemental Process, as proposed by the Secretary in the Directive submitted to this Court.

*First*, extending it to prior years would be unduly burdensome. Some boards use databases that identify whether a name was removed from the registration roll under the Supplemental Process. Others do not. *See* Damschroder Dec. at ¶ 29; Shubat Dec. at ¶ 10. For boards that cannot identify the procedure used to remove a name from the registration roll, the Secretary can compare county data against a state-wide 2011 NCOA list to reach a *presumption* that a name was removed pursuant to the Supplemental Process. Damschroder Dec. at ¶ 20. The 2011 NCOA list, however, is extensive.

However, even after the Secretary compares the NCOA list against the provisional ballot list provided by each county, the more time-consuming work will begin. The other checks in the Secretary's Directive, including checking names against lists of the deceased and incarcerated

---

<sup>2</sup> Cards sent in 2007 went to individuals who did not engage in any voter activity since 2005. Cards sent in 2009 went to individuals who did not engage in any voter activity since 2007.

felons, will still need to take place. Even those counties that can identify whether a name was removed through the Supplemental Process will still need to do those verifications. *Id.* at ¶ 23. Indeed, once a name is removed from the registration roll, in most counties, lists are not updated with subsequent events such as a death. *Id.*; Shubat Dec. at ¶ 9.

*Second*, using NCOA lists compiled prior to 2011 may be unreliable. The removals in 2015 were based on notices sent in 2011, and notices before 2011 were prior to the Secretary's time in office. Because the lists related to those procedures were compiled during a different administration, the Secretary does not have the same level of confidence in the integrity and accuracy of those lists. *See* Damschroder Dec. at ¶ 23 ("The NCOA lists prior to 2011 are potentially less reliable, or, otherwise the reliability is unknown, because previous administrations compiled these lists, and many of the employees working on the lists have moved to other positions outside of the office.").

*Third*, extending this procedure to years earlier than the removals in 2015 would create a risk of non-uniformity. The retention schedule for many of the lists required to complete the process in the Secretary's proposed Directive is only two years. *Id.* at ¶ 24. As Mr. Damschroder explained, "The older the NCOA list, the less likely the county has the deceased voter lists and the other necessary lists." *Id.* The potential for different applications of the procedure in various counties, all depending on the availability of the necessary records, would create non-uniformity.

For all of these reasons, Plaintiffs' demand to expand the Directive to the 2011 and 2013 Supplemental Processes should be denied.

- c. **Including a process to count provisional ballots of individuals who have relocated is beyond the scope of relief Plaintiffs requested and would create administrative burdens.**

Plaintiffs now insist that the Secretary return to the registration roll not only all those names removed pursuant to the Supplemental Process who have not relocated, but also all those who have moved within the same county. This new request for relief similarly goes beyond anything Plaintiffs have requested at any point before this Court or the Sixth Circuit.

Starting in their Complaint, Plaintiffs focused on relief for those individuals “residing at the same address at which they were previously registered.” Doc. 37 at ¶ 6. Plaintiffs explicitly asked this Court for an injunction requiring Secretary Husted either to restore all removed voters to the rolls or “to count all provisional ballots cast in any federal election by voters whose registrations have been cancelled by operation of the Supplemental Process and *who continue to reside at the same address.*” Doc 39 at 3 (emphasis added). They reiterated this request in their third merits brief:

Plaintiffs have requested that the provisional ballots cast by voters purged under the Supplemental Process *be counted if the voter provides an address on the provisional ballot that matches the last known address* for that voter in Ohio’s voter registration system and the voter is not otherwise ineligible.

Pl’s Reply, doc. 57 at 2 (emphasis added).

Plaintiffs made the same representations before the Sixth Circuit that any relief would only involve those individuals at the same address as when they were removed. In their Appellate Brief, Plaintiffs asked for relief either restoring voters to the rolls or “requiring the Secretary of State . . . to count all provisional ballots cast by eligible voters whose registrations have been cancelled by operation of the Supplemental Process and who continue to reside at the same address.” Appellant Brief, Sixth Cir. No. 16-3746, Doc. 24 at 54. Plaintiffs even suggested that the Secretary should use names and address provided by the ERIC system “to

verify which voters purged pursuant to the Supplemental Process continue to reside at the same address.” Appellant Reply, Sixth Cir. No. 16-3746, doc. 35 at 29. In fact, Plaintiffs went into great detail about how their requested relief is “narrowly tailored and easily administered”:

For any such voter, the official would then compare the address the voter provided on the provisional ballot envelope to the address at which the voter had last been registered. *If the addresses match*, and the voter has provided the other information on the provisional ballot affidavit necessary to determine the voter’s eligibility, *the provisional ballot would be counted*.

*Id.* at 30 (emphasis added).

For Plaintiffs to change their requested relief now, after making representations of “narrowly tailored and easily administered” relief to the Sixth Circuit, *see id.*, would be highly prejudicial to the Secretary and the boards of elections. It also would require the added administrative difficulty of determining not only whether an individual was removed pursuant to the Supplemental Process and whether an individual resides at the same address, but also—if the individual is not at the same address—whether the new address is within the same county and whether the individual’s identity can otherwise be verified with enough confidence to outweigh the difference in address. With every ballot subject to this process, Plaintiffs’ newly requested relief would add an unprecedented additional burden to boards of elections as they attempt to count all provisional ballots and otherwise fulfill all of their other election duties. *See Damschroder Dec.* at ¶ 34; *Masich Dec.* at ¶¶ 3, 6; *Shubat Dec.* at ¶¶ 3, 6; *Billing Dec.* at ¶¶ 3, 6 (**Ex. G**). Moreover, expanding the relief to encompass persons no longer residing at the same address would increase concerns about the integrity of the process. *See Crawford*, 553 U.S. at 196 (finding “legitimate” and “weighty” state concerns about public confidence in the integrity of elections, preventing voter fraud, and reducing administrative burdens).

Finally, as noted by Mr. Damschroder, Plaintiffs' demand "overlooks that the move itself is evidence that the individual may have been lawfully cancelled pursuant to the NCOA Process had he or she filed a NCOA." Damschroder Dec. at ¶ 33.

For all these reasons, Plaintiffs' newly suggested relief should be rejected.

**d. Plaintiffs' demand for television and radio advertisements before the November election should also be denied.**

Plaintiffs ask that the Court Order the Secretary to "mak[e] public service announcements view television, radio, and social media" before the November election. *See* Plaintiffs' Proposed Order at ¶ 7. This remedy is impossible. The Secretary would need to submit a proposal for funds to the Controlling Board to make these advertisements and to buy air time. The amount of money required to buy such advertisements during a busy election cycle, when much of the air time is likely already allotted, would be significant. As an example, the Secretary went to the Controlling Board in July to conduct voter education efforts using television, radio, and digital media—similar types of media requested by Plaintiffs in the Proposed Order. *See* Controlling Board Submission (**Ex. H**). These voter education efforts cost the office approximately \$550,000, *id.*, and the advertising time was likely less expensive when these advertisements ran in early September than they would be now about three weeks prior to Election Day.

There are two Controlling Board meetings prior to Election Day, one today, October 17, 2016, and one October 31, 2016. The meeting today, October 17, had a proposal submission deadline of September 20, 2016. *See* Controlling Board Schedule (**Ex. I**). The October 31 deadline for proposals was October 11, 2016. *See id.* Even if it were still possible to somehow get this issue onto the October 17 or October 31 agenda, that still would leave the issues of hiring firms to produce and film the advertisements, developing the content for the advertisements, shooting or recording the advertisements, and then securing the air time. Also, at some point, the

Controlling Board would need to waive competitive bidding for the Secretary to enter into a contract with a vendor on the media buy. *See* Controlling Board Manual at 28 (**Ex. J**). To do all of this before the November election is impossible and assumes that a majority of the Controlling Board, members of which who are not party to this litigation, would vote to approve all of the above.

\* \* \*

For all of these reasons, Plaintiffs cannot succeed in proving that their proposed relief is appropriate or legally permissible, particularly when the Secretary has already voluntarily proposed a remedy that exceeds what the law requires and would provide a practical, effective solution.

**B. The balance of the harms and the public interest favor the Secretary's Directive.**

Balancing the potential harm to Plaintiffs absent a temporary restraining order against the risk of harm to the public, the Secretary, and other parties only further confirms that Plaintiffs' demand should be denied.

The Sixth Circuit has held that showing irreparable injury is generally required to warrant injunctive relief. *See Friendship Materials, Inc. v. Mich. Brick, Inc.*, 679 F.2d 100, 105 (6th Cir. 1982) ("A district court abuses its discretion when it grants [an injunction] without making specific findings of irreparable injury to the party seeking the injunction . . ."). In determining whether irreparable harm will occur, the length of time that a party takes to file suit or request injunctive relief is relevant. *Forry, Inc. v. Neundorfer, Inc.*, 837 F.2d 259, 267 (6th Cir. 1988). "A delay between the discovery of the allegedly infringing conduct and the request for injunctive relief can support an inference that the alleged harm is not sufficiently severe or irreparable to justify injunctive relief." *Pierre v. Univ. of Dayton*, 143 F. Supp. 3d 703, 713-14 (S.D. Ohio

2015) (quotation omitted) (“Plaintiff’s delay in seeking a preliminary injunction undermines [his] allegation of irreparable harm.” (quotation omitted)); *see also Respect Maine PAC v. McKee*, 622 F.3d 13, 16 (1st Cir. 2010) (noting that the emergency was largely of plaintiffs own making, as they were “well aware of the requirements of the election laws” and “the case law on which they rel[ied] was not new”).

Here, Plaintiffs waited *over two decades* from the first implementation of the Supplemental Process to file their lawsuit. During those 22 years, four different secretaries of state from both political parties implemented the same process. Yet, Plaintiffs waited until 2016, many, many years after the first cancellations occurred, to challenge the long-standing process. Additionally, the NVRA is not a new statute, which only recently applied to the Supplemental Process. *See Respect Maine PAC*, 622 F.3d at 16. Instead, the NVRA has applied all twenty-two years that the Supplemental Process has been in place. If Plaintiffs had brought a timely challenge to the process, they could have obtained a determination before four different secretaries had implemented it. This significant delay severely undermines any allegation of irreparable harm. *See Pierre*, 143 F. Supp. 3d at 713-14 (finding a *one-month delay* to be significant).

Furthermore, as noted above, despite compelling reasons and legal authority supporting prospective-only relief, the Secretary has proposed a remedy that would enable eligible individuals to cast a ballot even if their registration was cancelled in 2015 under the Supplemental Process. Thus, if this Court adopts the Secretary’s remedy, those potential voters will in no way suffer irreparable injury.

In contrast to the lack of harm that Plaintiffs will suffer if a TRO is denied, a decision to grant the TRO would “subject[] [the Secretary] to ongoing irreparable harm.” *Maryland v. King*,



133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers). As Supreme Court Justices have recognized over the years, “[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Id.* (quoting *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). Here, requiring the Secretary to mail provisional ballots prohibits the Secretary from effectuating Ohio law regarding the casting of provisional ballots, which provides for only one, narrow circumstance in which provisional ballots may be mailed. *See* Ohio Rev. Code § 3503.16(G).

Additionally, all of Plaintiffs’ proposals are burdensome. Many boards of elections operate with minimal staff and small budgets. These budgets also are established a year in advance, such that adding new, unexpected expenses is extremely burdensome and harmful to the boards. *See* Damschroder Dec. at ¶ 8; Billing Dec. at ¶ 2. Plaintiffs’ request to mail provisional ballots would significantly impact the boards’ budgets and ability to accomplish all their necessary election tasks. Damschroder Dec. at ¶ 32. Requiring such a mailing would require new procedures, new election supplies, and additional time and money to identify and mail those ballots. During a presidential election, adding this new requirement creates substantial harm.

As the Director of the Shelby County Board of Elections explained:

While the Defendant’s proposed directive would be difficult to implement less than four weeks prior to Election Day, I believe the Defendant’s proposed directive is a reasonable solution and contains the safeguards necessary to ensure the integrity of the voting process . . . I believe it would be very burdensome implement Plaintiffs’ proposed order at this late stage . . . In order to implement Plaintiffs’ proposed order, the board would need to hire additional temporary employees, pull employees from other required duties, and require and pay staff to work overtime. This would force the board to spend a substantial monetary amount, and may come at the detriment of other duties that are required by law.

Billing Dec. at ¶¶ 5, 6, 8.

Lastly, the public interest similarly favors denying Plaintiffs' request. Ohio has a strong interest in establishing voting procedures that it knows can be implemented in a practical and consistent manner. It is indisputable that a State has a compelling interest in preserving the integrity of its election process. *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989); *cf. also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 194-97 (2008) (recognizing Indiana's interests in preventing voter fraud and safeguarding "public confidence in the integrity of the electoral process"). The State also has an interest in reducing the potential for "invalid ballots," *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004), and protecting the "fairness" of the "election processes," *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997). Plaintiffs' proposal would undermine all of these interests and hurt public confidence.

Moreover, the State and the public have an interest in reducing administrative burdens, *Bullock v. Carter*, 405 U.S. 134, 147 (1972); conserving public money, *Dudum v. Arntz*, 640 F.3d 1098, 1116 (9th Cir. 2011); and election "efficiency," *Timmons*, 520 U.S. at 364. All of these also would be undermined by Plaintiffs' proposal.

Finally, "[a]s a general rule, last-minute injunctions changing election procedures are strongly disfavored." *Serv. Emps. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012). Orders that change election procedures "can themselves result in voter confusion," and the risk for confusion only increases as the election draws near. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). Courts have recognized that the public interest is harmed by chaos created by substantial, last-minute changes to election laws. *See Respect Maine PAC*, 622 F.3d at 16 ("We also note the harm to the public interest from the chaos that will ensue if the Maine election laws, which have been in place since 1996, are invalidated by a court order in the crucial final weeks

before an election.”). The Secretary’s proposed Directive is manageable. *See* Damschroder Dec. at ¶¶ 27, 34; Billing Dec. at ¶ 5. On the other hand, Plaintiffs’ request will cause confusion in the final weeks before the election. Damschroder Dec. ¶34.

For the foregoing reasons, the equitable factors required for an injunctive remedy do not favor Plaintiffs.

**C. Plaintiffs’ effort to introduce settlement discussions should be rejected**

Throughout their Motion, without citing to anything in the record, Plaintiffs claim that they have somehow “learned” various pieces of information. For example, on Page 12 of their motion, Plaintiffs say this: “Plaintiffs have learned that the Secretary has the ability and the information to *immediately* implement every element of the *exact relief* Plaintiffs are seeking.” (emphasis added). This statement is untrue. It is a distortion of various ideas exchanged during settlement negotiations. This statement, and others like it, should be excluded from consideration.

Many concepts and proposals are exchanged during settlement negotiations and often positions change over time based on other terms and ideas that are put forward as discussions progress. One important factor in any settlement discussion is the potential for litigation to continue, and often proposals and counter-proposals depend on the burdens imposed by other elements of a proposed resolution, including sometimes the prospect of diverting time and resources to additional litigation. The Sixth Circuit “recognizes that settlements are more likely to result when parties are free to speak openly during settlement negotiations, without fear that what is said can be used against them.” *Eid v. Saint-Gobain Abrasives, Inc.*, 377 F. App’x 438, 444 (6th Cir. 2010) (quotation omitted). Indeed, settlement discussions typically include “unreliable” and “irrelevant” discussions and statements, as well as “puffing and posturing.” *Id.*

Among the many reasons to preclude the use of settlement discussions in pleadings, doing so chills the prospect for future discussions in the same or future litigation.

Here, such statements should not be permitted to influence the Court. Counsel for the parties worked to attempt to resolve a remedy through settlement discussions. Many individuals at the Secretary's Office, as well as lawyers for the Secretary, worked extremely hard and in good faith to try to resolve this dispute. It is unfortunate that discussions ended. But now that they have ended, it is wholly improper for Plaintiffs to use those discussions to try to assemble some sort of support for their positions. It is a highly prejudicial tactic that should be rejected.

### **III. CONCLUSION**

For the reasons explained above, the Secretary respectfully asks this Court to deny Plaintiffs' request for a temporary restraining order.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General

*s/ Steven T. Voigt*

---

STEVEN T. VOIGT (0092879)  
Principal Assistant Attorney General  
JORDAN S. BERMAN (0093075)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (614) 466-2872 | Fax: (614) 728-7592  
steven.voigt@ohioattorneygeneral.gov  
jordan.berman@ohioattorneygeneral.gov

*Counsel for Defendant  
Secretary of State Jon Husted*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2016, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by e-mail or facsimile upon all parties for whom counsel has not yet entered an appearance and upon all counsel who have not entered their appearance via the electronic system.

/s/ Steven T. Voigt

STEVEN T. VOIGT (0092879)

Principal Assistant Attorney General

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**OHIO A. PHILIP RANDOLPH  
INSTITUTE, *et al.*,**

Plaintiffs,

v.

**SECRETARY OF STATE, JON HUSTED,**

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 2:16-CV-00303

JUDGE GEORGE C. SMITH

MAGISTRATE JUDGE DEAVERS

---

**DECLARATION OF MATTHEW M. DAMSCHRODER**

---

I, Matthew M. Damschroder, hereby declare that:

1. From June 2003 to January 2011, I was employed by the Franklin County (Ohio) Board of Elections, where I served alternately in the position of Director and Deputy Director, performing the statutory duties of those offices, and such other duties as assigned to me by the Board, relating to the administration and conduct of elections in Franklin County.
2. On January 10, 2011, I was appointed by Secretary of State Jon Husted to the position of Deputy Assistant Secretary of State and State Elections Director in the Elections Division of the Ohio Secretary of State's office. In 2015, I was promoted to Assistant Secretary of State and Chief of Staff for the Secretary of State. I am responsible for developing and implementing policies, procedures, and guidelines for the administration of federal, state, and local elections to assist county boards of elections in the fulfillment of their statutory duties.
3. I earned a Masters of Arts degree in Public Policy and Management from the John Glenn College of Public Affairs at The Ohio State University in 2014. I completed training as a Certified Elections Registration Administrator ("CERA") in 2005, the nation's sole professional designation for local elections administrators, which is offered through the Election Center and Auburn University (Alabama).
4. Based on my years of employment at the Franklin County Board of Elections, my professional training and accreditation, and my responsibilities at the Secretary of State's office, I have first-hand knowledge of the responsibilities and tasks of the eighty-eight county boards of elections and Secretary of State's office in preparing for and conducting an election.

#### A. PREPARING FOR ELECTION DAY

5. For the November 8, 2016 Presidential General Election, the voter registration deadline was October 11, 2016. *See* Ohio Const., Art. V, § 1. Boards must promptly input all timely voter registrations into their databases.
6. For the November 8, 2016 Presidential General Election, absentee voting for military and overseas voters began on September 24, 2016. *See* 42 U.S.C § 1973ff-1(a)(8) & Ohio Rev. Code §§ 3509.01(B)(1), 3511.04(B). Absentee voting for non-military and overseas voters began on October 12, 2016. *See* Ohio Rev. Code § 3509.01(B)(2). Boards must promptly process absentee ballot applications and send ballots to those submitting valid applications.
7. Given the high volume of voters voting in person on Election Day and key tasks that need to be completed to prepare for Election Day, boards of elections are extremely busy in the weeks immediately preceding any Election Day.
8. For most counties, budget planning for the board of elections begins in the year before the election. For example, for a 2016 election, the planning and finalization of the budget typically occurs in 2015. From my experience, there is typically not a lot of room in the budget for unforeseen expenses.
9. Boards of elections must process and mail any absentee ballots where the request for an absentee ballot was received by mail by noon on the Saturday before the election.
10. Boards of elections must review for validation all returned voted absentee ballots by checking the voter's name, identification (usually in the form of the voter's Ohio driver license number or last four digits of the voter's Social Security number), and signature against information contained in the county voter registration database. Validated absentee ballots are then opened and the ballots separated from their respective identification envelopes and scanned through automatic tabulating equipment. Most counties do not have "high speed" scanning equipment for absentee ballots, in which case the ballots must be hand-fed into the scanners one at a time. The volume of voted absentee ballots needing review, separation, and scanning grows during the last week before the election.
11. All valid absentee ballots received by 7:30 p.m. on Election Day, including absentee ballots cast in-person, must be validated and scanned so that they can be included in the unofficial canvass, which must be completed on election night.
12. Ohio law requires that each polling location has sufficient ballots, instruction cards, registration forms, poll books, tally sheets, writing implements, and other supplies necessary for the casting and counting of ballots. The boards of elections must prepare these materials.
13. Boards of elections must ensure that each polling location has sufficient provisional ballots and provisional ballot envelopes.
14. Boards of elections must set up polling locations with voting equipment, tables, chairs, and proper signage.

15. Boards of elections must ensure that each polling location is accessible, including ensuring that any temporary improvements necessary to make a polling location accessible are implemented. For instance, if a polling location does not have an otherwise accessible entrance, a board may need to install a temporary ramp. If a polling location does not have sufficient handicapped accessible parking, sufficient temporary spaces must be set up.
16. The official lists of registered voters must be accurately prepared for each precinct no later than the 14<sup>th</sup> day before Election Day (October 25, 2016). *See* Ohio Rev. Code § 3503.23. Boards of elections must also make notations of those voters who have already requested an absentee ballot by mail or in-person in order to prevent an absentee voter from also casting a regular ballot at the polls on Election Day.
17. In addition to all of those scheduled tasks, boards of elections must handle any last-minute issues that arise, including, but not limited to, moving a polling place in the event of an emergency, replacing poll workers who are unable to serve at the last minute, and reacting to court decisions that affect the administration of the election.
18. In order to facilitate additional evening and weekend in-person absentee voting, boards of elections must ensure adequate staffing during those hours. This can be burdensome and costly for boards that are already operating under tight budgetary restrictions. In addition, these staff cannot complete other necessary tasks while tending to in-person absentee voters.

## **B. CANCELLING A VOTER PURSUANT TO FEDERAL AND STATE LAW**

19. In order to comply with federal and state laws regarding list maintenance, Ohio cancels an individual's voter registration under several circumstances:
  - (1) An individual may fill out a form requesting the cancellation of his or her registration. *See* Ohio Rev. Code § 3503.21(A)(1).
  - (2) An individual may be cancelled due to his or her appearance on the National Change of Address ("NCOA") list, failing to respond to a confirmation card, and failing to vote or engage in voter activity for a period of four years. *See* Ohio Rev. Code § 3503.21(A)(7). This cancellation process is known as the "NCOA Process".
  - (3) Between 1999 and 2015, an individual failing to cast a ballot or engage in voter activity for two years, failing to respond to a confirmation card, and failing to cast a ballot or engage in voter activity for four years after the confirmation card was issued would be cancelled. *See id.* This cancellation process was known as the "Supplemental Process". The United States Court of Appeals for the Sixth Circuit recently held this longstanding process that had been used by secretaries of state from both major political parties to violate the National Voter Registration Act ("NVRA") in *A. Philip Randolph Institute et al. v. Husted*, \_\_\_ F.3d \_\_\_, 2016 WL 5328160 (6th Cir. Sept. 23, 2016) ("APRF").
  - (4) An individual may be cancelled because a probate court adjudicates him or her incompetent for voting purposes. *See* Ohio Rev. Code § 3503.21(A)(5).



- (5) An individual who has been convicted of a felony and is now incarcerated will appear on a list the clerk of the courts of common pleas sends to each county. The board must cancel the registration of this individual. *See* Ohio Rev. Code §§ 2961.01, 3503.18(C).
- (6) An individual may appear on the state department of health deceased voters list or the deceased voters list provided by the State and Territorial Exchange of Vital Events (“STEVE”) database. This list is provided to the county boards of elections, which cancels the registration of any individual named within the list. *See* Ohio Rev. Code § 3503.18. A deceased individual may also have his or her registration cancelled if the deceased individual’s spouse, parent, child, administrator of the estate, or executor of the will filed a certified copy of the death certificate with the board of elections. *See* Ohio Rev. Code § 3503.21(A)(3).
20. As explained in Paragraph 19, an individual may be cancelled from the voter rolls due to his or her appearance on the NCOA list, failing to respond to a confirmation card, and failing to vote or engage in voter activity for a period of four years. An individual cancelled in 2015 pursuant to this NCOA Process would have appeared on the NCOA list in 2011.
21. Prior to 2014, the NCOA and Supplemental Processes were conducted every other year. In 2014, the Ohio General Assembly passed legislation requiring the annual completion of the NCOA Process. *See* Amended Substitute Senate Bill No. 200 (effective March 20, 2014). The Supplemental Process was required to be conducted on an annual basis pursuant to a settlement agreement. *See Judicial Watch, Inc. and True the Vote v. Husted*, Case No. 2:12-CV-00792, settlement agreement entered into January 10, 2014. The last cancellation of individuals from the voter rolls pursuant to the Supplemental Process occurred in 2015. No one has been cancelled from the voter rolls pursuant to the Supplemental Process in 2016, and pursuant to the Sixth Circuit’s decision in *APRI*, no one will be cancelled pursuant to the Supplemental Process as described in Paragraph 19(3) in the future.
22. The only NCOA list compiled during Secretary Husted’s time in office as Ohio Secretary of State that has been used to remove individuals pursuant to the NCOA and Supplemental Processes is the 2011 NCOA list, which was used to cancel individuals in 2015 who did not respond to confirmation cards and failed to vote or engage in voter activity for a period of four years. The Secretary’s office is in possession of the 2011 NCOA list and can confirm its validity because the current administration was in office when it was compiled. The NCOA lists prior to 2011 are potentially less reliable, or, otherwise the reliability is unknown, because previous administrations compiled these lists, and many of the employees working on the lists have moved to other positions outside of the office.
23. In their Emergency Motion for a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue, Doc. 74, Plaintiffs explain that the NCOA lists are the cure all for any lack of data the counties may have in its possession (see Paragraphs 28 and 29 below for more information). This explanation is misguided for two reasons. First, as explained in Paragraph 22 above, NCOA lists prior to 2011 are potentially less reliable, or, otherwise the reliability is unknown, because previous administrations compiled these lists, and many of the employees working on the lists have moved to other positions outside of the office. Second, the NCOA lists must be checked against the

deceased voter lists, incarcerated felons lists, and other lists to ensure that the individual has not passed away or otherwise become ineligible after cancellation pursuant to the Supplemental Process. This is important because counties often do not track subsequent reasons for cancellation. So, for instance, an individual cancelled pursuant to the Supplemental Process would be marked as cancelled for this reason, assuming the county kept track of the specific reason of cancellation. However, if the individual subsequently passed away, the county may not mark this – because the individual has already been cancelled pursuant to the Supplemental Process there was no need to mark an additional reason for cancellation.

24. The older the NCOA list, the less likely the county has the deceased voter lists and the other necessary lists. In some circumstances, the Secretary of State's retention schedule, which boards of elections follow, only requires that these lists be kept for two years. A true and accurate copy of the Secretary of State retention schedule boards of elections follow is attached as Attachment "A". The availability of these lists becomes more problematic as one goes to further years back.

#### **C. PROPOSED DIRECTIVE 2016-XX**

25. The Secretary of State's office has drafted Directive 2016-XX. A true and accurate copy of Directive 2016-XX was submitted to this Court as a proposed order on October 13, 2016. Directive 2016-XX proposes to instruct the county boards of elections to count as valid a provisional ballot cast by a voter who is not registered to vote in the State of Ohio if all of the following apply: (i) the individual's voter registration was cancelled in 2015 pursuant to the Supplemental Process, (ii) the provisional ballot affirmation reflects that the voter currently resides at the same address at which the voter was last registered to vote in the State of Ohio at the time of cancellation, (iii) the individual does not appear on any deceased voter list provided to the boards by the state department of health or by the STEVE database, (iv) the individual does not appear on any list provided by the boards by an Ohio clerk of court or a federal district court indicating that the individual is incarcerated on a felony conviction, (iv) the boards did not receive a certified copy of the individual's death certificate from the deceased elector's spouse, parent, or child, by the administrator of the deceased elector's estate, or by the executor of the deceased elector's will, and (v) the individual's provisional ballot affirmation and the ballot otherwise complies with all applicable laws and directives.
26. As stated in Paragraph 25, an individual cancelled in 2015 pursuant to the Supplemental Process may cast a provisional ballot eligible for counting. Directive 2016-XX explains that an individual is deemed to have been cancelled pursuant to the Supplemental Process if either of the following are true: (i) in a county that recorded the reason for cancellation at the time the voter was cancelled, the county board of elections registration database reflects that the voter's registration was cancelled pursuant to the Supplemental Process or (ii) in a county that did not record the reason for cancellation at the time the voter was cancelled, the voter is not listed on the NCOA list from the year in which the voter was sent a confirmation notice (four years prior to the cancellation).
27. Given all of the tasks necessary to run an election (see Paragraphs 5 through 18 above for some examples), introducing a new mandate weeks prior to an election is disfavored.

However, the office made the determination that Directive 2016-XX was a reasonable proposal, which satisfies the specific requests Plaintiffs have made throughout the litigation (see Paragraph 30 below). In order to avoid further changes to election administration in the coming years, Directive 2016-XX extends the process mandated by it beyond the November 8, 2016 Presidential General Election to the end of Secretary Husted's term of office on January 13, 2019. It is important for election officials and voters to have set rules as soon as possible prior to Election Day.

#### **D. VOTER REGISTRATION DATABASE**

28. Ohio has a bottom-up voter registration database system. Under this bottom-up system, counties input voter registration data into their database, which is then copied and transferred onto the Secretary of State's statewide voter registration database. Since the statewide voter registration database's existence in the early 2000s, the Secretary of State generally has not included the reason for cancellation as a field. Thus, the Secretary of State's statewide voter registration database does not include whether an individual was cancelled pursuant to the NCOA Process or Supplemental Process.
29. The county boards of elections' voter registration databases vary in the specificity of information they contain. In addition, this may vary from year to year. So, for instance, one county's voter registration database may state an individual was cancelled pursuant to the Supplemental Process, while another county's voter registration database does not distinguish between an individual cancelled pursuant to the NCOA Process or the Supplemental Process. Additionally, while a county's voter registration database may now distinguish between an individual cancelled pursuant to the NCOA Process or the Supplemental Process, it may not have applied that distinction in earlier years.

#### **E. PLAINTIFFS' PROPOSED REMEDIES**

30. Throughout litigation in the above-captioned case, Plaintiffs have requested two alternative remedies – reinstating individuals cancelled pursuant to the Supplemental Process or allowing individuals cancelled pursuant to the Supplemental Process to cast provisional ballots eligible for counting if the address on the provisional ballot matches the address in the voter registration database. For instance, in Plaintiffs' Motion for Summary Judgment and Permanent Injunction, or, in the alternative, Preliminary Injunction, Doc. 39, Plaintiffs seek an order “[r]equiring Defendant Secretary of State Husted and his successors, agent, officers, and employees to reinstate all unlawfully purged voters to the registration rolls or, in the alternative, to count all provisional ballots cast in any federal election by voters whose registrations have been cancelled by operation of the Supplemental Process and who continue to reside at the same address.” Plaintiffs requested the same relief when they filed their Appellants' Brief with the United States Court of Appeals for the Sixth Circuit. Directive 2016-XX provides Plaintiffs with the remedy they sought in District Court and Appellate Court, and actually goes beyond the requested remedy by allowing the process to extend to all elections, not just federal elections.
31. For the first time in the six months since this litigation began, Plaintiffs request the mailing of provisional ballots. Ohio law generally prohibits the sending and/or casting of a

provisional ballot by mail. There is only one rare circumstance where provisional ballots can be mailed pursuant to Ohio law. This is the circumstance described in Ohio Rev. Code § 3503.16(G), and is limited to individuals who are disabled or confined and would otherwise receive a provisional ballot. Boards of elections have been trained to only permit the sending and/or casting of a provisional ballot by mail in this specific circumstance. Allowing additional categories of provisional ballots to be sent and/or received by mail has the chance of causing confusion.

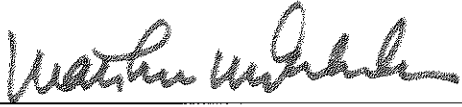
32. If Plaintiffs' remedy regarding the mailing of provisional ballots is agreed upon, confusion would be the result. Training would need to occur to explain the substantial change to provisional ballots. Provisional ballot envelopes are generally 9 inches by 12 inches – much larger than a traditional absentee ballot identification envelope designed to fit inside of a "letter rate" return envelope. As such, boards would not have on hand carrier envelopes intended to deliver the provisional envelope, a ballot, and a courtesy reply envelope large enough for the voter to enclose his or her provisional envelope. Further, boards would need to immediately print additional provisional ballots and prepare instructions to include with the provisional ballot mailing to inform voters why they are receiving a provisional ballot by mail. This provisional ballot mailing may be especially confusing to voters who have already received a notice of an absentee ballot deficiency from the county board of elections. After all, the early voting period has begun, and boards are processing absentee ballot applications. While the Secretary issued a Directive on Friday pursuant to this Court's Order in the above-captioned case instructing boards to not reject absentee ballot applications due to lack of voter registration, some notices regarding absentee ballot deficiencies likely were already issued. Finally, the postage required of a voter to affix to the larger envelope in order to return a provisional ballot by mail would be significantly more than the cost to return an absentee ballot by mail.
33. Also for the first time, Plaintiffs' request that individuals moving within a county and cancelled pursuant to the Supplemental Process may cast a valid provisional ballot. In addition to being a new provision not contemplated by Plaintiffs' earlier filings, this proposal overlooks that the move itself is evidence that the individual may have been lawfully cancelled pursuant to the NCOA Process had he or she filed a NCOA.
34. The election has already begun, and Election Day is less than four weeks away. The Secretary's office is prepared to issue Directive 2016-XX, which is the result of careful thought and deliberation based on the Plaintiffs request for this specific form of relief for the last six months. Plaintiffs' proposed remedies, especially when taken in combination, have the potential of causing confusion and perhaps even chaos. After all, many of Plaintiffs' proposed remedies are brand new and have not received careful thought and deliberation from elections officials.

#### **F. VOTER REGISTRATION AND VOTER EDUCATION**

35. On June 24, 2016, Secretary Husted announced a partnership with the Electronic Registration Information Center ("ERIC"). ERIC is a national, non-profit organization with twenty member states. As part of the partnership, Secretary Husted contacted more than 1.6 million Ohioans who were determined by ERIC to be potentially eligible to vote but not yet

registered to encourage them to register to vote and become active and engaged voters. Secretary Husted is the first Ohio Secretary of State to use this or any method to directly contact potentially eligible, but unregistered, voters to encourage them to register to vote.

I declare, under penalty of perjury, that the foregoing is true and correct.



MATTHEW M. DAMSCHRODER

Executed on: October 17<sup>th</sup> 2016



ATTACHMENT A

OHIO SECRETARY OF STATE RETENTION SCHEDULES				
SERIES NUMBER	DESCRIPTION OF RECORD	RETENTION PERIOD	ORIGIN DATE	AUTHORIZATION #
COUNTY BOARD OF ELECTIONS				
CBE-01	Absentee Ballot Applications: Civilian and Military	Retain four (4) years then destroy.	1983	050-0031
CBE-02	Absentee Voter Register: Civilian - record of absentee voters.	Retain permanently.	1983	050-0032
CBE-03	Absentee Voter Register: Military - record of absentee voters.	Retain permanently.	1983	050-0033
CBE-04	Abstract of Votes - Abstract of votes cast in all elections.	Retain permanently.	1983	050-0034
CBE-05	Audit Report - Report of the state examiner.	Retain one (1) copy permanently.	1983	050-0035
CBE-06	All Ballots: Used and Unused	Retain until sixty (60) days after an election or 22 months after a federal election then destroy provided no pending court action or court order. (R.C. 3505.31)	1983 Revised 2010	050-0036
CBE-07	Ballots: Sample - Record of bond issues and tax levies in form of sample ballots.	Retain twenty (20) years in office, then transfer to Archives for permanent retention.	1983	050-0037
CBE-08	Bids: Unsuccessful - copies of unsuccessful bids.	Retain two (2) years after contract awarded, then destroy.	1983	050-0038
CBE-09	Bids: Successful with Contract - This record series contains copies of successful bids, contracts and related documents from vendors for various goods and/or services.	Retain for eight (8) years, then may destroy.	1983, revised 2013	050-0039
CBE-10	Cash Book - Record of fees collected.	Retain ten (10) years and until audited by Auditor of State and audit report is released, then destroy.	1983	050-0040
CBE-11	Campaign Expense Reports - Candidates' expense reports filed.	Retain six (6) years then destroy.	1983	050-0041

CBE-12	<b>Central Committee Notices</b> - Notices of political party meetings and committee member lists.	Notices: retain two (2) years, then may destroy; Member List: retain two (2) or four (4) years depending on term of committee members of the political party, then may destroy.	1983, revised 2015	050-0042
CBE-13	<b>Correspondence</b> - General Office Correspondence.	Retain one (1) year then destroy.	1983	050-0043
CBE-14	<b>Certificates of Annexation</b> - Copy of Annexation ordinance, etc.	Retain permanently.	1983	050-0044
CBE-15	<b>Election Charge-Back Record</b> - Election expenses charged back.	Retain three (3) years and until audited by Auditor of State and audit report is released, then destroy.	1983	050-0045
CBE-17	<b>Ledger of Receipts and Expenditures</b> - CBE financial records.	Retain six (6) years and until all items are cleared and audited by Auditor of State and audit report is released, then destroy.	1983	050-0047
CBE-18	<b>Petitions of Candidates</b> - Accepted and rejected petitions for elections.	Retain six (6) years, then destroy.	1983, Revised 2011	050-0048
CBE-19	<b>Pollbooks, Poll Lists and Related Materials</b> - This record series includes, but is not limited to, pollbooks, poll lists or signature pollbooks, tally sheets, summary statements, and other records and returns of an election delivered to the Board of Elections from polling places.	Retain two (2) years, then may destroy.	1983, Revised 2015	050-0049
CBE-21	<b>Poll Officials Record / Precinct Record</b> - List maintained by county boards of elections that contains contact information of qualified individuals available to serve as judges or precinct election officials.	Retain two (2) years then may destroy	1983, revised 2012	050-0052
CBE-22	<b>Receipts and Expenditures: Candidates</b> - Campaign financial history for candidates.	Retain six (6) years then destroy.	1983	050-0053
CBE-23	<b>Receipts and Expenditures: Questions and Issues</b> - Campaign financial history: for/against questions and issues.	Retain two (2) years then destroy.	1983	050-0054
CBE-24	<b>Receipt Books: Election Papers</b> - Office receipt book for ethics material & campaign financing statements issues.	Retain one (1) year then destroy.	1983	050-0055

<b>CBE-25</b>	<b>Receipt Books: Monies</b> - Office copy of financial receipts issued.	Retain until audited by Auditor of State and audit report is released, then destroy.	1983	050-0056
<b>CBE-26A</b>	<b>Resolutions on Bond Issues that Pass</b> - Copies of resolutions by governmental bodies authorizing placement of issues on the ballot.	Retain for life of bonds then destroy.	1983	050-0057
<b>CBE-26B</b>	<b>Resolutions Except for Bond Issues that Pass</b> - Copies of resolutions by governmental bodies authorizing placement of issues on the ballot.	Retain five (5) years after election, then destroy.	1983	050-0058
<b>CBE-27</b>	<b>Vouchers</b> - Office Copy of Voucher sent to County Auditor.	Retain until audited by Auditor of State and audit report is released, then destroy.	1983	050-0059
<b>CBE-28</b>	<b>Ward &amp; Precinct Maps</b> - Political subdivision precinct boundaries.	Retain permanently.	1983	050-0060
<b>CBE-29</b>	<b>Withdrawal of Candidacy Notices</b> - Notices of withdrawal received.	Retain one (1) year after election then destroy	1983	050-0061
<b>CBE-30</b>	<b>Minutes of the Board of Elections</b> - Record of proceedings.	Retain permanently.	1983	050-0062
<b>CBE-31</b>	<b>Change of Name, Deaths, and Disenfranchised Voters Reports</b> - Original reports issued by the Probate Court, Clerk of Courts, and Health Department.	Retain two (2) years after filing then destroy.	1983	050-0063
<b>CBE-32</b>	<b>Registration Cards: Active</b> - Master and precinct cards files for currently registered voters.	Retain permanently.	1983	050-0064
<b>CBE-33</b>	<b>Registration Cards: Inactive</b> - Cancelled voter registration cards.	Retain permanently.	1983	050-0065
<b>CBE-34</b>	<b>Transfer of Registrations</b> - Record of voters' transfer of registration from one area to another.	Retain four (4) years, then destroy.	1983, revised 2010	050-0066
<b>CBE-35</b>	<b>Campaign Expense Reports</b> - Original PAC campaign finance reports.	Retain in office, six (6) years then transfer to Records Center for six (6) years, then destroy	1992	050-0084
<b>CBE-36</b>	<b>Change of Address/Name Notifications</b> - Written notices from registered voters of a change of address or name, including R.C. 3503.16(B)(1) notice of change of name (SOS prescribed form 10-L).	Retain four (4) years, then may destroy.	1994, revised 2015	050-0087
<b>CBE-37</b>	<b>Elector Application for Correction or Challenge Form</b> - Forms to be completed pursuant to R.C. 3505.20, R.C. 3513.19 and R.C. 3513.20.	Retain two (2) years then may destroy.	1994, revised 2015	050-0088



CBE-38	<b>Absentee Identification Envelopes</b> - Statement of absentee voter and absent voter's ballot identification envelope supplement.	Retain ninety (90) days after an election, or twenty-two (22) months after a federal election, then may destroy, provided no pending court action or order.	1994, revised 2016	050-0090
CBE-40	<b>Provisonal ballot affirmations</b> - Affirmations filled out by an elector voted a ballot provisionally.	Retain four (4) years, then destroy unless used as a voter reigstration form, then retain permanently.	1994, revised 2010	050-0092
CBE-42	<b>Payroll Records for County Boards</b> - Payroll records of pollworkers, election extras, part-time workers and workers no longer employed at the boards.	Retain four (4) years, then may destroy provided audited and audit report has been released.	1994, revised 2015	050-0094
CBE-44	<b>Registration Confirmation Notices</b> - Confirmation notices sent by the county boards to resident to verify registration records and returned with updated information.	County Board will retain for two (2) years, then destroy	1996, revised 2011	050-0096
CBE-45	<b>Directives/Advisories</b> - Letters of instruction, information and guidance sent to all county board of elections concerning the election process and new election laws.	Retain in office for one (1) year, then transfer to storage for an additional five (5) years. Six (6) year retention needed to provide information for a complete election cycle for U.S. Senate and Supreme Court Justices.	1994, revised 2011	050-0086
CBE-45A	<b>Confirmation Notice Responses</b> - Information indicating whether a person has responded to a confirmation notice. A confirmation notice is a notice that is mailed to a voter to confirm the person's residency or other required information.	County Board will retain for five (5) years, then destroy.	1996, revised 2010	050-0097
CBE-46	<b>Confirmation or Acknowledgement Notice Lists</b> - Lists of names and addresses of persons who were sent confirmation or acknowledgement notices.	County Board will retain for five (5) years, then destroy.	1996, revised 2010	050-0098
CBE-47	<b>Acknowledgement or confirmation cards</b> - Acknowledgement or confirmation cards returned undeliverable.	Retain four (4) years, then destroy.	2010	50030006

CBE- 48	<b>Voter Verified Paper Audit Trail -</b> Voter Verified Audit Trail (VVPAT) official ballot to be used for recount purposes	Retain for 60 days or 22 months for federal elections, then destroy provided no pending court action or court order (R.C. 3506.18)	2010	50030007
CBE-49	<b>Voting Machine Reports -</b> This record series includes, but is not limited to, logic & accuracy testing, test decks, tapes, testing result records, zero tapes, close of polls tapes, cards downloaded, used seal/lock records, independent verification and validation testing (IV & V) of new voting equipment.	Retain sixty (60) days after an election or twenty-two (22) months after a federal election, then may destroy provided no pending court action or order.	2010, revised 2013	50030008
CBE-50	<b>Chain of custody form and voting unit event log -</b> This record series includes chain of custody forms and voting unit event log.	Retain two (2) years, then may destroy.	2010, revised 2015	50030005
CBE-51	<b>Proclamations of elections or legal advertisement of questions and issues</b>	Retain one (1) year, then destroy.	2010	50030009
CBE-52	<b>Challenge forms -</b> Challenge forms pursuant to R.C. 3505.20	Retain for two (2) years, then destroy.	2010	50030010
CBE-53	<b>Observer forms -</b> Observer forms pursuant to R.C. 3505.21	Retain one (1) year, then destroy.	2010	50030011
CBE-54	<b>Census block reprecincting waiver form and accompanying maps</b>	Retain four years (4), then destroy.	2010	50030036
CBE-55	<b>Affirmation of voter who does not possess any appropriate identification for voting purposes -</b> Affirmation of voter who does not possess any appropriate identification for voting purposes - (SOS prescribed form #10- T).	For any Form 10-T completed prior to the May 6, 2014 primary election, retain two (2) years, then may destroy. For any Form 10-T completed during the May 6, 2014 primary election, retain until May 6, 2016, then may destroy.	2010, revised 2015	50030012
CBE-56	<b>Verification of handicapped accessible parking spaces and polling locations</b>	Retain one (1) year, then destroy.	2010	50030013
CBE-57	<b>Certification of training hours completed</b>	Retain two (2) years, then destroy.	2010	50030014
CBE-58	<b>Election calendars</b>	Retain until no longer of administrative value, then destroy.	2010	50030032

CBE-59	<b>Mailing Envelope Containing Voted Absent Voter Ballot</b> - Mailing envelope containing a voted absent voter ballot.	Retain ninety (90) days after election, then may destroy provided no pending court action or court order.	2010, revised 2016	50030029
CBE-60	<b>Proofs of ballots</b>	Retain 60 days after election, then destroy provided no pending court action or court order.	2010	50030030
CBE-61	<b>Report Forms for local questions &amp; issues including approved ballot language</b>	Retain 60 days after election, then destroy provided no pending court action or court order.	2010	50030015
CBE-62	<b>Certifications by most populous county of overlapping local questions and issues</b> - Certifications by most populous county of overlapping local questions and issues.	Retain 60 days after election, then may destroy provided no pending court action or court order.	2010, revised 2015	50030035
CBE-63	<b>Certificates of results</b> - certificates of results pursuant to R.C. 3505.32 and 3513.22.	Retain six (6) years, then destroy.	2010	50030037
CBE-64	<b>Copies of state issues petitions or statewide candidate petitions</b>	Retain 60 days after election, then destroy provided no pending court action or court order	2010	50030033
CBE-65	<b>Unofficial election results</b>	Retain 60 days after election, then destroy provided no pending court action or court order.	2010	50030031
CBE-66	<b>Evidence used in protest hearing</b> - Evidence or materials provided or used in conjunction with a protest hearing.	Retain one (1) year, then destroy provided no pending court action or court order.	2010	50030016
CBE-67	<b>SOS expenses of conducting elections</b> - Yearly report to Secretary of State of the expenses of conducting elections.	Retain four (4) years, then destroy.	2010	50030017
CBE-68	<b>Organization or Reorganization of Boards of Elections</b> - Report forms on organization or reorganization of board of elections.	Retain six (6) years, then destroy.	2010	50030027
CBE-69	<b>Reimbursement of poll worker training</b> - Reimbursement records of costs of training poll workers.	Retain two (2) years or until audited, then destroy	2010	50030018

CBE-70	Duplicate reports generated by the statewide voter registration database	Retain for 60 days or no longer of administrative value, then destroy	2010	50030019
CBE-71	Duplicate or incomplete voter registration forms	Retain for 4 (four) years, then destroy.	2010	50030020
CBE-72	Returned undeliverable 60 day notices	Retain until the elector appears to vote or until the elector named is removed from the voter registration list, then destroy.	2010	50030028
CBE-73	Transmittal forms that accompany voter registration forms from agencies	Retain 2 (two) years, then destroy.	2010	50030021
CBE-74	Copies of identification provided by electors - copies of identification provided by electors with a voter registration form or absentee ballot application.	Retain for the longer of these periods; 6 months from the date of receipt or 45 days from the date of the election for which the absentee ballot was issued, then destroy.	2010	50030022
CBE-75	Copies of identification provided by electors with an absentee ballot and identification envelope	Retain for 90 (ninety) days from the date received, then destroy.	2010	50030023
CBE-76	Copies of identification provided by a UOCAVA voter with a Federal Postcard application	Retain 4 (four) years from the date received, then destroy.	2010	50030024
CBE-77	Federal Postcard Voting Application (FVAP) - Application for registration as a voter on a form adopted in accordance with federal regulations relating to the "Uniformed and Overseas Citizens Absentee Voting Act" per R.C. 3511.02	Retain permanently.	2012	50030057
CBE-78	Election Administration and Voting Survey Biennial Reports - Election administration and voting survey biennial reports that include information on voter registrations, changes of name/address, absentee ballots, ballots cast provisionally and other election related information.	Retain two (2) years, three (3) months, then may destroy.	2012	50030060
CBE-79	Election Administration Plans - Administrative plans created by county boards of elections indicating preparations for conducting elections and handling of possible emergency situations on election day...	Retain for four (4) years, then may destroy.	2012, revised 2015	50030061

<b>CBE-80</b>	<b>Precinct Election Officials Performance Assessment</b> -A review to be conducted after each presidential primary and even-numbered general election to determine whether precinct election officials are satisfactorily performing their duties.	Retain fifteen (15) months, then may destroy.	2012	50030052
<b>CBE-81</b>	<b>Local Option Petitions</b> - Local option petitions filed with county boards of elections	Retain four (4) years, then may destroy	2012	50030053
<b>CBE-82</b>	<b>Notice of County Board of Elections Public Meeting</b> - Notice of public meeting of a county board of elections including regular, special or emergency meetings. Required by R.C. 121.22 (F).	Retain two (2) years, six (6) months, then may destroy.	2012	50030054
<b>CBE-83</b>	<b>Certificates of Appointment</b> - Copies of certificates of appointment to elected office. The certificate contains the name of the appointed official, the office held, and beginning and ending terms of the appointment.	Retain four (4) years, then may destroy.	2012	50030065
<b>CBE-84</b>	<b>County Job &amp; Family Services Voter Registrations Report</b> - Quarterly report of number of voter registration forms received from county job and family services offices.	Retain one (1) year, then may destroy	2012	50030066
<b>CBE-85</b>	<b>Returned Undeliverable Notices</b> - Notices sent to electors that are returned as undeliverable (i.e. change of precinct, polling location or voting district, notice of cancellation of voter registration following receipt of notification of the death of a registered elector).	Retain four (4) years, then may destroy.	2012, revised 2015	50030067
<b>CBE-86</b>	<b>Authority to Vote Slips</b> - Form given to elector at polling place indicating permission to cast a ballot.	Retain sixty (60) days after election, then may destroy provided no court action or court order.	2012	50030055
<b>CBE-87</b>	<b>Post-Election Audit Reports</b> - The original audit workbook verifying that the county board of elections has conducted an audit of the election process. To be completed after each even-numbered year general election and after presidential primary elections verifying the accuracy of the election process.	Retain for four (4) years, then may destroy.	2013, revised 2015	50030100

CBE-88	<b>Ethics Forms</b> - Forms required to be completed by board of elections staff verifying that they have been trained on and will comply with the Secretary of State's ethics policy and Ohio ethics law. Original signed forms will be provided to the Ohio Secretary of State's Office for board of elections permanent employees. Original signed forms will be retained for board of elections precinct election workers, rovers and/or any temporary persons employed to assist with the election.	Retain one (1) year, then may destroy.	2013	50030093
CBE-90	<b>Attorney-in-Fact Forms</b> - An elector may designate another individual as an Attorney-in-Fact to complete election related documents. (R.C. 3501.11; R.C. 3501.382)	Retain until revoked or elector no longer registered in county.	2013, revised 2015	50030086
CBE-91	<b>Elected Official and Appointment Certification Forms</b> - Forms to report certifications of persons elected to office; report appointments to fill vacancies in nomination on the ballot; and/or report political affiliation of previous office holder certified by the board of elections director.	Retain six (6) years, then may destroy.	2013	50030087
CBE-92	<b>Division of Liquor Control Rquests</b> - Copies of responses to the Division of Liquor Control regarding precinct boundaries or other local liquor option inquiries received from the Division of Liquor Control.	Retain six (6) months, then may destroy.	2013	50030098
CBE-93	<b>Precinct Election Officials Notices</b> - Notices of acceptance, rejection, replacement or removal of precinct election officials. (R.C. 3501.22)	Retain one (1) year, then may destroy.	2013	50030094
CBE-94	<b>Former Resident Presidential Ballot</b> - Form required to be completed under chapter 3504 of the Ohio Revised Code, submitted to county board of elections requesting a presidential ballot. Copy sent to the Secretary of State.	Retain for twenty-two (22) months after the federal election, then may destroy provided no pending court action or order.	2013	50030095

CBE-95	<b>Authorization for Elector to Update Signature</b> - Allows an elector to update his or her voter signature with the county board of elections per R.C. 3501.05(AA).	Retain until signature updated or person no longer registered in county, then may destroy.	2013	50030097
CBE-96	<b>Certifications of District Candidates</b> - Certification by the board of the most populous county in a district to overlap counties in that district, of the names of the candidates to appear on the primary or general election ballot for district offices. (R.C. 3505.01; R.C. 3513.05)	Retain six (6) months, then may destroy.	2013	50030088
CBE-97	<b>Election Hardware Inventory</b> - Listing of election hardware (servers) providing make, model type, quantity, date of installation and software/firmware version.	Retain until no longer of administrative value, then may destroy.	2013	50030089
CBE-98	<b>Election Day Precinct Incident Log</b> - Log submitted by precinct election officials to county board of elections regarding incidents occurring at a precinct on Election Day.	Retain sixty (60) days after an election or twenty-two (22) months after a federal election, then may destroy provided no pending court action or order.	2013	50030090
CBE-99	<b>Declaration of Intent to Change Political Party</b> - Declaration of intent to change political party filed by an elected official prior to their submission of declaration of candidacy and petition for partisan office. R.C. 3513.191(C).	Retain for ten (10) years, then may destroy.	2013	50030096
CBE-100	<b>Absentee Voter Challenge</b> - Statement of person challenged as to party affiliation when requesting an absentee voter's ballot.	Retain sixty (60) days after an election or twenty-two (22) months after a federal election, then may destroy provided no pending court action or order.	2013	50030091
CBE-101	<b>Provisional Voter Precinct Verification</b> - Form completed by a precinct election official when a voter's name does not appear in the poll book/list and the voter insists on voting in the wrong precinct of a multiple-precinct polling location.	Retain for four (4) years, then may destroy.	2013	50030092
CBE-102	<b>Correspondence for DOB</b> - Letters sent by Board of Elections requesting a registered voter to provide their date of birth.	Retain until no longer of administrative value, then may destroy.	2015	50030108

<b>CBE-103</b>	<b>State and Territorial Exchange of Vital Events (STEVE) files</b> - File containing county statewide voter registration database (SWVRD) records that have been matched with records of decedents for the purpose of cancelling the registrations of deceased voters.	Retain two (2) years, then may destroy.	2015	50030115
<b>CBE-104</b>	<b>Cancellation of Registration of Deceased Elector</b> - Includes Notice of Death of Registered Voter (R.C. 3503.21(A)(3)) and Notice of Cancellation of Voter Registration (R.C. 3503.21(F)) following receipt of notification of death of a registered elector. (SOS prescribed forms 255-C and 255-D)	Retain two (2) years, then may destroy.	2015	50030118





**Jon Husted**  
Ohio Secretary of State

180 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (877) 767-6446 Fax: (614) 644-0649  
[www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov)

---

**DIRECTIVE 2015-02**

February 17, 2015

To: All County Boards of Elections  
Directors, Deputy Directors, and Board Members

Re: Enhancing Voter Access to Public Information

**BACKGROUND**

A key emphasis for Ohio's election administrators in 2015 must be our preparation for 2016. Offering online voter access to public information – the voter's registration status, assigned voting location, and sample ballot lookup – is increasingly important and expected by the public, particularly in higher turnout federal election years. With increasing numbers of voters casting in-person and by-mail absentee ballots, the public's expectation is that local election officials will provide online access to the status of the voter's application and ballot. Many boards of elections already provide these and other online services to their voters.

This Directive establishes baselines for online voter access to public information that all boards of elections must fully implement no later than September 18, 2015.

For additional information about best practices for online access to voter information, see the Pew Center on the States' *Being Online is Not Enough* reports from [2008](#) and [2011](#).

**INSTRUCTIONS**

Each board of elections must offer the following minimum look-up tools on its website:

- **Voter Registration Status** – This functionality must allow a voter to identify the address within the county at which the voter is registered to vote. A successful search result must offer a link to the Secretary of State's Online Change of Address system in the event the voter must update the voter's registration address. An unsuccessful search (i.e., the voter cannot be found in the county's voter file) must offer a link both to the voter registration form and the Secretary of State's Online Change of Address system. This search functionality must be available to voters throughout the year. Boards of elections must continue to ensure that registration updates made in the county voter registration system (e.g., new registrations, changes of name, changes of address, etc.) are promptly sent to the Statewide Voter Registration Database.

- Absentee Ballot Status – This functionality must allow all absentee voters in the county to identify the status of his or her absentee ballot from the date of application to the date the ballot was accepted for counting. Specifically, a successful search result must provide the voter with the following information:
  - The date the voter’s absentee application was approved;
  - The date the voter’s approved absentee application was processed by the board of elections (i.e., the date the board of elections mailed the ballot or otherwise issued it);
  - The date the voter’s voted absentee ballot was received by the board of elections; and
  - The date the voter’s voted absentee ballot was accepted for counting (or, if not accepted for counting, the reason it was determined to be ineligible for counting and the deadline by which the voter may correct any deficiency).

This search functionality must be available to voters beginning at least the 45<sup>th</sup> day before an election through the 35<sup>th</sup> day after that same election.

- Polling Place Lookup – This functionality must allow a voter to identify the correct polling place assigned to the voter based upon the address at which the voter is registered to vote. Optional functionality may offer a link to online directions (e.g., Google, MapQuest, etc.) from the voter’s registration address to the address of the correct polling place assigned to the voter. This search functionality must be available to voters throughout the year. Boards of elections must continue to ensure that registration updates made in the county voter registration system (e.g., changes to precinct assignments or changes to polling place locations, addresses, names, etc.) are promptly sent to the Statewide Voter Registration Database.
- Sample Ballot – This functionality must allow a voter to view and print the correct sample ballot assigned to the voter for the upcoming election based upon the address at which the voter is registered to vote. This search functionality must be available to voters beginning the 45<sup>th</sup> day before the election.

### **ADDITIONAL CONSIDERATIONS**

- Because election information changes from time to time, it is important that each board establish regular intervals by which the information necessary to populate the lookup tools established above is updated. Any change to a voter’s registration information or absentee ballot status must be reflected in the lookup tool each business day. Any changes to the location of a polling place or to a sample ballot must be reflected promptly in the lookup tool.
- Boards of elections must make the necessary arrangements to ensure that the IT infrastructure supporting its website and these lookup tools, as well as the internet “path” to them, are sufficiently robust and stable to support the traffic during peak election periods. Boards of elections should procure the appropriate personnel and resources (e.g.,

county Automatic Data Processing board personnel and other county or elections IT staff, county voter registration system vendor, local internet service provider personnel, etc.) to ensure that the Board's online presence is scaled and supported appropriately to meet presidential-year activity levels.

- The voter information discussed in this Directive is derived from public records as defined in state law. However, each board of elections must take all necessary steps to ensure that industry-standard security protocols for its website and lookup tools are implemented and followed. Boards should procure the appropriate resources (see above) to do so.
- Each board of elections must build its website, and these baseline online voter information access tools, with the end user – the voter – in mind. Each board needs to evaluate the following:
  - Are users easily able to find the correct site when using online search engines (e.g., Google, Yahoo!, etc.);
  - Are users easily able to navigate within the board of elections' own website (e.g., are links clearly labeled, is the content organized, and does it use plain language whenever possible); and
  - Is the information easily displayed using various platforms (i.e., PC vs. mobile; iPhone vs. Android; Internet Explorer vs. Chrome)?
- Boards of elections must work to ensure that its website and these baseline online voter information access tools can be accessed effectively and used by voters with disabilities.

If you have any questions concerning this Directive, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted



**Jon Husted**  
Ohio Secretary of State

180 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (877) 767-6446 Fax: (614) 644-0649  
[www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov)

Print friendly

**FOR IMMEDIATE RELEASE**  
Tuesday, September 29, 2015

**Secretary Husted's Office to hold Open Office Hours Across Ohio in October**

**COLUMBUS** – Ohio Secretary of State Jon Husted today announced his office's October regional office hours. Regional liaisons for the Secretary of State's office will be in 31 counties around Ohio including Adams, Ashland, Ashtabula, Athens, Butler, Clark, Clinton, Coshocton, Crawford, Cuyahoga, Darke, Delaware, Fairfield, Fulton, Geauga, Guernsey, Henry, Highland, Hocking, Jackson, Knox, Lake, Lorain, Mercer, Morrow, Pike, Preble, Seneca, Stark, Tuscarawas and Wood Counties.

The purpose of open office hours is to give local residents an opportunity to learn more about, and stay connected with, the Secretary of State's office in an informal and accessible setting.

In addition to making voter registration forms and election information available, regional representatives will be on hand to answer questions and distribute materials to those interested in learning more about the other functions of the office such as the business services division and initiatives including the Ohio Business Profile and Military Ready-to-Vote program.

**Regional office hours will be held at the following times and locations:**

*Sorted by county*

County	Date	Time	Location	Address
Adams	10/26/2015	10:00am - 12:00pm	Adams County Services Annex Conference Room	215 North Cross Street West Union, Ohio 45693
Ashland	10/12/2015	1:00pm - 3:00pm	Ashland County Public Library	224 Claremont Avenue Ashland, Ohio 44805
Ashtabula	10/21/2015	2:00pm - 4:00pm	Henderson Public Library	54 East Jefferson Street Jefferson, Ohio 44047
Athens	10/9/2015	9:00am - 11:00am	Athens County Public Library	95 West Washington Street Nelsonville, Ohio 45764
Butler	10/19/2015	11:00am - 1:00pm	MidPointe Library West Chester	9363 Centre Pointe Drive West Chester, Ohio 45069
Clark	10/19/2015	11:00am - 1:00pm	Clark County Public Library- Houston Branch	5 West Jamestown Street South Charleston, Ohio 45368
Clinton	10/13/2015	10:00am - 12:00pm	Wilmington Public Library	268 North South Street Wilmington, Ohio 45177 601 East Main Street

Coshocton	10/7/2015	12:00pm - 2:00pm	West Lafayette Library	West Lafayette, Ohio 43845
Crawford	10/23/2015	11:00am - 1:00pm	Bucyrus Public Library	200 East Mansfield Street Bucyrus , Ohio 44820
Cuyahoga	10/9/2015	10:00am - 12:00pm	Strongsville Public Library	18700 Westwood Drive Strongsville, Ohio 44136
Darke	10/2/2015	10:00am - 12:00pm	Greenville Public Library	520 Sycamore Street Greenville, Ohio 45331
Delaware	10/26/2015	11:30am - 1:30pm	Delaware County Public Library- Main Branch	84 East Winter Street Delaware, Ohio 43015
Fairfield	10/7/2015	11:00am - 1:00pm	Fairfield County Library- Baltimore Branch	205 East Market Street Baltimore, Ohio 43015
Fulton	10/16/2015	12:00pm - 2:00pm	Wauseon Public Library	117 East Elm Street Wauseon, Ohio 43567
Geauga	10/28/2015	1:00pm - 3:00pm	Chardon Public Library	110 East Park Street Chardon, Ohio 44024
Guernsey	10/6/2015	12:00pm - 2:00pm	Guernsey County Library Byesville Branch	100 Glass Avenue Byesville, Ohio 43723
Henry	10/20/2015	12:00pm - 2:00pm	Napoleon Public Library	310 West Clinton Street Napoleon, Ohio 43545
Highland	10/26/2015	1:00pm - 3:00pm	Highland County District Library - Hillsboro	10 Willettsville Pike Hillsboro, Ohio 45133
Hocking	10/8/2015	9:00am - 11:00am	Logan-Hocking County District Library	230 East Main Street Logan, Ohio 43138
Jackson	10/28/2015	1:00pm - 3:00pm	Markay Cultural Arts Center	269 East Main Street Jackson, Ohio 45640
Knox	10/14/2015	10:00am - 12:00pm	Fredericktown Community Library	1 Burgett Drive Fredericktown, Ohio 43019
Lake	10/14/2015	1:00pm - 3:00pm	Madison Public Library	6111 Middle Ridge Road Madison, Ohio 44057
Lorain	10/22/2015	10:00am - 12:00pm	Domonkas Branch Library	4125 Lake Road Lorain, Ohio 44054
Mercer	10/9/2015	10:00am - 12:00pm	Mercer County District Library	303 North Main Street Celina, Ohio 45822
Morrow	10/16/2015	2:00pm - 4:00pm	Mount Gilead Public Library	41 East High Street Mount Gilead , Ohio 43338
Pike	10/19/2015	10:30am - 12:00pm	Garnet A. Wilson Public Library of Pike County	207 North Market Street Waverly, Ohio 45690
Preble	10/15/2015	12:30pm - 2:30pm	Eaton Branch Library	301 North Barron Street Eaton, Ohio 45320
Seneca	10/2/2015	12:00pm -	Tiffin Public Library	77 Jefferson Street

Exhibit C

		2:00pm		Tiffin, Ohio 44883
Stark	10/7/2015	1:30pm - 3:30pm	Stark County District Library	715 Market Avenue North Canton, Ohio 44702
Tuscarawas	10/5/2015	12:00pm - 2:00pm	Tuscarawas County Public Library Tuscarawas Branch	209 South Main Street Tuscarawas, Ohio 44682
Wood	10/14/2015	2:00pm - 4:00pm	Wood County District Public Library	108 North Main Street Bowling Green, Ohio 43402

-30-

*For more information, please contact [Joshua Eck](#) at (614) 466-2729*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**OHIO A. PHILIP RANDOLPH  
INSTITUTE, *et al.*,**

Plaintiffs,

v.

**SECRETARY OF STATE, JON HUSTED,**

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 2:16-CV-00303

JUDGE GEORGE C. SMITH

MAGISTRATE JUDGE DEEVERS

---

**DECLARATION OF JOSEPH P. MASICH**

---

I, Joseph P. Masich, hereby declare that:

1. I have been Director of the Summit County Board of Elections since March 2012. I am affiliated with the Republican Party.
2. The board of elections begins planning for an election many months prior to the election actually occurring. For a presidential election, the planning can begin a year or more prior to the election. A part of the planning is ensuring the budget is set. Budget planning for the board begins the year before the election. The budget for the 2016 Presidential General Election was finalized in 2015, and therefore it is difficult to add previously unexpected expenses at this late stage.
3. The board of elections is extremely busy in the weeks preceding any Election Day. Right now, the board is inputting all timely filed voter registrations, processing absentee ballot applications, sending absentee ballots, conducting in-person absentee voting, ensuring that all polling locations are compliant with federal and state law, preparing for the setup of all polling locations with voting equipment, tables, chairs, and proper signage, and creating the official lists of registered voters for Election Day precincts, among numerous other tasks.
4. I have reviewed the Plaintiffs' proposed order and the Defendant's proposed directive for the above-captioned case.
5. While the Defendant's proposed directive would be difficult to implement less than four weeks prior to Election Day, I believe the Defendant's proposed directive is a reasonable solution and contains the safeguards necessary to ensure the integrity of the voting process.



6. I believe it would be very burdensome to implement Plaintiffs' proposed order at this late stage. This is especially true because Plaintiffs request the mailing of provisional ballots, which only very rarely occurs under current law.
7. Ohio law generally prohibits the sending and/or casting of a provisional ballot by mail. The only circumstance a provisional ballot can be mailed is when an individual is disabled or confined and would otherwise receive a provisional ballot. *See* Ohio Rev. Code § 3503.16(G). This circumstance very rarely occurs. Allowing additional categories of provisional ballots to be sent and/or received by mail has the chance of causing confusion. At the very least, training would need to occur and the board would need to spend additional money to immediately print additional provisional ballots. Also, the board would need to use envelopes large enough to contain the provisional ballot envelopes, as the current mail absentee ballot identification envelopes that the board uses for mailing absentee ballots are too small to fit the provisional ballot envelopes. The postage required for these larger provisional ballot envelopes would be significantly more expensive than the postage for the absentee ballot identification envelopes. Further, instructions would need to be drafted and included with the provisional ballot mailing to inform voters why they are receiving a provisional ballot by mail.
8. It would be a logistical challenge to implement Plaintiffs' proposed order. Board staff workload is already at full capacity. Board staff has been working eleven hours days before the start of absentee voting to process and assemble absentee ballots for mailing. This burdensome proposal may come at the detriment of other election duties that are required by law.
9. The board's voter registration database does not track subsequent reasons for cancellation. So, for instance, an individual cancelled pursuant to the National Change of Address Process or Supplemental Process in 2011, who then appears on a 2014 state department of health deceased voters list, would not be marked as deceased in our database because the individual was already cancelled in 2011.
10. It is my understanding that the county boards of elections vary in the specificity of information in their databases related to the reasons for cancellation. So, while my county could find a way to distinguish between individuals cancelled pursuant to the Supplemental Process and NCOA Process, I believe other counties are not able to make such a distinction.

I declare, under penalty of perjury, that the foregoing is true and correct.

  
\_\_\_\_\_  
Joseph P. Masich

Executed on: October 15, 2016



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**OHIO A. PHILIP RANDOLPH  
INSTITUTE, *et al.*,**

Plaintiffs,

v.

**SECRETARY OF STATE, JON HUSTED,**

Defendant.

:  
:  
:  
: Case No. 2:16-CV-00303  
:  
: JUDGE GEORGE C. SMITH  
:  
: MAGISTRATE JUDGE DEEVERS  
:  
:

---

**DECLARATION OF WILLIAM F. SHUBAT**

---

I, WILLIAM F. SHUBAT, hereby declare that:

1. I am presently the Democrat Director of the Belmont County Board of Elections, where I have held the appointed position of Director since July 18, 1994.
2. The board of elections begins planning for an election many months prior to the election actually occurring. For a presidential election, the planning can begin a year or more prior to the election. A part of the planning is ensuring the budget is set. Budget planning for the board begins the year before the election. The budget for the 2016 Presidential General Election was finalized in 2015, and therefore it is difficult to add previously unexpected expenses at this late stage.
3. The board of elections is extremely busy in the weeks preceding any Election Day. Right now, the board is inputting all timely filed voter registrations, processing absentee ballot applications, sending absentee ballots, conducting in-person absentee voting, ensuring that all polling locations are compliant with federal and state law, preparing for the setup of all polling locations with voting equipment, tables, chairs, and proper signage, and creating the official lists of registered voters for Election Day precincts, among numerous other tasks.
4. I have reviewed the Plaintiffs' proposed order and the Defendant's proposed directive for the above-captioned case.
5. While the Defendant's proposed directive would be difficult to implement less than four weeks prior to Election Day, I believe the Defendant's proposed directive is a reasonable solution and contains the safeguards necessary to ensure the integrity of the voting process.

6. I believe it would be very burdensome implement Plaintiffs' proposed order at this late stage. This is especially true because Plaintiffs request the mailing of provisional ballots, which only very rarely occurs under current law.
7. Ohio law generally prohibits the sending and/or casting of a provisional ballot by mail. The only circumstance a provisional ballot can be mailed is when an individual is disabled or confined and would otherwise receive a provisional ballot. *See* Ohio Rev. Code § 3503.16(G). This circumstance very rarely occurs. Allowing additional categories of provisional ballots to be sent and/or received by mail has the chance of causing confusion. At the very least, training would need to occur and the board would need to spend additional money to immediately print additional provisional ballots. Also, the board would need to obtain envelopes large enough to contain the provisional ballot envelopes, as the traditional absentee ballot identification envelopes that the board has on hand are too small to fit the provisional ballot envelopes. The postage required for these larger provisional ballot envelopes would be significantly more expensive than the postage for the absentee ballot identification envelopes. Further, instructions would need to be drafted and included with the provisional ballot mailing to inform voters why they are receiving a provisional ballot by mail.
8. In order to implement Plaintiffs' proposed order, the board would need to hire additional temporary employees, pull employees from other required duties, and require and pay staff to work overtime. This would force the board to spend a substantial monetary amount, and may come at the detriment of other duties that are required by law.
9. The board's voter registration database does not track subsequent reasons for cancellation. So, for instance, an individual cancelled pursuant to the National Change of Address Process or Supplemental Process in 2011, who then appears on a 2014 state department of health deceased voters list, would not be marked as deceased in our database because the individual was already cancelled in 2011.
10. It is my understanding that the county boards of elections vary in the specificity of information in their databases related to the reasons for cancellation. So, while burdensome, my county could distinguish between individuals cancelled pursuant to the Supplemental Process and NCOA Process, but I believe other counties are not able to make such a distinction.

I declare, under penalty of perjury, that the foregoing is true and correct.

  
\_\_\_\_\_  
WILLIAM F. SHUBAT

Executed on: October 17, 2016



**Jon Husted**  
Ohio Secretary of State

180 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (877) 767-6446 Fax: (614) 644-0649  
[www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov)

---

**Issued Pursuant to Court Order**

**DIRECTIVE 2016-37**

October 14, 2016

To: All County Boards of Elections  
Directors, Deputy Directors and Board Members

Re: Court Order – Prohibition on Denying an Absentee Ballot Application from an Unregistered Elector

**SUMMARY**

This Directive is being issued in accordance with the Order issued today by the United States District Court for the Southern District of Ohio, Eastern Division, in the case of *Ohio A. Philip Randolph Institute, et al. v. Husted*, Case No. 2:16-cv-303. The Order states that “the Secretary of State shall refrain from denying an absentee ballot application on the basis that the applicant is not currently registered to vote.” Pursuant to the Court’s Order, no board of elections shall deny an application for an absentee ballot from an individual who is not currently registered to vote. The Court’s Order specifies that the aforementioned instruction shall remain in effect until the Court issues a subsequent Order. At that time, a new Directive with additional instructions will be issued.

**INSTRUCTIONS**

**I. Absentee Ballot Applications Received by Mail**

If a board of elections receives an application for an absentee ballot via mail from an individual who is not currently registered to vote, the board must not reject that application. Instead, the board must retain the application in a secure location until additional instructions are provided.

## **II. Absentee Ballot Applications Received in Person**

If a board of elections receives an application for an absentee ballot in person from an individual who is not currently registered to vote, the board must not reject that application. Instead, that individual must be issued a provisional ballot. The board must write “NR” (for not registered) and the date in ink on the top left-hand corner of the provisional ballot affirmation envelope (SOS Form 12-B) and retain it securely and separately from the board’s other provisional ballots until additional instructions are provided.

If you have any questions about this Directive, please do not hesitate to contact the Secretary of State’s elections counsel assigned to your county at (614) 466-2564 or (614) 466-2585.

Sincerely,

A handwritten signature in dark ink, reading "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**OHIO A. PHILIP RANDOLPH  
INSTITUTE, *et al.*,**

Plaintiffs,

v.

**SECRETARY OF STATE, JON HUSTED,**

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 2:16-CV-00303

JUDGE GEORGE C. SMITH

MAGISTRATE JUDGE DEAVERS

---

**DECLARATION OF DAWN BILLING**

---

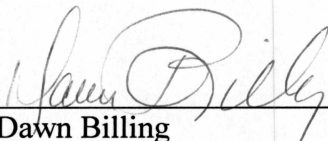
I, Dawn Billing, hereby declare that:

1. I have been with the Shelby County Board of Elections serving as either Director or Deputy Director since 2000 and have served exclusively as Director since 2010. I am affiliated with the Democratic Party.
2. The board of elections begins planning for an election many months prior to the election actually occurring. For a presidential election, the planning can begin a year or more prior to the election. A part of the planning is ensuring the budget is set. Budget planning for the board begins the year before the election. The budget for the 2016 Presidential General Election was finalized in 2015, and therefore it is difficult to add previously unexpected expenses at this late stage.
3. The board of elections is extremely busy in the weeks preceding any Election Day. Right now, the board is inputting all timely filed voter registrations, processing absentee ballot applications, sending absentee ballots, conducting in-person absentee voting, ensuring that all polling locations are compliant with federal and state law, preparing for the setup of all polling locations with voting equipment, tables, chairs, and proper signage, and creating the official lists of registered voters for Election Day precincts, among numerous other tasks.
4. I have reviewed the Plaintiffs' proposed order and the Defendant's proposed directive for the above-captioned case.
5. While the Defendant's proposed directive would be difficult to implement less than four weeks prior to Election Day, I believe the Defendant's proposed directive is a reasonable solution and contains the safeguards necessary to ensure the integrity of the voting process.



6. I believe it would be very burdensome implement Plaintiffs' proposed order at this late stage. This is especially true because Plaintiffs request the mailing of provisional ballots, which only very rarely occurs under current law.
7. Ohio law generally prohibits the sending and/or casting of a provisional ballot by mail. The only circumstance a provisional ballot can be mailed is when an individual is disabled or confined and would otherwise receive a provisional ballot. *See* Ohio Rev. Code § 3503.16(G). This circumstance very rarely occurs. Allowing additional categories of provisional ballots to be sent and/or received by mail has the chance of causing confusion. At the very least, training would need to occur and the board would need to spend additional money to immediately print additional provisional ballots. Also, the board would need to obtain envelopes large enough to contain the provisional ballot envelopes, as the traditional absentee ballot identification envelopes that the board has on hand are too small to fit the provisional ballot envelopes. The postage required for these larger provisional ballot envelopes would be significantly more expensive than the postage for the absentee ballot identification envelopes. Further, instructions would need to be drafted and included with the provisional ballot mailing to inform voters why they are receiving a provisional ballot by mail.
8. In order to implement Plaintiffs' proposed order, the board would need to hire additional temporary employees, pull employees from other required duties, and require and pay staff to work overtime. This would force the board to spend a substantial monetary amount, and may come at the detriment of other duties that are required by law.
9. The board's voter registration database does not track subsequent reasons for cancellation. So, for instance, an individual cancelled pursuant to the National Change of Address Process or Supplemental Process in 2011, who then appears on a 2014 state department of health deceased voters list, would not be marked as deceased in our database because the individual was already cancelled in 2011.
10. It is my understanding that the county boards of elections vary in the specificity of information in their databases related to the reasons for cancellation. So, while my county is not able to distinguish between individuals cancelled pursuant to the Supplemental Process and NCOA Process, I believe other counties might be able to make such a distinction.

I declare, under penalty of perjury, that the foregoing is true and correct.

  
Dawn Billing

Executed on: October 17, 2016

STATE OF OHIO  
 CONTROLLING BOARD  
 30 East Broad Street, 34th Floor  
 Columbus, Ohio 43215-3457  
 (614) 466-5721 FAX:(614) 466-3813

**OPERATING REQUEST**
[Attachments](#) [Print](#) [Print PDF](#) [Close](#)

Controlling Board No.  
**SOS0100048**

Status: Approved  
 Meeting Date: 7/25/2016

**GENERAL INFORMATION**

<b>Agency</b> Secretary of State's Office  <b>Division/Institution</b> Secretary of State's Office	<input checked="" type="radio"/> Waiver of Competitive Selection (Revised Code Section 127.16B) <input checked="" type="checkbox"/> No Competitive Opportunity <input type="checkbox"/> Agency Released Competitive Opportunity <input type="radio"/> Agency Released Competitive Opportunity (Revised Code Section 127.162) <input type="radio"/> Other Statutory Authority/Bill Section: <input type="radio"/> Operating Transfer Request (Revised Code Section 127.14) <input type="checkbox"/> Appropriation <input type="checkbox"/> Cash <input type="checkbox"/> Other Statutory Authority/Bill Section:	<b>Fiscal Year(s)</b> 2017  <b>Bill No.</b> 64  <b>Eligible for OBM Director Approval?</b> No
--	---	--

**VENDOR INFORMATION**

For	Vendor ID	FY	Amount	Name	Address	City	State	County	Zip Code
SOS01	0000050890	2017	\$549,411.00	Pierce Communications, Inc.	208 E State Street	Columbus	OH	Franklin	43215

**FUNDING INFORMATION**

Fund Group	Fund Code	Appropriation Line Item	Appropriation Line Item Name	FY	Amount	FY	Amount
DPF	5990	050603	Business Services Operating Expenses	2017	\$549,411.00		\$0.00

**SIGNATURES**


07/25/2016

Agency Director or Authorized Agent

On The Date Of

07/11/2016



Date

Controlling Board President/OBM Director

**AGENCY CONTACT**

Name: Veronica Sherman

Title: Chief Financial Officer

Phone: (614) 466 - 0180

Fax: (614) 785 - 3692

E-Mail: vsherman@ohiosecretaryofstate.gov

**REQUIRED EXPLANATION OF REQUEST**

The Secretary of State's Office respectfully requests Controlling Board approval to waive competitive selection in the amount of \$549,411.00 in FY 2017 to contract with Pierce Communications, Inc., Columbus, OH (Franklin county) for a voter education effort using broadcast and cable television, targeted radio, and digital media across Ohio's media marketplace ahead of the November 8, 2016 general election.

Pierce Communications will use an integrated campaign to deliver statewide media buys providing voting information to every corner of Ohio's demographic and geographical niches, major metro and small town media markets. It is planned that television, radio and digital ads will begin airing/running in early September.

Of the total amount, 90 percent or about \$495,411 is for actual media buys. Production costs are estimated at \$10,000 and Pierce Communications will receive \$44,000 for media placement, coordination of the campaign, and auditing of the media buys.

Attachments	Controlling Board Request No.: SOS0100048
-------------	---

Attachment Type	Attachment Description
Contract	Pierce Communications

Release and Permit Information						
Name	FY	Amount	R & P #	R & P Date	Issued By	Comments
Pierce Communications, Inc.	2017	\$549,411.00				

Operating Request Required Information New Contract - Pierce Communications, Inc.	Controlling Board Request No.: SOS0100048
--	---

1. Selection Process: Was this contract subject to selection by a Request for Proposal (RFP) process? No

Explain why this contract was not subject to an RFP process

The majority of funds, approximately 90 percent of the contract, will go directly towards payment to media outlets across the state for the purchase of actual media buys. Contractor payment will total \$54,000 for production costs, media placement work, media coordination and after-placement audit work.

2. Provide the following selected contractor information:

Pierce Communications, Inc.  
208 E State Street  
Columbus, OH 43215  
County: Franklin

3. Contractor's location from which all or most of the contract work will be performed, if different from the location of principal place of business. (For institutional agencies, cite the location of the institution, including the city and county, where services are to be performed.)

4. Institutional agencies only: Is the contractor currently performing services at the institution listed above?

5. Specify the deliverables of this contract or describe the scope of service(s) to be performed by this contractor.

Pierce Communications will use an integrated campaign to deliver statewide media buys including: 1) broadcast TV ads in Ohio's major market's, 2) cable TV ads in eastern and southeastern Ohio, 3) target radio buy time on Ohio's leading news/talk and urban stations, 4) digital display ads on broadcast TV station's digital platforms and Facebook, and 5) production, media placement, coordination and audit.

6. Cite the account category of expense being used for this purchase of service(s).

Account Category	Subobject	Amount	Non-Exempt Amount
510		\$54,000.00	\$54,000.00
520		\$495,411.00	\$495,411.00

**Total Amounts**

\$549,411.00

\$549,411.00

7. Duration of this contract (beginning and ending dates) within the fiscal biennium.

Beginning Date

Ending Date



07/26/2016

06/30/2017

8. Is the contractor already performing work under this contract? No

9. Identify all state contracts which the selected contractor has had approved by the Controlling Board since the beginning of the last fiscal year through this fiscal year to date. Also include contracts approved for this agency or institutions of higher education.

a. Total number of contracts. 0

b. For each contract list the state agency and the contract amount.

Agency	Contract/Agreement Amount	FY
--------	---------------------------	----

10. Contractor Procurement Compliance:

a. Is this contractor in compliance with Buy America? Yes

Explain: The contractor is located at: 208 E State Street Columbus, OH 43215

b. Is this contractor in compliance with Buy Ohio? Yes

Explain: The contractor is located at: 208 E State Street Columbus, OH 43215

11. Provide the following employee information:

	Nationwide	Ohio
Total Number of Employees	3	3
Percentage of Women	33.33%	33.33%
Percentage of Minorities	0%	0%

12. What percent of the work will be done by subcontractors? 0

If more than 50%, provide the same information for each subcontractor as requested in number 11 above for the contractor.

Subcontractor	Nationwide # of Employees	Nationwide % of Women	Nationwide % of Minorities	Ohio # of Employees	Ohio % of Women	Ohio % of Minorities
---------------	------------------------------	--------------------------	-------------------------------	------------------------	--------------------	-------------------------

13. Provide all subsequent renewal schedules (beginning and ending dates) and amounts associated with this contract.

A contract renewal is the exercise of an option to enter into a subsequent contract with a vendor in accordance with renewal provisions specified in a preceding contract.

Beginning Date	Ending Date	Total Lease Amount
----------------	-------------	--------------------

Explain contract provisions.

## 2016 CONTROLLING BOARD SCHEDULE and Ohio Board of Regents Deadlines

*The meetings of the Controlling Board will be held at 1:30 p.m.,  
in the North Hearing Room of the Statehouse Senate Office Building.*

<b>BOR Submission Deadline</b>	<b>OBM Submission Deadline</b>	<b>Revision Deadline</b>	<b>Agenda Published</b>	<b>Meeting Date</b>
12/10/2015	12/22/2015	12/29/2015	1/4/2016	1/11/2016
12/23/2015	1/5/2016	1/12/2016	1/15/2016	1/25/2016
1/7/2016	1/19/2016	1/26/2016	2/1/2016	2/8/2016
1/21/2016	2/2/2016	2/9/2016	2/12/2016	2/22/2016
2/4/2016	2/16/2016	2/23/2016	2/29/2016	3/7/2016
2/18/2016	3/1/2016	3/8/2016	3/14/2016	3/21/2016
3/3/2016	3/15/2016	3/22/2016	3/28/2016	4/4/2016
3/17/2016	3/29/2016	4/5/2016	4/11/2016	4/18/2016
3/31/2016	4/12/2016	4/19/2016	4/25/2016	5/2/2016
4/14/2016	4/26/2016	5/3/2016	5/9/2016	5/16/2016
5/5/2016	5/17/2016	5/24/2016	5/27/2016	6/6/2016
5/19/2016	5/31/2016	6/7/2016	6/13/2016	6/20/2016
6/9/2016	6/21/2016	6/28/2016	7/1/2016	7/11/2016
6/23/2016	7/5/2016	7/12/2016	7/18/2016	7/25/2016
7/7/2016	7/19/2016	7/26/2016	8/1/2016	8/8/2016
7/21/2016	8/2/2016	8/9/2016	8/15/2016	8/22/2016
8/4/2016	8/16/2016	8/23/2016	9/2/2016	9/12/2016
8/25/2016	9/6/2016	9/13/2016	9/19/2016	9/26/2016
9/8/2016	9/20/2016	9/27/2016	10/7/2016	10/17/2016
9/29/2016	10/11/2016	10/18/2016	10/24/2016	10/31/2016
10/13/2016	10/25/2016	11/1/2016	11/7/2016	11/14/2016
11/3/2016	11/15/2016	11/22/2016	11/28/2016	12/5/2016
11/15/2016	11/29/2016	12/6/2016	12/12/2016	12/19/2016

23 Meetings

[www.ecb.ohio.gov](http://www.ecb.ohio.gov)

CB phone number: 614-466-5721

# **CONTROLLING BOARD MANUAL**

**Rev. 2/2012**

T  
ABLE OF C  
ONTENTS

**Section I—Introduction..... 6**

**Controlling Board Overview..... 6**

    Why a Controlling Board? .....7

    History of the Controlling Board .....7

        Membership .....7

        Authority/Duties .....7

    Controlling Board Authority and its Context.....8

        Controlling Board Actions Related to State Finances and the Budget Arena .....8

            The Operating Budget.....8

            The Capital Budget .....9

        Controlling Board Actions in the Purchasing Arena—Waiver of Competitive Selection...10

            State Procurement Processes.....10

            Other Legislative Oversight.....10

    Who is the Controlling Board?.....10

    Who is the President?.....11

    Who is the Secretary?.....11

    When Does the Board Meet, and What Happens?.....11

    Who Else is Involved in the Work of the Controlling Board?.....12

        Agency Staff.....12

        Analysts of the Office of Budget and Management (OBM).....12

        The Role of the Legislative Service Commission (LSC) and Legislative Staff.....12

        Office of Budget and Management: Ohio Shared Services (OSS) and State Accounting12

        Divisions of the Department of Administrative Services .....13

        Director of Budget and Management .....13

        Office of Information Technology .....13

**Section II—Do I Need to Come to the Controlling Board? .... 14**

**Operating Budget Issues..... 14**

**Capital Budget Issues ..... 15**

    Getting Started with Capital Projects.....16

        Administration.....16

        Selection of Service Providers.....17

            Architects/Engineers or other Professional Services .....17

            Construction-Related Contracts .....17

            Construction Reform Information ..... 17

    Approval to Expend the Funds .....18

        General/Specific Designation.....18

        Controlling Board Review.....18

**Purchasing Issues ..... 20**

    Release & Permit.....21

        Types of Prior Approvals .....21

        Release and Permit.....22

        Questions & Answers .....23

        Blanket Release and Permit .....24

        OIT Release & Permit.....24

    Exempt Types and Sources of Services and Supplies .....24

Types of Purchases Exempt from Controlling Board Review .....24

Sources for Purchases Exempt from Controlling Board Review .....25

Optional Sources for Purchases Exempt from  
Controlling Board Review .....25

Exempt Process by Which the Purchase is Made .....26

DAS Purchases through Competitive Selection .....26

Independent Contractor Guidelines .....26

Amount of the Purchase and Fiscal Activity .....26

Understanding the Controlling Board Threshold .....26

Purchase of Supplies or Services .....27

Real Estate Leases.....27

Elements of the Controlling Board Threshold.....27

Direct Purchase Authority Adjustments .....28

Will This Purchase Equal or Exceed the Controlling Board Threshold? .....28

New Contracts & Real Estate Lease Agreements .....28

Amount of Purchase Above the Controlling Board Threshold .....28

Amount of Purchase Below the Controlling Board Threshold.....29

Do I Need to Come to the Controlling Board?—A Flow Chart Model .....30

Will This Purchase Equal or Exceed the Controlling Board Threshold? .....31

Contract Amendments and Contract Renewals.....31

Examples .....31

**Changes to Previously Approved Controlling Board Requests ..... 34**

Substantive Change.....34

Non-substantive Change.....35

Accounting Changes.....35

**Section III—Preparing a Controlling Board Request ..... 37**

**Overview of Various Types of Controlling Board Requests ..... 37**

Capital Request ..... 37

Operating Request.....38

Operating Transfer Request ..... 38

Fund/Appropriation Request .....38

Real Estate Acquisition Request .....38

**Capital Request—Detailed Instructions ..... 39**

Instructions—Checklist Format .....39

Capital Request Combinations.....39

Contents—Capital Request.....40

Required Explanation Checklist .....44

Summary Paragraph .....44

Subsequent Paragraphs.....46

Project Budget.....48

Required Information Questions—Waiver of Competitive Selection.....48

Architect, engineering, or other professional services contracts.....49

Amendments to architect, engineering, or other professional services contracts.....50

Purchases of equipment .....51

Attachments .....52

**Operating Request—Detailed Instructions ..... 54**

Form Contents—Operating Request.....55

New Contracts.....58

Summary Paragraph.....58

Subsequent Paragraphs .....59

Required Information Questions.....59

Contract Amendments.....60

    Summary Paragraph.....60

    Subsequent Paragraphs .....61

    Required Information Questions.....61

Contract Renewals .....62

    Summary Paragraph.....62

    Subsequent Paragraphs .....62

    Required Information Questions.....62

Purchases of Supplies or Equipment.....64

    Summary Paragraph.....64

    Subsequent Paragraphs .....64

    Required Information Questions.....64

Non Real-Estate Leases.....65

    Summary Paragraph.....65

    Subsequent Paragraphs .....65

    Required Information Questions.....65

New Real Estate Leases .....67

    Summary Paragraph.....67

    Subsequent Paragraphs .....67

    Required Information Questions.....67

Real Estate Lease Addenda .....69

    Summary Paragraph.....69

    Subsequent Paragraphs .....69

    Required Information Questions.....69

Real Estate Lease Renewal or Real Estate Lease Holdover .....71

    Summary Paragraph.....71

    Subsequent Paragraphs .....71

    Required Information Questions.....71

Attachments—Operating Request.....72

**Transfer of Operating Request—Detailed Instructions ..... 74**

    Form Instructions—Transfer of Operating Appropriations Request.....74

    Required Explanation Of Request .....78

    Summary Paragraph.....78

    Subsequent Paragraphs .....78

    Required Information Questions.....78

**Fund/Appropriation Request—Detailed Instructions..... 79**

    Form Instructions—Fund/Appropriation Request.....80

    Required Explanation Of Request .....82

    Summary Paragraph.....82

    Subsequent Paragraphs .....82

    Required Information Questions.....82

**Emergency Purposes Transfers ..... 84**

**Real Estate Acquisition Request—Detailed Instructions ..... 84**

    Form Instructions—Real Estate Acquisition .....85

    Required Explanation Of Request .....90

    Summary Paragraph.....91

    Subsequent Paragraph(s) .....91

**Section IV—Controlling Board Request Processing**

**Information and Timelines ..... 92**

**Controlling Board Online Resources ..... 92**

        Deadlines and Request Processing ..... 92

        Early Communication ..... 92

        Request Submission-Controlling Board ..... 93

        Request Submission-Director of OBM ..... 93

        Late Submissions ..... 93

**Controlling Board Request Review ..... 93**

        OBM Review ..... 93

        Request Revisions (if necessary) ..... 94

        Agenda Publication and Public Inspection ..... 94

        LSC and Legislative Staff Review ..... 94

        Request Review Timeline ..... 94

**Emergency Approvals ..... 95**

**Planning Ahead: Preparing the Encumbering Documents ..... 95**

        Vendor Identification Information ..... 96

        State of Ohio Purchase Order—Non-Capital Appropriations ..... 96

        Waiver of Competitive Selection using Non-Capital Appropriations ..... 96

        State of Ohio Contract Encumbrance—Capital Appropriations ..... 96

        Waiver of Competitive Selection using Capital Appropriations, or a Release of Capital Appropriations ..... 96

**Section V—At the Meeting ..... 97**

**Meeting Overview ..... 97**

**The Agenda ..... 97**

**Order of Business ..... 97**

**Open Meeting Policy/Closed Sessions/Executive Sessions ..... 99**

        Closed Meetings ..... 99

        Executive Session ..... 99

        Protocol ..... 99

        Meeting Minutes ..... 100

**Controlling Board Manual Glossary ..... 101**

**Appendices ..... 105**

**ORC 127.12 Controlling Board; Members; Payment; Substitute Members ..... 105**

**ORC 127.13 Officers; Procedures ..... 106**

**ORC 127.14 Approval Of Transfers Of Funds; Limitations; Other Powers ..... 107**

**ORC 127.15 Transfer Of Capital Appropriation Items ..... 108**

**ORC 127.16 Purchasing by Competitive Selection. .... 108**

**ORC 127.17 Board To Carry Out Legislative Intent ..... 112**

**ORC 131.35 Expenditures Of Federal Funds; Nonfederal Funds; Transfer And Limits On Expenditure ..... 112**

**Authority & References ..... 113**

## Section I—Introduction

The purpose of this manual is to help agencies understand the role of the Controlling Board, as well as to explain the types of requests considered by the Board. In addition, it attempts to illustrate the proper and most successful ways to prepare requests for the Board's consideration. This manual is written primarily for state agencies and employees who interact with the Board. It is useful, however, to anyone who has a desire to better understand the Board's work, practices and procedures.

The manual is divided into five primary sections. The sections present the following information:

- I. **Introduction**—This section provides background information on the Board and, in many respects, serves as an executive summary on the Board and its authority.
- II. **Do I Need to Come to the Controlling Board?**—This section reviews the state's procurement procedures generally and the way in which the Controlling Board fits into these procedures.
- III. **Preparing a Controlling Board Request**—This section describes in detail the types of requests presented to the Board for consideration. The various components of the most common requests (narrative, criteria, attachments, etc.) are discussed. Instructions for preparing requests, checklists, and samples of requests are included in this section.
- IV. **Timelines**—This section discusses in general terms the Controlling Board "production" cycle and the time involved in each step of the process.
- V. **At the Meeting**—This section discusses the specifics of the Controlling Board meeting, including the agenda, the order of business, and protocol.

In addition to these five key sections, a variety of appendices and miscellaneous information are also provided.

### Controlling Board Overview

This section provides a general overview of the Board, its history, composition, authority and powers. It cross-references more detailed explanations contained in other parts of this manual. The following topics are discussed in this section:

- Why a Controlling Board?
- History of the Controlling Board
- Controlling Board Authority and its Context
- Who is the Controlling Board?
- Who is the President?
- Who is the Secretary?
- When does the Board Meet and What Happens?
- Who is Involved in the Work of the Board?



### ***Why a Controlling Board?***

Imagine bringing the entire legislature together each time some minor adjustment needed to be made to a budget plan. Given that the Constitution invests in the legislature the power to make appropriations, acts of the legislature are required before dollars can be spent. While appropriations acts can attempt to prescribe the activities of state government, there inevitably arise circumstances that merit budget modifications. The need for the executive branch to be able to propose and obtain adjustments to appropriations is legitimate and often necessary. Many of these modifications are likely to be relatively minor—but if some change to the act is required, then the legislature must convene.

The Controlling Board is a mechanism for handling certain limited day-to-day adjustments needed in the state budget. Additionally, recognizing that from time to time standard competitive bidding requirements cannot be followed, a mechanism to waive such requirements is desirable as well. Trying to accommodate such circumstances acknowledges the practical realities of running a government the size of Ohio's and the need to allow for flexibility when such flexibility makes sense. When originally created, the Board was not dominated by legislative members. Therefore, it appears that what was desired was consensus among the various elected stakeholders. When the composition of the Board was changed in 1969, it emerged as a venue for greater legislative oversight of executive action in addition to an arena for building consensus.

### ***History of the Controlling Board***

#### **Membership**

The Controlling Board was first created in the General Appropriations Act of 1917. Until 1969, the Board consisted of the governor, the attorney general, the auditor and the chairpersons of the Ohio House and Senate Finance Committees. Its original composition, involving three statewide elected officials from the executive branch as well as a representative of each legislative chamber, dispersed the authority and required consensus to make decisions on matters over which the Board had authority (primarily minor budget changes and waivers of competitive selection). In fact, four votes (a supermajority) were required to approve appropriations transfers.

In 1969, the composition of the Board was altered almost to its present form with seven members. The governor was referenced as the chairman, although the law allowed the Director of Finance or an employee of the Department of Finance appointed by the governor to preside over the Board. The Department of Finance was the predecessor to the current Office of Budget and Management. In addition, the two finance committee chairpersons as well as one majority and one minority member from each legislative chamber appointed by the leader of each chamber made up the membership of the Board. In 1975, the 111th General Assembly established the Board in statute. It was at this time that the Director of Finance or his or her designee was specified as President of the Board.

#### **Authority/Duties**

In 1917, the primary duties of the Board were similar to the current duties— transferring appropriation authority between line items within an agency and granting waivers of

competitive selection. (In those days, appropriations were more detailed than they are today.) Appropriations transfers required a supermajority of five members to be approved. Waivers required only a simple majority of the Board.

Over its history, the Board has been viewed as a way to exercise legislative oversight of executive actions. Thus the powers of the Board have been expanded into areas beyond those contained in the Board's original authorization. Recent history demonstrates that the Board's authority often is expanded as a reaction to the legislature's perceptions of inappropriate behavior on the part of the executive branch. The last significant expansion of Controlling Board authority was made to include all leases above a certain threshold dollar value made by state government.

### ***Controlling Board Authority and its Context***

Generally, the powers and duties of the Board are enumerated in Chapter 127 of the Revised Code. However, other references to the Board are made in various places in both codified and uncoded law. This section does not provide a complete listing of all the powers and authorities of the Controlling Board but rather focuses on the major responsibilities of the Board. Other sections of this manual provide more detail regarding the circumstances requiring Controlling Board review. Section 127.12 of the Revised Code creates the Board and **Section 127.17** requires that it take no action, which does not carry out the legislative intent of the General Assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the General Assembly. However, within this broad principle, the Board considers from 2,000 to 2,500 requests each fiscal year. The Controlling Board operates in three key arenas of state government:

- 1) fiscal and budgetary,
- 2) purchasing and,
- 3) legislative oversight.

In order to understand how the Controlling Board operates within these arenas, some general discussion of each is required.

### **Controlling Board Actions Related to State Finances and the Budget Arena**

From an operational perspective, a budget is a plan for spending available state revenues. In addition to being a blueprint for spending, it is also a statement of policy priorities and intents. While the Governor makes recommendations regarding the budget, the Ohio Constitution gives the power of actually making appropriations to the General Assembly. A discussion of how the Controlling Board relates to the two types of budgets—operating and capital—follows:

#### **The Operating Budget**

The operating budget is typically enacted at the end of June in odd-numbered years after an executive preparation and legislative approval process that lasts about a year. The Office of Budget and Management works with requests submitted by state agencies and direction from the Governor's office to develop the executive budget proposal, which is submitted to the General Assembly for consideration. The Governor's proposal is drafted into a bill format and is introduced into the legislative process. The legislature reviews the Governor's recommendations and makes changes to the budget. The House

and the Senate each make changes according to their own priorities. Differences between the proposals of the two chambers are resolved in a conference committee. The final version of the budget that is passed by both houses is then submitted to the Governor for signature. The Governor may veto items in the budget bill.

Ohio budgets biennially—that is to say, each budget covers a two-year period. A budget act contains two columns of numbers, one for the first year of the biennium and one for the second year. Appropriations (i.e., authorization to spend money) are made to agencies through appropriation line items (ALIs) and from a variety of funds.

In enacting the statutes that authorize the Board's powers, the General Assembly delegates to the Board the power to make relatively minor adjustments to the enacted operating budget. The Board's actions are restricted by the confines of the budget as approved by the General Assembly. Board actions that affect the operating budget include:

- Transferring operating appropriations between line items within the same agency and fund;
- Transferring operating appropriations between fiscal years within the same line item;
- For certain funds, increasing appropriation authority based on available fund balances;
- Providing additional resources to an agency in emergency situations through the Board's Emergency Purposes appropriation;
- In certain instances provided in law, approving transfers of cash between funds; and
- Creating new funds and establishing appropriation authority in new line items.

Ohio's Constitution prohibits the General Assembly from making appropriations that last more than two years. Also, state agencies are prohibited from obligating appropriations beyond the fiscal biennium. Accordingly, every appropriation expires at the end of the biennium. Controlling Board action is also confined by the two-year (biennial) limitation.

### **The Capital Budget**

The capital budget is typically enacted in even-numbered years. While capital appropriations are also made for a two-year biennium, the appropriations are made by fund by line item and in one amount effective for the entire two-year period. Unobligated balances from previous capital appropriations acts are generally re-appropriated in a separate act of the General Assembly.

Controlling Board actions facilitate some of the same types of adjustments to capital budgets as are available for operating budget. Additionally, the Controlling Board must release funds for capital construction. Controlling Board actions for capital budgets include:

- Transferring capital appropriations (or reappropriations) between line items within the same fund;
- Releasing capital appropriations for construction-related projects (and in some cases for the acquisition of real estate); and

- Waiving competitive selection or Releasing Competitive Opportunity for architects' and engineers' contracts for amounts in excess of certain thresholds.

Unlike operating appropriations, the release of capital funds has no expiration. Once capital dollars are released, they remain released, even when reappropriated.

## **Controlling Board Actions in the Purchasing Arena—Waiver of Competitive Selection**

### **State Procurement Processes**

The general principle at work in the state's purchasing arena is that, except for relatively small purchases of goods and services and other specific types of purchases that are statutorily exempted, purchases made by the agencies of state government should be procured using the competitive selection provisions of state law through the Department of Administrative Services (**Revised Code Chapter 125**). However, it is acknowledged that this may not always be advantageous, so the Controlling Board is authorized to waive these statutory competitive selection requirements. The law allows agencies to procure goods and services without using the statutorily prescribed competitive selection process through DAS up to a certain cumulative dollar limit per vendor. Beyond that limit, the agency must seek the approval of the Controlling Board. The use of other competitive processes is generally preferred, and in all cases agencies are encouraged to get the best quality for the best price. Limiting fiscal and contractual activity to the biennium can create operational difficulties. Often contracts contain provisions that allow for renewals in subsequent biennia. Such renewals still require Controlling Board waivers of statutorily prescribed competitive selection through DAS.

### **Other Legislative Oversight**

All the areas discussed above include elements of legislative oversight of actions of the executive branch. In addition to those areas, the Controlling Board exercises legislative oversight in a variety of areas. The following is a partial list of the major types of oversight exercised by the Board:

- Approval of land purchases by institutions of higher education;
- Transfers of appropriations to accommodate a reorganization of government or the abolition of a state agency;
- Approval of certain grants and loans made by the Department of Development;
- Approval of operating loans sought by school districts;
- Approval of fee increases requested by certain regulatory boards and commissions; and
- Approval of certain subsidy distributions.

## ***Who is the Controlling Board?***

**Section 127.12 of the Revised Code** establishes the Controlling Board as a body consisting of seven members: the Director of the Office of Budget and Management or an employee of the Office of Budget and Management designated by the Director, the Chairpersons or Vice-Chairpersons of the Senate and House Finance committees (as

determined by the Speaker of the House and the Senate President), a majority member appointed from both the Senate and the House, and a minority member appointed from both the Senate and the House.

### ***Who is the President?***

Section **127.13 of the Revised Code** provides that the Director of the Office of Budget and Management or a designee of the director shall serve as President of the Controlling Board. Traditionally, the designee has served as a deputy director of the Office of Budget and Management. The President chairs the Board meetings. Practically speaking, as a representative of the executive branch, the President acts in the interest of the administration by determining which requests are to be presented to the Board for consideration and by working with agencies to help ensure the approval of agency requests. The President is required to publish the agenda and provide all supporting documentation relative to matters before the Board to its members and the Legislative Service Commission at least seven days prior to the meeting. The Board may adopt rules to authorize the President to act on its behalf in exigent circumstances affecting the public health, safety or welfare.

### ***Who is the Secretary?***

Section **127.13 of the Revised Code** also establishes an employee of the Office of Budget and Management as Secretary of the Board. This person has the duties of assisting the President, keeping records of each request and the Board's disposition of that request, and certifying to each Board member and the Director of OBM the record of the Board's actions. The Secretary works with the President and other OBM staff to coordinate the review of all requests, including technical review. The Secretary also works with the Office of Procurement Services in DAS to ensure that agencies submitting requests have followed necessary procurement procedures and with the State Accounting section of OBM to facilitate the encumbering process related to items approved by the Board. Any questions or issues involving forms, Controlling Board procedures, scheduling a request, revising requests, or obtaining copies of requests or agendas should be first directed to the Secretary.

### ***When Does the Board Meet and What Happens?***

The Board is required by **Section 127.13 of the Revised Code** to meet at least once a month, and generally, meetings are held every other Monday throughout the year. The schedule of meeting dates is published each October for the next calendar year and is available on the e-Controlling Board web site. The President may schedule emergency meetings to address issues needing immediate attention. Since the Controlling Board calendar may deviate from time to time due to state holidays, it is essential to consult the published Controlling Board schedule to determine the exact date of its meetings.

Typically, regularly scheduled Controlling Board meetings are held in the North Hearing Room of the Statehouse Senate Office Building and begin at 1:30 p.m. The Board is authorized by statute to adopt procedural rules for the conduct of its meetings and may approve, disapprove, modify as to dollar amount, or defer any request that comes before it. In addition, the Board may require that certain matters, delineated in the statute, be

added to its agenda. Approval by the Board requires at least four affirmative votes. More details regarding what happens at a meeting can be found in Section V-At the Meeting.

### ***Who Else is Involved in the Work of the Controlling Board?***

#### **Agency Staff**

Controlling Board requests are prepared by state agencies. Staff of state departments are responsible for responding to any requests for information made by OBM as well as explaining their requests at Board meetings and responding to Board members' questions. Agencies that bring large numbers of requests to the Board typically have individuals exclusively assigned to work on Board business. Controlling Board activity required by agencies with less frequent requests are generally handled by the agency's fiscal office.

#### **Analysts of the Office of Budget and Management (OBM)**

With regard to Controlling Board requests, OBM budget analysts provide fiscal and policy analysis assistance to the President. In setting the agenda, the President relies on the knowledge and insights of the analysts to determine whether a request is appropriate from an executive branch perspective, meets the intent of the legislature, and whether revisions or refinements are required. Analysts review all Controlling Board requests for substantive issues and work with agencies to ensure that the intent and impact of the requests are understood. The OBM debt analyst reviews and approves requests involving capital appropriations. Analysts may consult the legal, accounting, and financial experts within OBM in order to facilitate the review of requests. Agencies typically maintain good communications with their budget analysts regarding all fiscal issues. Agency staff preparing requests should contact their budget analysts with questions or issues they might have, especially with regards to policy considerations and fiscal or financial implications.

#### **The Role of the Legislative Service Commission (LSC) and Legislative Staff**

Six of the seven Board members are legislators. They require assistance in analyzing and understanding items on the agenda. The staff of the Legislative Service Commission reviews agency requests to ensure that the agency is meeting the legislative intent of the General Assembly in regard to program goals and appropriation levels as included in the appropriation acts of the General Assembly. This review also includes ensuring that the agency is in compliance with Controlling Board regulations and procedures. Generally, House and Senate aides to the Controlling Board members review the requests concurrently with LSC. The LSC staff typically provides written comments, referred to as "green sheets," on certain requests. The comments can summarize complex or precedent-setting items, analyze substantive concerns about the request, or provide additional information to the Board members. Legislative Service Commission liaisons to each of the four caucuses provide additional assistance to the members.

#### **Office of Budget and Management: Ohio Shared Services (OSS) and State**

##### **Accounting**

Prior to Controlling Board approval, all vendor information relating to a forthcoming Controlling Board request should be entered into and accepted by the OAKS System.



For assistance in providing a vendor's federal tax identification information, contact the Vendor Compliance section within Ohio Shared Services, a division of OBM. Upon Controlling Board approval, the State Accounting Appropriations & Encumbrance Review sections review financial information and enter it into the accounting system. Technical questions regarding requests involving appropriations (such as releases, transfers, and fund creations) should be directed to the Appropriations Reconciliation section of OBM. Questions on encumbering funds for requests involving waivers of competitive selection or changes in vendor or vendor numbers on CB Waivers should be directed to the Encumbrance Review section of OBM.

### **Divisions of the Department of Administrative Services**

Insofar as various divisions of DAS play a part in the purchasing process and in capital improvements, their involvement is required in a variety of situations. The Division of State Purchasing is involved in most major purchasing processes and must grant a release and permit to an agency before an agency may request a waiver of competitive selection from the Board. The Bureau of Real Estate is involved in state agency land purchases and facility leases that require competitive selection waivers. The State Architect's Office is involved in architect selection processes and overseeing many capital construction projects for state agencies and institutions of higher education.

### **Director of Budget and Management**

The Director of the Office of Budget and Management is the statutory President of the Board, although in accordance with the statute, he or she traditionally designates this duty to a deputy director of OBM. However, the Board, as well as certain uncodified law provisions, delegates to the director certain duties that otherwise fall to the board. For instance, under **Section 127.14 of the Revised Code**, the Controlling Board has authorized the OBM Director to approve certain requests for small transfers of appropriations between line items within the same fund within a fiscal year. The OBM director may also approve the release of capital funds for certain projects designated by the director as specific projects.

### **Office of Information Technology**

The Office of Information Technology (OIT) is involved in procurement decisions regarding computer equipment, telecommunications equipment, and software. The Office of Procurement Services is involved in the actual procurement of computer equipment, and software and other supplies and services and must grant a release and permit to an agency before an agency may request a waiver of competitive selection from the Board.

## Section II—Do I Need to Come to the Controlling Board?

This is probably the most frequently asked question regarding the role of Controlling Board in state agencies' daily operations. And the answer is not always simple. Section II of this manual is a guide to assist state agencies in determining what actions require Controlling Board approval. Although this section outlines many of the circumstances requiring Controlling Board approval, keep in mind that it is general in nature. Some agencies have very specific legal requirements, which trigger Controlling Board review. Agencies with specific questions not addressed here should contact their OBM budget analyst or the Controlling Board staff.

As discussed in Section I, the Controlling Board operates in three primary arenas—***the operating budget, the capital budget, and purchasing***. In addition, Controlling Board and/or State Accounting's approval and notification may be required in a variety of ***circumstances affecting previously approved Controlling Board requests***. Controlling Board's role in each of these arenas is outlined in the four parts of this section as follows:

- **Operating Budget Issues**—This part discusses a variety of operating budget adjustments that can be made with the approval of the Controlling Board.
- **Capital Budget Issues**—This part discusses the Controlling Board's role in the use of capital appropriations. The Controlling Board's review of *land acquisitions* is also discussed in this section.
- **Purchasing Issues**—This part discusses the complex issues that determine whether a Waiver of Competitive Selection or an Agency Released Competitive Opportunity must be approved by the Controlling Board for the purchase of supplies, services, data and telecommunication, and real estate. Differences between new contracts, contract renewals and contract addendums are addressed.
- **Changes to Previously Approved Controlling Board Requests**—Refer to this part for a discussion of the Controlling Board and State Accounting's roles in approving changes (substantive, non-substantive, and accounting) to previously approved requests.

### Operating Budget Issues

The Controlling Board has certain limited authority to make adjustments to an agency's operating budget to facilitate normal fiscal activity.

The following table may help an agency better understand this authority and when approval by the Controlling Board is required.



	Within a Fiscal Year	Between Fiscal Years Within the Same Fiscal Biennium	Between Fiscal Years in Different Fiscal Bienniums	Within or Between State Agencies
Transfers of Appropriation Authority	Yes	Yes	No	Yes

**1) I've just learned that my agency is going to receive a new grant for something we have never been involved in before. I'm not sure where to deposit the money or what I need to have in place to spend the money. What do I do? (Creation of Funds and Appropriation Authority under Section 131.35 of the Revised Code.)**

Your OBM analyst can help you determine if you already have a fund into which the money can be deposited. If a fund does not exist, then the Controlling Board may be asked to create a new fund and the appropriation authority necessary to spend the dollars expected to be received. These types of requests should be prepared on the "Fund/Appropriation Request" form.

**2) Our agency received more money than we expected from a grant award. Do we need additional appropriation authority to spend the extra dollars? (Increase in Appropriation Authority under Section 131.35 of the Revised Code.)**

If current available appropriations are insufficient to allow for the expenditure of the amount the agency needs to spend, Controlling Board approval to increase appropriation authority is required. Appropriation authority is required to spend any dollars received into the state treasury. The Controlling Board can approve requests to increase appropriation authority in many funds. However, for some funds, (see Revised Code Section 131.35), including the General Revenue Fund, the Board is prohibited from increasing appropriation authority. Increases in these funds can occur only through legislative action.

Besides the receipt of a grant, an increase in appropriation authority may also be desired if an agency happens to have more cash in a particular fund than it has appropriation authority. Requests to spend such amounts will be closely scrutinized for their long-term impact. Proposals that have an ongoing operating impact should be sustainable by on-going revenues. These types of requests should be prepared on the "Fund/Appropriation Request" form.

## Capital Budget Issues

The Controlling Board has very specific authority regarding expenditures of capital appropriations. In order to understand the Board's authority, it is helpful to recognize the appropriate uses of capital appropriations. Generally, capital appropriation acts prescribe the appropriate uses of capital funds. Capital funds cannot be used for operating expenses. Unless specifically authorized in an appropriations act, capital funds cannot be used for motor vehicles, computers and computer peripherals, and other office equipment.

Typically, the acts allow capital funds to be used for the following purposes:

- Acquisition of real property;
- Buildings and structures (including construction, demolition, heating, lighting, utility infrastructure, ventilation, plumbing, sprinkler, and sewer systems);
- Directly related architectural, engineering and professional services;
- Machinery that is part of a structure when originally constructed or acquired; and
- Equipment meeting all the following criteria:
  - Essential to bringing a facility up to its intended use and the function of the facility;
  - Unit cost of \$100 or more;
  - Useful life of five years or more; and
  - Used primarily in the rooms or areas covered by the project.

NOTE: This information is taken from the requirements of H.B. 562 of the 127th General Assembly. Refer to the applicable capital appropriations act, or check with the Controlling Board office for further clarification.

The following discussions may help an agency better understand when Controlling Board approval is required to address capital budget-related issues.

**1) My agency is ready to start on a capital improvement project, but I'm not sure how we access the appropriations approved by the General Assembly for the project. Where do I start? (Uses of Capital Funds/Release of Capital Funds, Section 127.14 of the Revised Code.)**

In order to expend capital dollars to pay legitimate project costs, an agency must submit a request to the Controlling Board or the Director of OBM to "release" the appropriations. However, there are specific legal requirements that must be met prior to requesting a release of funds. The capital funds will not be released until the agency is ready to spend (encumber) money for planning/design services, initiate competitively bid construction contracts, purchase equipment, or incur other capital-related costs.

### ***Getting Started with Capital Projects***

Initiating a capital improvement project involves a number of critical determinations and activities. The following are some of the important issues that must be considered prior to undertaking a capital project.

#### **Administration**

Generally, the administration of a capital improvement project is performed by the Department of Administrative Services/General Services Division—Office of the State Architect. However, as authorized by legislation, some agencies may receive approval from DAS to **administer** their own capital projects while state-assisted institutions of Higher Education may administer projects of less than \$4 million without the approval of DAS.

### **Selection of Service Providers**

Most capital projects require two or more Controlling Board actions. Typically, when a project requires a contract for design or other professional services, a request for the release of funds to enter into the contract is presented to the Board for approval. A subsequent release of funds (or multiple releases) should be requested for the contracts for the construction phase(s) of the project.

### **Architects/Engineers or other Professional Services**

Typically, before requesting the release of funds, an agency must determine who will be providing the design or other professional services. For most projects, obtaining the planning and design services of an architect or engineer pursuant to the requirements of **Revised Code Section 153.69** is the first step. Once the agency is ready to enter into a contract, Controlling Board approval is required for the release of funds. In addition, Controlling Board approval may be required if the proposed amount of the contract equals or exceeds the agency's Controlling Board threshold.

### **Construction-Related Contracts**

At later stages, construction services must be procured through the competitive bidding process as prescribed by law. Again, only when the agency is ready to enter into the contracts should Controlling Board approval be sought for the release of funds.

*Note about Change Orders*—Change orders may be recommended by the associate architect/engineer, authorized by the owner, and issued after execution of the construction contract in order to authorize a change in the work or an adjustment in the contract price or contract time for the project.

*Note about Contingency Moneys*—Project contingency moneys shall be reserved to pay costs resulting from unanticipated job conditions, to comply with rulings regarding building and other codes, to pay costs related to errors and omissions in contract documents, and to pay the cost of settlements and judgments related to the project. For questions about contingencies, contact the State Architect's Office.

### **Construction Reform Information**

Under Am. Sub. H.B. 153, of the 129th General Assembly, the contract limit found in RC 153.01 has increased from \$50,000 to \$200,000. This means that a state agency is not bound to use the provisions found in Chapter 153 for public improvement projects when the cost of the project is less than \$200,000. Public improvement projects that do not exceed \$200,000 in aggregate cost may be awarded in a manner other than competitive bidding or competitive selection. It is recommended that the agency follow the guidelines in the **State Architect's Office (SAO) Manual – 2011 version, Section 0240, Construction Documents**, as follows:

- Identify at least three Contractors, when possible, who can perform the work and seek proposals from those entities;
- Document the process for award using the letterhead bid format, and provide a summary;
- Retain records in the project file.
- For capitally-funded projects that follow the procedure above, the Controlling Board capital request should be designated as an "Agency Released Competitive

Opportunity" (R.C. Section 127.162). Requests not following this procedure should be designated as a "Waiver of Competitive Selection" (R.C. Section 127.16B).

## **Approval to Expend the Funds**

### **General/Specific Designation**

The capital appropriations and reappropriations acts typically contain provisions that allow the Director of OBM to approve releases of capital appropriations for line item-specific projects or specified projects within the "Basic Renovations" line items of higher education institutions. Understanding whether a capital project has been designated as "General" or "Specific" will determine the way the Controlling Board request is prepared and determine how the release will be approved. The release of any funds to be used for real estate acquisition as well as the request for the release of funds from "General" line items requires the approval of the Controlling Board.

The General/Specific list is prepared by OBM and indicates whether a line item, or project within a "Basic Renovations" line item, has been designated as "General" or "Specific" based on recommendations from the agencies/institutions of higher education. The Controlling Board is provided with this list within sixty (60) days of the effective date of the particular capital appropriations act. Copies of the most current lists are available from OBM or online at <http://obm.ohio.gov/sectionpages/Budget/>

### **Controlling Board Review**

For those capital projects that have been designated as "General," Controlling Board approval to expend the funds to execute competitively bid construction contracts or to purchase competitively selected equipment is required. In addition, all requests for a Waiver of Competitive Selection or Agency Released Competitive Opportunity require Controlling Board approval, regardless of the General/Specific designation. For purchases of equipment using capital funds, the agency must obtain a release and permit from DAS unless the purchase was made by DAS under competitive selection.

All requests for the release of capital funds should be prepared on the "Capital Request" form, except for the acquisition of real estate, regardless of whether it will be approved by the Director of OBM or by the Controlling Board.

**2) Part of a construction-related project my agency is involved with includes the design or planning services of an architect or engineer. These services were selected by DAS (or the agency) using the architect/engineer selection process. Do such contracts require Controlling Board approval? (Release of Capital Appropriation and/or an Agency Released Competitive Opportunity, Revised Code Section(s) 127.14 and/or 127.162)**

Yes, they do. Because the selection of these types of professional services is qualitative in nature, they are not subject to statutorily defined competitive bidding processes by which contracts are awarded to the lowest responsive and responsible bidder. Rather, pursuant to Revised Code Section 153.69, DAS (or the agency, in cases of agency-

administered projects) is required to select and rank at least three firms considered to be the most qualified to provide the professional design services. Starting with the firm ranked most qualified, the professional design contract is negotiated and compensation is determined based on those qualifications and the scope of the project. Such contracts require Controlling Board approval if the amount of the contract equals or exceeds the Controlling Board threshold with the vendor.

Generally, in the same request, a release of funds accompanies the request for approval to release competitive opportunity to initiate the contract for the professional services. The Director of OBM cannot approve a request to release competitive opportunity, even if the project has been designated "Specific." Requests for a release of capital appropriations and/or a release of competitive opportunity for professional design or construction management services should be prepared on the "Capital Request" form.

**3) My agency has experienced cost overruns on one capital project, but we have excess appropriation in another capital project. Can I use the excess appropriation in one project for another capital project? (Transfer of Appropriation Authority between Capital Line Items, Section 127.15.)**

The Controlling Board is authorized to transfer appropriations between capital line items or create new capital line items and authorize transfers to those new line items, within the same fund. Prior to submitting a request for the transfer of capital appropriations, the agency should consult its OBM budget analyst and discuss the rationale for the proposed transfer of appropriations.

According to **ORC 127.15**, prior to such transfers, the agency shall notify by mail the elected representatives of the General Assembly from the counties affected by such transfers of appropriation stating the time and place of the hearing on the proposed transfer. Requests to transfer capital appropriations should be prepared on the "Capital Request." Typically, requests to transfer appropriation authority between capital line items are accompanied, in the same request, by a request to release the transferred funds.

**4) When our agency received approval for the release of funds for a "General" capital project, we submitted a project budget based on our best estimates for the various components of the project. The construction phase went better than we had anticipated and we have a remaining balance in our contingency account. We now want to shift some of the dollars from the contingency component of the budget to purchase equipment. Does this require Controlling Board approval? (Change of Intent.)**

Yes. This is known as a "change of intent." Such a change occurs within the project budget and does not require a transfer of appropriation authority between capital line items. A request for a change of intent involving previously released capital appropriations approved by the Controlling Board allows the agency or institution to reallocate a portion of the funds already released for a specific purpose, such as a contingency account, to an existing component included in the project budget, such as equipment. However, all of the following criteria must be met.

**NOTE:** The *Director of OBM* may approve a change of intent for the components of a “Specific” project for which approval has already been granted, providing that a waiver of competitive selection is not required.

In order for the Controlling Board or the Director of OBM to review a request for a **Change of Intent**, all of the following criteria must be met:

1. The appropriation has been previously released;
2. This reallocation involves one project, one appropriation line item;
3. This reallocation involves unencumbered appropriations within the capital biennium in which the original release occurred, **or** this reallocation involves encumbered appropriations from a different capital biennium in which the original release occurred; and
4. The request for the change of intent does not modify the original scope of the project.

This type of request may be accompanied by an Additional Release of Capital Appropriations and/or a Waiver of Competitive Selection or and Agency Release Competitive Opportunity. If the change of intent affects a contract for which the Controlling Board has already approved or if the contract modification will result in exceeding the Controlling Board threshold, a waiver of competitive selection by the Controlling Board is required.

This type of request should also be prepared using the “Capital Request” form.

**5) Do we need Controlling Board approval for the purchase of real estate? (Real Estate Acquisition, Sections 127.14 and/or 3333.071 of the Revised Code.)**

Pursuant to provisions in the capital appropriation acts, all acquisitions of real estate ***made with capital appropriations*** require approval of the release of funds by the Controlling Board. The Director of OBM cannot approve the release of funds for real estate acquisition.

In addition, under Section 3333.071 of the Revised Code, all expenditures for acquisitions of real estate ***made by state-assisted institutions of higher education or agents of such institutions*** require Controlling Board approval, ***regardless of the source of funds***.

A request for the acquisition of real estate should be submitted using the “Real Estate Acquisition” form.

## **Purchasing Issues**

Perhaps the most difficult determinations to make regarding whether Controlling Board approval is required are those that involve the purchase of supplies and services. Agency purchases of supplies (non-services) and services are governed by statutory law and related rules and policies. The Controlling Board may grant a waiver of competitive selection when it determines that an emergency or sufficient economic reason exists, pursuant to **Revised Code Section 127.16**. The following definitions are helpful in understanding the Controlling Board’s role in approving the purchase of supplies and services.



**Purchase:** To buy, rent, lease, lease-purchase, or otherwise acquire supplies or services.

**Services:** The furnishing of labor, time or effort by a person(s) which may be technical, non-technical, consulting, advisory, professional or non-professional in nature.

**Supplies:** All property, including, but not limited to, equipment, insurance, and other tangible assets, with the exception of land.

*A flow chart outlining the factors determining Controlling Board's role in approving the purchase of supplies and services concludes this section on Purchasing Issues.*

All requests for waivers of competitive selection (except those involving the use of capital funds) should be prepared on the "Operating Request" form.

When preparing to purchase supplies and services, an agency should consider the following factors to determine whether the purchase requires a waiver of competitive selection by Controlling Board:

- Exempt types and sources of supplies or services
- Exempt process by which the purchase is made
- Amount of the proposed purchase and all other fiscal activity with a particular vendor.

### ***Release & Permit***

The Ohio Revised Code places a responsibility upon DAS to superintend purchases of certain types of supplies and services; i.e. computers, software, telecommunications, copiers, fax machines, and vehicles. DAS is also responsible to make purchases of supplies and services above certain dollar limits unless DAS determines that it is not practical or advantageous to make the purchase on behalf of the agency. This section will explain the procedures an agency must follow when seeking prior approvals and when DAS issues a release to allow the agency to make the purchase under its direct authority.

Special Note: A release and permit from DAS is required for all purchases that will exceed the cumulative annual threshold. Agencies should not seek quotes from suppliers until the release and permit has been obtained from DAS.

### **Types of Prior Approvals**

Certain purchases require review and approval from designated agencies before completing the purchase. The need for prior approval may be triggered by the type of equipment or service, amount of purchase, or deviation from normal procedures. Types of prior approvals include pre-approvals, release and permits, and Controlling Board approvals. A pre-approval is required prior to any purchase of:

- telecommunication services or equipment;
- facsimile;
- copier and duplicator;
- information technology (IT) solutions;
- data processing (DP) equipment/services;
- software; and



- vehicles.

Agencies request a pre-approval from the appropriate office listed in this chapter. If the request is approved, a pre-approval number will be assigned to the using agency.

A release and permit is required when an agency anticipates that it will exceed its direct purchase authority threshold and/or cumulative annual threshold. Procedures for requesting a release and permit can be found at <http://das.ohio.gov/>.

### **Release and Permit**

When an agency's direct purchase amount exceeds \$33,500/\$67,000, the agency is required to forward its request to DAS to make the purchase under competitive selection. If DAS determines that it is not possible or advantageous for it to make the purchase, permission will be given to the agency to make the purchase under its direct purchase authority.

The waiver that authorizes the agency to seek Controlling Board approval or to make purchases that DAS cannot make is the Release and Permit (ADM-3252). DAS' authority to grant a Release and Permit is contained in Ohio Revised Code Sections **125.05** & **125.06** and **Ohio Administrative Code Section 125**.

Factors DAS will consider in granting a Release and Permit include:

- The demonstrated ability of the agency in terms of procurement and specialized knowledge pertinent to the procurement.
- The past experience of the agency in exercising similar authority.
- The degree of economy and efficiency to be achieved if authority is delegated.
- The availability of resources in DAS to make the purchase.
- The ability of DAS to complete the purchase under Competitive Selection.
- The existence of an emergency condition.

The agency should not proceed with the purchase until DAS has granted the Release and Permit. Whenever DAS grants a Release and Permit, the agency must make the purchase pursuant to Competitive Selection requirements or with Controlling Board approval. A copy of the approved Release and Permit, to include supportive documentation, will be retained by DAS.

If the request is approved, a release and permit number will be assigned to the using agency.

DAS may also grant special Blanket Release and Permits (see below) for certain personal services that cannot be bid by DAS. DAS will issue the Blanket Release and Permit prior to the beginning of the fiscal year(s) to which they apply.

Special Note: Agencies are cautioned against investing significant time in obtaining quotes and/or finalizing any contractual agreement with a vendor under the assumption that DAS will automatically grant the release and permit. Agencies should also guard against submitting a request for the release and permit and citing an expedited need for DAS to grant the release and permit (i.e. trying to meet a Controlling Board deadline for submission). Law requires that DAS review each request to determine if such can be

purchased through competitive selection. If DAS determines that formal bidding is possible, the request will be denied. The agency should contact DAS when the agency first determines that a need exists. If DAS determines, at that time, that it cannot procure the need through competitive selection, the agency will be granted the release and permit and may then proceed with using its direct authority to complete the purchase.

## **Questions & Answers**

### ***Q: When should a Release and Permit be requested?***

**A:** DAS should be contacted when the agency has determined that it will be exceeding the \$33,500/\$67,000 DAS direct purchase limits. DAS will review the purchase request and make a determination if such can be purchased through competitive selection or if a Release and Permit should be granted to the agency. Agencies should not contact suppliers prior to DAS review. If it is determined that the purchase can be purchased through competitive selection, the request will be denied and the agency will have invested time and effort needlessly.

### ***Q: What if the purchase has been made and we now discover that a Release and Permit is necessary?***

**A:** Law requires DAS to determine that it is not possible or advantageous to make the purchase through Competitive Selection. If determined that DAS could have made the purchase through Competitive Selection, the purchase could be considered invalid. This may require the agency to return the item and/or may leave the person authorizing the purchase personally responsible to pay for the purchase. The only exception would involve an emergency condition.

### ***Q: When will a purchase be considered an emergency purchase?***

**A:** The Revised Code defines that an emergency exists when there is an immediate need for supplies or services that cannot be met through normal procurement methods and lack of which would create a serious threat to the health or safety of a person or to the functioning of state government. The failure to properly plan is not considered to fall within the definition of an emergency situation. With few exceptions, only true emergency requests will be considered for a release and permit.

### ***Q: How long does it take to obtain a Release and Permit?***

**A:** With the exception of an emergency, the process generally takes a minimum of ten (10) business days from the date the request is received. Agencies should be mindful to include all relative information to support the request as failure to do so will result in return of the request and will delay receipt of the Release and Permit. Depending upon the purchase, some requests may require additional time for review.

### ***Q: How do I make a request for a Release and Permit?***

**A:** Complete the ADM-3252, Request for Release and Permit form. Release and Permits may be submitted online at <http://procure.ohio.gov/proc/viewForms.asp>. Include all required information and complete all areas of the form, as requested. Additional pages may be attached. When the review is completed, notification will be sent electronically. For some Controlling Board and Special Blanket Release and Permits, a Release and Permit Notification may be used in lieu of the ADM-3252.

### ***Q: Why does a Release and Permit have to be obtained for Controlling Board Requests?***

**A:** The Controlling Board requires that all requests to be placed on the agenda requesting a Waiver of Competitive Selection or approval for an agency to release

competitive opportunity be accompanied by a Release and Permit from DAS, if so required by DAS. If not attached, the request will not be placed on the Controlling Board agenda. It is important to involve DAS early in your purchase as the Controlling Board Request must include the Release and Permit or you will be delayed in obtaining Controlling Board approval.

***Q: I need to make a purchase involving a repair to our public building. How do I obtain a Release and Permit?***

**A:** The Office of State Purchasing is not authorized by law to make purchases related to the construction, reconstruction, alterations, or similar repairs to a public building (see Chapter 11). Agencies should contact the DAS State Architect's Office at (614) 466-4761.

**Blanket Release and Permit**

Certain types of purchases may exceed the agency direct purchase authority thresholds, but are not required to be made through DAS. DAS issues a blanket release and permit to cover these types of purchases.

At the beginning of each biennium, DAS determines that it is not possible or advantageous for it to make purchases of certain types of personal services and other specialized items. These items are described in the Expense Accounts as published by OBM, State Accounting. This blanket release and permit does not waive the necessity for any additional reviews or approvals as required by law or other DAS policies.

**OIT Release & Permit**

A release and permit request to OIT is an agency's written request for authorization to procure information technology supplies or services within the Office of Information Technology's superintending authority under sections 125.06 and 125.18 of the Ohio Revised Code. When Controlling Board approval is required, agencies must obtain a release and permit authorizing them to seek Controlling Board approval to procure information technology supplies and services. A release and permit may be based on one of the following purchasing methods: direct, term contract, state term schedule, competitive selection (RFP or ITB), or Controlling Board. OIT issues a blanket release and permit to agencies for purchases less than \$25,000.

***Exempt Types and Sources of Services and Supplies***

Certain **types** of supplies and services and certain **sources** (suppliers) from which supplies and services may be purchased are exempt from Controlling Board review, regardless of the total dollar amount.

**Types of Purchases Exempt from Controlling Board Review**

By virtue of statutory exemptions, the following is a partial list of the most common types of specific purchases that are exempt from Controlling Board review:

- Examinations purchased from a sole supplier by a state licensing board under Revised Code Title 47
- Membership dues in an association or organization
- Purchases of utility services pursuant to Section 9.30 of the Revised Code

- Purchases made pursuant to DAS rules of motor vehicle, aviation or watercraft fuel, or emergency repairs of such vehicles
- Passenger airline tickets
- Legally required public notices or notifications of job openings
- Motor Courier and Freight Services purchased pursuant to DAS rules
- Postage
- Books, periodicals, newspapers, maintenance subscriptions, and published materials
- Purchases made from other state agencies, including state-assisted institutions of higher education.

A more complete list, with several agency-specific items, is found in **Revised Code Section 127.16 (D)**.

If you have a question as to whether a particular type of purchase qualifies as one of the exemptions described above, contact the Controlling Board Office.

### **Sources for Purchases Exempt from Controlling Board Review**

State agencies are *required* to use the following sources (suppliers) for supplies and services in order (also known as the “order of ranking”) as outlined in the Office of State Purchasing’s Guidelines:

- Ohio Penal Industries (OPI)
- Office of Procurement from Community Rehabilitation Programs (OPCRP)
- State Printing—Forms Management
- Ohio Department of Mental Health/Support Services (Institutional Agencies only)
- DAS Term Contracts
- Purchases made from any other state agency or state-assisted institutions of higher education

### **Optional Sources for Purchases Exempt from Controlling Board Review**

In addition, state agencies have the *option* of purchasing from **state term schedules (STS)** and **multiple award term contracts (MAC)**. Purchases from MACs and STSs do not require Controlling Board review, regardless of the amount, because DAS traditionally receives approval by Controlling Board covering all agency purchases made under the STS and MAC.

When making a purchase from a STS or MAC, the agency must be sure that the supplies, services or data/telecommunications equipment and software are included in the contract awarded by DAS. If the items have not been approved by DAS, the purchase will be considered as a direct purchase, which may require a release and permit from DAS, as well as approval from the Controlling Board.

*If the proposed purchase is not included in this list of exempted types or sources, you may need approval from the Controlling Board depending on the process by which the purchase is being made, the purchase amount, or the amount of fiscal activity with the same vendor. (See the following discussions.)*

### ***Exempt Process by Which the Purchase is Made***

If a service or supply is not one of the types exempt from Controlling Board review and is unavailable from an exempt source in the order of ranking, then procurement without Controlling Board approval may be accomplished through DAS using competitive selection.

### **DAS Purchases through Competitive Selection**

In most cases, state agencies are required to coordinate their purchasing activity through DAS and OIT. The entities outlined below follow statutorily authorized procedures for the competitive selection of vendors to provide the desired supplies and services.

- OIT coordinates the purchases of computers, telecommunications equipment and related supplies and services, and all Request for Proposals using the competitive sealed proposal process;
- The **Office of State Printing** coordinates the purchases of printed materials; and
- The **Office of Procurement Services** coordinates the purchases of all other supplies and services (except Request for Proposals).

*Purchases made by DAS for an agency using competitive selection pursuant to state law do not require a waiver of competitive selection by the Controlling Board.*

### **Independent Contractor Guidelines**

When an agency enters into a contract for personal services, the agency must ensure that it is contracting with an independent contractor, not a contract employee, and that the contract complies with DAS Directive HR-D-13, "Independent Contractor Guidelines," as applicable to the agency. Directive HR-D-13 is available online at <http://das.ohio.gov/LinkClick.aspx?fileticket=My9mLN9MOt8=&tabid=356>.

### ***Amount of the Purchase and Fiscal Activity***

If the proposed purchase of a supply or service is not one of the exempt types and is not being procured from an exempt source or through one of the entities listed above, then the final factor for determining the requirement for Controlling Board approval is whether the agency's fiscal activity with the vendor equals or exceeds the Controlling Board threshold.

### **Understanding the Controlling Board Threshold**

The Controlling Board threshold is an agency's limitation on the amount of noncompetitively selected purchasing activity with a vendor that an agency may enter into without receiving prior approval by the Controlling Board. The following types of purchases highlight the statutory references governing the Controlling Board's authority to grant a waiver of competitive selection.

### **Purchase of Supplies or Services**

Pursuant to **Revised Code Section 127.6(B)(1)**, the Controlling Board threshold is the limit at which a purchase from a particular supplier would amount to \$50,000 or more when combined with the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency from the supplier 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.

### **Real Estate Leases**

Pursuant to **Revised Code Section 127.16(B)(2)**, the Controlling Board threshold for real estate leases is the limit at which a real estate lease from a particular supplier would amount to \$75,000 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 from the supplier and the amount of all outstanding encumbrances for real estate leases made by the agency from the supplier, unless the lease was made by competitive selection or with approval by the Controlling Board.

Real Estate Commercial Lease Renewals expire at the end of the biennium period and must be renewed every two years. Historically, these renewals have been submitted to the Controlling Board as individual requests. To streamline the process for renewals, new classifications have been established.

Effective October 2010, Real Estate Commercial Lease Renewal Agreements have been categorized into two classifications: Routine and New Leases and/or Non Routine. These classifications were established to streamline the process specifically with the renewal of routine commercial lease agreements. DAS has approval to waive competitive bidding for all commercial renewal agreements in a block format, and at the beginning of the second fiscal year of each biennium.

- *Routine Renewal Agreements*—If a commercial lease renewal agreement contains a renewal rent increase of less than 3.1% and the office space allocation meets or is better than the established criteria of 250-350 square feet per person, the lease renewal will be considered routine and approved through the streamlined method. The streamlined method permits rental payments for commercial lease renewal agreements classified as “routine” to be processed using the Controlling Board number aligned with the approved commercial lease renewal process.
- *New Leases and/or Non Routine*—If a commercial lease renewal agreement does not meet the above criteria as defined in the Routine Renewal Agreements, the New Lease or Non Routine Renewal Agreement shall follow the current procedure.

### **Elements of the Controlling Board Threshold**

The following elements of the Controlling Board threshold deserve additional discussion:

- *Purchase Amount/Contract Amount*—***The full amount to be paid to the vendor over the term of the contract is applied to the Controlling***



***Board threshold, regardless of whether the term of the contract covers more than one fiscal year within the biennium.***

- *Cumulative*—The sum of all purchasing activity not competitively selected pursuant to **Revised Code Chapter 125**, nor approved by the Controlling Board in the fiscal year of the proposed purchase is applied toward the Controlling Board threshold.
- *Per Vendor*—The Controlling Board threshold applies to a single vendor.
- *Per Agency*—The Controlling Board threshold reflects only the purchases made by a single agency and does not reflect purchases made by other state agencies.
- *Encumbrances & Disbursements*—The Controlling Board threshold is calculated counting disbursements to the vendor in the current fiscal year and all outstanding encumbrances with the vendor. However, the full amount of the proposed contract is considered regardless of the fiscal year in which payment may be made.
- *Prior Controlling Board Approvals*—Purchases previously approved by the Controlling Board, regardless of the amount of the purchase, are not applied toward the Controlling Board threshold.

**Direct Purchase Authority Adjustments**

In HB 562 of the 127<sup>th</sup> General Assembly, the Department of Administrative Services adjusted the direct purchase limits, pursuant to Division (D) of Section 125.05 of the Ohio Revised Code. Please keep in mind that this adjustment **does not** affect the requirements of **Section 127.16** of the Ohio Revised Code, the section that defines the Controlling Board threshold.

*For more information regarding purchases of supplies and services made by state agencies, please contact the Department of Administrative Services or refer to **Chapter 125 of the Revised Code**.*

***Will This Purchase Equal or Exceed the Controlling Board Threshold?***

**New Contracts & Real Estate Lease Agreements**

**Amount of Purchase Above the Controlling Board Threshold**

Any individual, noncompetitively selected purchase or contract not otherwise exempted that equals or exceeds \$50,000 requires Controlling Board approval. Any real estate lease agreement that equals or exceeds \$75,000 requires Controlling Board approval. The following table illustrates the various types of noncompetitively selected purchasing activity by state agencies that require a Controlling Board waiver of competitive selection:



**Amount of Individual Purchase from One Vendor**

	<b>All Agencies</b>
Supplies and/or Services	= or > \$50,000
Leases of Real Estate, including all Real Estate Lease-Related Expenses	= or > \$75,000

**Amount of Purchase Below the Controlling Board Threshold**

*For an individual, non-competitively selected purchase through DAS, or contract that is less than the aforementioned Controlling Board thresholds, this purchase or contract requires a Controlling Board approval Waiver of Competitive Selection or Agency Released Competitive Opportunity if the sum of A + B + C below is greater than or equal to the Controlling Board threshold. The following example illustrates the calculation of the Controlling Board threshold for non-institutional agencies.*

<b>A</b>	<b>+ B</b>	<b>+ C</b>	<b>= D</b>
Total amount of proposed purchase (not competitively selected) from a particular vendor. This is the amount to be spent over the entire period of the contract.	Amount of all disbursements to the vendor during the fiscal year for purchases from the vendor that were <b>NOT</b> competitively selected nor approved by the Controlling Board	Amount of all outstanding encumbrances for purchases from the vendor that were <b>NOT</b> competitively selected nor approved by the Controlling Board	\$50,000 or more in total

**Examples**

(1) \$7,000 + \$15,000 + \$28,000 = \$50,000\*

(2) \$30,000 + \$ 3,000 + \$23,000 = \$56,000\*

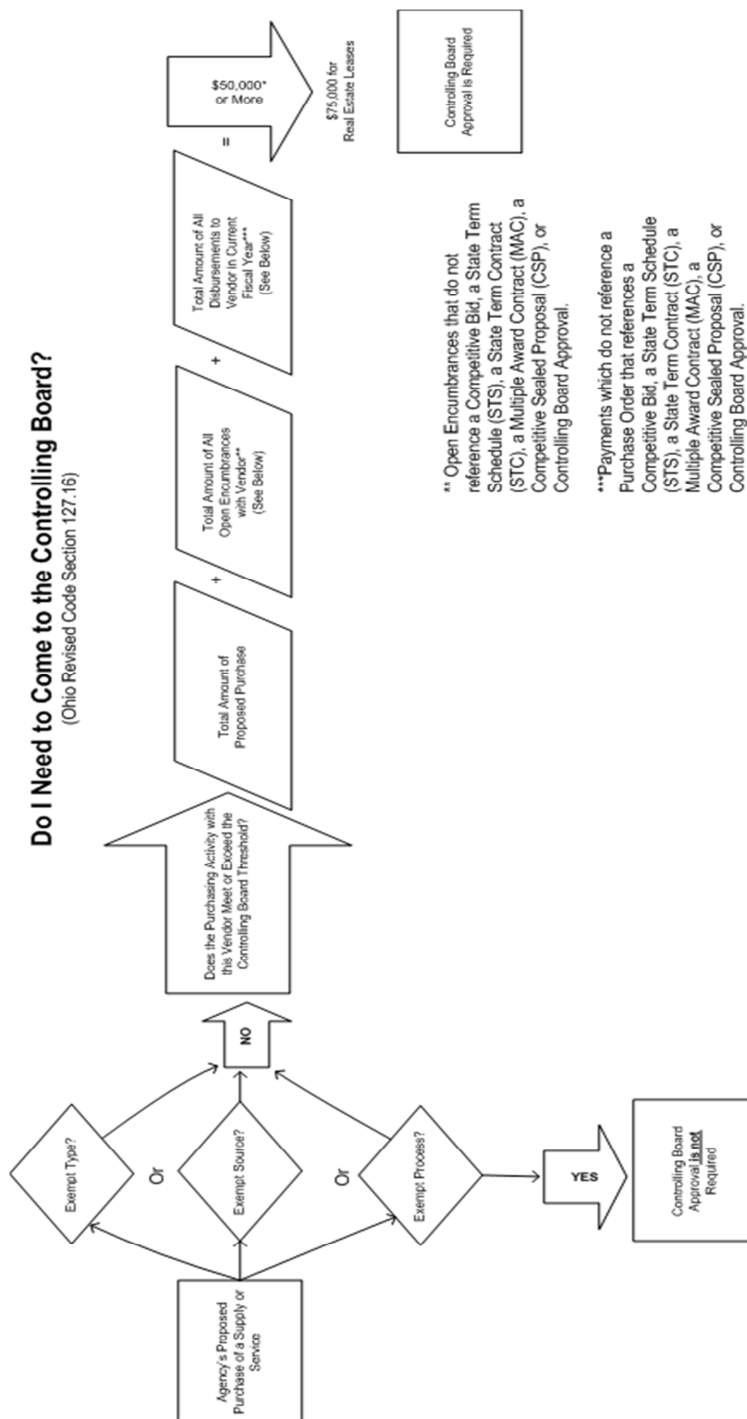
\*Purchases that have been made by competitive selection (defined in **Section 125.01 (I) of the Revised Code**) or that have been approved by the Controlling Board are **NOT** included in the calculation.

**Both example purchases above are subject to the approval of the Controlling Board because the \$50,000 cumulative amount has been reached or exceeded under "D."** Amounts previously approved by the Controlling Board as well as disbursements and encumbrances based on competitively selected purchases through the Department of Administrative Services are not applied to the threshold.

**NOTE:** When making the calculation for real estate leases, only real estate lease-related expenses need to be considered.

### ***Do I Need to Come to the Controlling Board?—A Flow Chart Model***

The following model summarizes the various steps involved in determining whether a particular purchase must be presented to the Controlling Board for approval for a waiver of competitive selection:



NOTE: This chart addresses Controlling Board requirements under ORC Section 127.16 only. Other Controlling Board requirements may apply to an agency's activities.

5/18/2010

### ***Will This Purchase Equal or Exceed the Controlling Board Threshold?***

#### **Contract Amendments and Contract Renewals**

- An *amendment* to a contract not previously approved by the Controlling Board with a particular vendor requires Controlling Board approval if the amount of the amendment, the original contract, and applicable encumbrances with and disbursements to a particular vendor exceed the Controlling Board threshold.

An *amendment* to a contract previously approved by the Board that increases the dollar amount of the contract, changes the vendor or modifies the scope of the work must be approved by the Controlling Board.

- A *renewal* of a noncompetitively selected contract with a particular vendor requires Controlling Board approval if the amount of the renewal and applicable encumbrances with and disbursements to equals or exceeds the Controlling Board threshold.

#### **Examples**

The following examples, using the threshold of \$50,000, illustrate some of the most common situations when the dollar amount of the purchase and the applicable Controlling Board threshold determine whether Controlling Board approval for a Waiver of Competitive Selection or Agency Released Competitive Opportunity, pursuant to **Revised Code Section 127.16** and **127.162**, is required.

**1) Our agency has received a Release and Permit from OIT for a \$45,000 purchase of telephone equipment. We have not previously disbursed any amounts to the vendor, nor do we have any outstanding encumbrances based on non-competitive purchases with this vendor. Is Controlling Board approval required? (Amount of the Purchase)**

Controlling Board approval **is not** required. This purchase applied to the agency's Controlling Board threshold for this vendor is less than the agency's threshold for the fiscal year.

**2) Our agency has already made \$45,000 in non-competitively selected purchases of telephone equipment from a particular vendor this fiscal year. Now we want to make an additional \$10,000 purchase of equipment. I know I don't need to go through OIT for a Release and Permit, and can use my direct purchase authority, but do I need Controlling Board approval? (Cumulative Purchases)**

Controlling Board approval **is** required. The two purchases from this vendor result in a total of \$55,000 in non-competitively selected purchases, which would exceed the agency's Controlling Board threshold.

**3) Our agency purchased \$45,000 in telephone equipment from a vendor and encumbered the money in June of last fiscal year. This was a noncompetitively selected purchase that did not require Controlling Board approval. However, payment to the vendor was not made until July of the new fiscal year. Now I want to make a \$10,000 purchase of equipment under my direct purchase authority.**

**Does this require approval by the Controlling Board or DAS? (Disbursements to the Vendor)**

Since this individual purchase of \$10,000 is less than the threshold for your direct purchase authority, a release and permit from DAS is not required. The agency's Controlling Board threshold for this vendor includes the disbursement activity in favor of a vendor for that fiscal year, as well as outstanding encumbrances for purchases not competitively selected through DAS or approved by Controlling Board. The calculation would yield \$55,000, which would exceed the agency's Controlling Board threshold, thus requiring Controlling Board review.

**4) Our agency has a service contract with a vendor in the amount of \$100,000, and this vendor was awarded the contract by DAS through its competitive sealed proposal (CSP) process. We have no other fiscal activity with this vendor. Now we want to make a \$10,000 non-competitively selected purchase that is unrelated to the other contract. Do I need Controlling Board approval? (Exempt Process and Purchase Amount)**

Controlling Board approval is not required. While the agency has made another purchase with the vendor, the initial purchase was competitively selected through the CSP process, and therefore is not applied to the agency's Controlling Board threshold.

**5) Our agency has a service contract with a vendor for \$100,000 and it was approved by the Controlling Board. Now I want to make an additional \$10,000 non-competitively selected purchase from the vendor that is unrelated to the other contract. Do I need Controlling Board approval? (Prior Controlling Board Approval)**

Controlling Board approval is not required. The previous non-competitively selected activity was approved by the Controlling Board and, therefore, does not apply toward the Controlling Board threshold.

**6) Our agency has a service contract with a vendor for \$100,000 and it was approved by the Controlling Board. Now I want to amend this contract for an additional \$10,000 in services. Do I need Controlling Board approval? (Contract Amendment)**

Yes. This \$10,000 represents an increase and/or change in the scope of a contract previously approved by the Controlling Board, and, therefore, Controlling Board approval is required prior to entering into the contract amendment. A release and permit from DAS is not required.

**7) Our agency is ready to enter into a two-year contract in the total amount of \$55,000 for the biennium. We expect to spend \$25,000 in the first fiscal year of the biennium and \$30,000 in the second fiscal year. We have no previous fiscal activity with this vendor (and therefore no disbursements to the vendor this fiscal year or open encumbrances with this vendor). Is Controlling Board action required? (Purchase Amount)**

Yes. The full amount to be paid to the vendor over the term of the contract in exchange for supplies or services is to be counted against the Controlling Board threshold, regardless of the amount to be spent in a fiscal year. Since the proposed \$55,000 purchase exceeds the threshold, the item requires approval by the Board. A release and permit from DAS is required for this purchase as the cumulative value exceeds the cumulative annual threshold.

**8) Our agency is ready to enter into a service contract in the amount of \$150,000 that has not been competitively selected through DAS. The contract will extend for a period that crosses both years of the fiscal operating biennium. Do I need to seek approval by the Controlling Board twice? (Purchase Amount and Multi-Year Contracts)**

Controlling Board approval is required, and the request can be approved for a Waiver of Competitive Selection or Agency Released Competitive Opportunity that covers both fiscal years within the biennium. However, Controlling Board requires that both the request and the contract specifically designate the amount of the proposed contract to be spent per fiscal year. A release and permit from DAS is required for this purchase as the value exceeds the cumulative annual threshold.

Contracts may include renewal provisions, but prior to the expiration of the contract and the beginning of a new fiscal biennium, agencies must seek approval by the Controlling Board to renew the contract.

**9) Our agency is ready to enter into a service contract with a vendor in the amount of \$100,000 that will require services to be performed in more than one fiscal operating biennium. Can we seek Controlling Board approval for more than one biennium? (Contracts Extending Beyond the Biennium)**

Agencies are prohibited by law from entering into contracts that go beyond the fiscal operating biennium, thus obligating future General Assemblies to appropriate funds to pay for contractual arrangements. The contract may be written for the portion of the work to be performed during the current biennium and allow for a renewal of the contract once the new biennium begins and sufficient appropriations are in place. The agency will need to come to the Controlling Board for both the original contract and the renewal provision. A release and permit from DAS is required for the initial contract as the value exceeds the cumulative annual threshold.

**10) Our agency is ready to exercise the second of three renewal clauses in a service contract that was previously approved by Controlling Board. The amount for the renewal period is \$100,000. Does this renewal require approval by Controlling Board? (Contract Renewal)**

A contract renewal is considered a separate purchase and is subject to Controlling Board approval if the amount of the renewal and applicable encumbrances and disbursements equals or exceeds the Controlling Board threshold. A release and permit from DAS is required for the contract renewals that exceed the cumulative annual threshold.

**11) Our agency needs more office space than we currently have, and I've found a place we'd like to move into. What is Controlling Board's role in leases of real estate of non-state owned facilities? (Real Estate Leases)**

Most state agency leases for real estate, including warehouses, are coordinated by DAS—General Services Division's Bureau of Real Estate. Real estate leases may have to be approved by the Controlling Board for a waiver of competitive selection if the amount of the proposed lease, all real estate lease-related expenses, all disbursements to the lessor in the given fiscal year, and all outstanding encumbrances with the lessor (for purchases not approved by Controlling Board) exceed the Controlling Board threshold for real estate leases. DAS—General Service Division's Bureau of Real Estate is responsible for preparing the request for Controlling Board review.

**12) The lease for our current facility is ready to expire and we will be exercising an option to renew the lease. Since Controlling Board approval was granted for the initial lease agreement, is Controlling Board approval required to renew the lease agreement? (Real Estate Lease Renewal)**

Real estate lease agreements typically contain renewal clauses establishing the rental and service rates and the duration of the lease agreement, which usually correspond with the beginning of each fiscal operating biennium. Renewals of real estate lease agreements, like other contract renewals, must also be approved by the Controlling Board if the amount causes the agency to exceed the Controlling Board threshold for real estate leases. Again, DAS—General Service Division's Bureau of Real Estate is responsible for preparing the request for Controlling Board review prior to the beginning of the new biennium.

**13) Our agency needs more office space than we currently have, and our landlord has offered additional space to us. Our existing lease agreement has been approved by the Controlling Board. Do we need Controlling Board approval to amend our existing lease? (Real Estate Lease Addendum)**

Any amendment that results in an increased cost for a real estate lease agreement (because of an increase in square footage, an increase in the rental rate, additional costs for services, or any other significant modifications to the agreement) requires Controlling Board approval. DAS—General Service Division's Bureau of Real Estate is responsible for preparing the request for Controlling Board review of the addendum.

**Changes to Previously Approved Controlling Board Requests**

Changes to previously approved Controlling Board requests are classified as substantive, Non-substantive, or accounting changes. Substantive changes to requests previously approved by the Board must be submitted to the Board for approval. Non-substantive changes must be submitted to the Controlling Board President for approval. Notices of accounting changes must be submitted to the State Accounting Section of the Office of Budget and Management as outlined in the following discussions.

**Substantive Change**

A substantive change to a previously approved Controlling Board request requires the preparation and submission of a new request to the Controlling Board for approval. The requirements that apply to a new request are necessary for a substantive change.

Substantive changes include the following:

- A different prime contractor or provider of services;
- An increase in the amount to be paid to a contractor or the rate(s) of payment to the contractor;
- A change in the scope of work, type of work, work product, purpose or context of a contract;
- An increase in the amount of a real estate lease resulting from increased rent, square footage or other terms of the lease;
- A change in the amount of a loan, rate of interest, guarantors, security, repayment period or terms, or project that is the subject of the loan; and
- Any other change which the President or Controlling Board determines to be a substantive change.

### **Non-substantive Change**

A non-substantive change to a previously approved Controlling Board request requires the approval of the President of the Controlling Board. An electronic submission that includes the Controlling Board number, tax identification number, if applicable, approval date and an explanation of the request for a non-substantive change should be submitted through the e-CB website. Anyone with e-CB access can create and submit a non-substantive change request to the Controlling Board President. It is not necessary to notify the Controlling Board members.

Non-substantive changes include the following:

- The term or fiscal year for which the contract is approved. The term or fiscal year change must be within the current biennium;
- The contract amount allocated to each fiscal year of the biennium;
- The appropriation line item number or name or fund identified in the request;
- The subcontractor(s) identified in the contract; and
- Any other change that the President identifies as a non-substantive change.

### **Accounting Changes**

Accounting changes affect the vendor's information used to process the payment approved by the Controlling Board (or Director of OBM). Please follow the guidelines below for changing the information with State Accounting. It is not necessary to provide documentation to the Controlling Board office or to the Controlling Board members.

(1) The **Vendor Compliance Section** of the State Accounting Section of the Office of Budget and Management shall be notified of any change that affects payment to the contractor including a change in:

- Contractor's tax identification number;
- Contractor's name or address;
- Ownership, e.g., contractor is bought by or merges with a third party;
- Status, e.g., contractor incorporates or joins partnership; and



- Any other change which the President identifies as an accounting change requiring notification to State Accounting.

(2) The **Encumbrance Review Section** of the State Accounting Section of the Office of Budget and Management shall be notified in writing when any of the changes affecting payment to a contractor identified in (1) above requires modifications to OAKS in order to complete the encumbering process. This written notification must include the Controlling Board number, Controlling Board approval date, and an explanation, including all tax identification information justifying the requested OAKS modifications.

*For additional questions regarding the changes to a previously approved Controlling Board request, contact your OBM Budget Analyst or the Controlling Board staff.*

## **Section III—Preparing a Controlling Board Request**

At this point, hopefully, you have determined if you need to bring a request to the Controlling Board or would like more specific information on the actual preparation of a particular type of Controlling Board request. This section is structured to give detailed instructions for the preparation of Controlling Board requests. Although it covers the most common types of requests, there will occasionally arise a circumstance not covered by these instructions. In such cases, contact the Controlling Board secretary or your agency's OBM budget analyst for more information and guidance.

This section is divided into eight parts as follows:

- Overview of Various Types of Controlling Board Requests,
- Capital Request,
- Operating Request,
- Operating Transfer Request,
- Fund/Appropriation Request,
- Land Acquisition Request,
- Continuation Form, and
- Vendor Continuation.

Generally, the parts providing detailed instructions for the various requests specify three components of the request:

- (1) The Request Form,
- (2) Required Information, and
- (3) Attachments.

### **Overview of Various Types of Controlling Board Requests**

The type of request that an agency submits for consideration by the Controlling Board or the Director of OBM is determined by the specific action the Board or Director is being requested to approve. There are five basic request types and the actions for which they are used are as follows:

- Capital Request,
- Operating Request,
- Operating Transfer Request,
- Fund/Appropriation Request, and
- Land Acquisition Request.

### ***Capital Request***

This request involves the use of capital appropriations, that is, appropriations made in a capital appropriations act. The most common circumstances in which this request is submitted include:

- Transfer of Capital Appropriations,
- Release of Capital Appropriations,
- Waiver of Competitive Selection involving Capital Appropriations,
- Agency Released Competitive Opportunity, and
- Change of Intent for Previously Released Capital Appropriations.

### ***Operating Request***

This request is submitted primarily in those cases that involve a waiver of competitive selection using operating appropriations, although it can also be used to accommodate other circumstances. The uses of this form include waivers of competitive selection, including waivers for:

- New Contracts,
- Contract Amendments,
- Contract Renewals,
- Purchases of Supplies,
- Non-Real Estate Leases,
- New Real Estate Leases,
- Real Estate Lease Amendments,
- Real Estate Lease Renewals or Real Estate Lease Holdovers, and
- Miscellaneous Controlling Board approvals required by statute.

### ***Operating Transfer Request***

This request is submitted primarily to accommodate fiscal and accounting types of actions related to operating appropriation. The uses of this form include:

- Transfer of Operating Appropriations,
- Transfer of Cash,
- Transfer of Cash and Operating Appropriations.

### ***Fund/Appropriation Request***

This request is submitted primarily for the creation of a fund or the increase in appropriation authority related to operating appropriations. The uses of this form include:

- Increase Appropriation Authority
- Establish Appropriation Authority
- Create a New Fund

### ***Real Estate Acquisition Request***

This request is submitted almost exclusively for real estate acquisitions that must be presented to the Board. These requests include all purchases of real estate made with capital appropriations by any agency and all land purchases, regardless of the source of funds, made by higher education institutions. The uses of this form include the following:

- Release of Capital Appropriations for Real Estate Acquisition
- Transfer of Capital Appropriations Involving Real Estate Acquisition
- All Real Estate Acquisitions by Institutions of Higher Education

## Capital Request—Detailed Instructions

The Capital Request maybe submitted to seek the Controlling Board's approval of any combination of the various actions listed below:

- Release of Capital Appropriations (may or may not include a release for Percent for Arts)
- Transfer of Capital Appropriations
- Waiver of Competitive Selection using Capital Appropriations
- Change of a Intent for Previously Released Capital Appropriations

### ***Instructions—Checklist Format***

The following detailed instructions are presented in a checklist format. Rows of circles are provided. The preparer should complete those sections for which there is an empty circle for the type of request they are preparing. An "N" below the request type indicates that the information described is not required for the particular type of request.

The detailed instructions are divided into three sections:

- ***Form Contents*** describe the parts of the form itself and the information required on the form.
- ***Required Explanation of Request*** describes the information required for the explanation of the request to be included on the form and Continuation forms.
- ***Attachments*** describe other material that must be submitted with the form.

### ***Capital Request Combinations***

For the Capital Request form, an agency is likely to request more than one of the actions for which the form can be used. **An agency should know all aspects of the request and complete all checklist items for all actions requested.** For instance:

Most requests for a *transfer of funds* also involve the *release of funds* for a particular component of the capital project. Complete all items for types T and R.

Most requests for *waivers* of non-competitively selected contracts (usually planning/design/engineering contracts) which equal or exceed the Controlling Board threshold involve a release of funds as well. Complete all items for types R and W.

Requests for a *change of intent* involve previously released, but unencumbered, capital funds, and may also involve a request for a *waiver of competitive selection*. (Complete all items for type CI, and, if applicable, W.) Requests for *changes of intent* may also be combined with a request to *release* and/or *transfer capital funds*, in which case, also complete items T and/or R.

Requests for the *release of funds* for Planning/Design/Engineer contracts for amounts that will not exceed the Controlling Board threshold, or for competitively bid construction contracts, or for the purchase of equipment though competitive selection only involve the *release of funds*. Complete type R only.

**Contents—Capital Request****GENERAL INFORMATION**

CB Request			New	Open	Delete	Check Status
Meeting Date: 02/13/2012		CAPITAL REQUEST		Controlling Board Request No.: OBM0100057		
Status: New		1				
GENERAL INFORMATION						Reset
Agency Name	<input type="radio"/> Real Estate Acquisition <input type="radio"/> Release of Capital Funds(R.C.Sec. 127.14G) <input type="radio"/> Transfer of Capital Funds(R.C.Sec. 127.14G and/or Sec. 127.15) <input type="radio"/> Higher Education Authorization Request(Sec. 3333.071) <input type="radio"/> Other Statutory Authority/Bill Section:		Fiscal Year(s)			
Budget and Management			5			
Institution/Division Administration						
Eligible for Local Administration?	<input type="radio"/> Capital Request <input type="radio"/> Release of Capital Funds(R.C.Sec. 127.14G) <input type="radio"/> Transfer of Capital Funds(R.C.Sec. 127.14G and/or Sec. 127.15) <input type="radio"/> Waiver of Competitive Selection(R.C.Sec. 127.16B) <input type="checkbox"/> No Competitive Opportunity <input type="checkbox"/> Agency Released Competitive Opportunity <input type="radio"/> Agency Released Competitive Opportunity(R.C.Sec. 127.162) <input type="radio"/> Release Percent for Arts(R.C.Sec. 3379.10) <input type="radio"/> Other Statutory Authority/Bill Section: <input type="radio"/> Other:		3		Bill No.	
7					6	
Yes No					Eligible for OBM Director Approval?	
					Yes No	
					4	
Save and Continue						

1. Controlling Board Request No.: A ten-character code that identifies the request. The first three characters are to be the agency's agency code and the remaining will be sequentially generated by e-Controlling Board (e.g. OBM0100007).
2. Agency Name: Name of the agency completing the request.
3. Capital Request: Types of authorization include:
  - Transfer/Release of Capital Funds (**R.C. Section 127.14G** and/or **Section 127.15**)
  - Waiver of competitive selection involving capital appropriations (**R.C. Section 127.16B**)
  - Release Percent for Arts (**R.C. Section 3379.10**)
  - Other Statutory Authority/Bill Section: Cite statutory reference requiring Controlling Board approval.
  - Other
4. Eligible for OBM Director Approval?: Check "Yes" or "No" field to identify whether this request is eligible for approval by the Director of OBM according to the "General/ Specific" List as published by OBM for each capital biennium. (More information on this list can be found in Section II.
5. Fiscal Year(s): The fiscal year(s) for which the request applies.
6. Bill No.: The Bill Number(s) referencing the source of the appropriation applying to this request.

7. Eligible for Local Administration?: Check “Yes” or “No” field to identify whether this construction-related project is being administered by the agency. (See Section II for a discussion about agency administration of capital expense.)

## VENDOR INFORMATION

VENDOR INFORMATION							Hide
Vendor ID	Address Code	Vendor Name	Vendor Address of Principal Place of Business				
13		8	9				
FY	Contract Amount	Release & Permit #	City	State	County (Ohio Only)	Zip Code	
	14 \$0.00		10	OH	11	12	
	\$0.00		Owner Agency		OBM(		
Add New							

8. Vendor Name: The name of the vendor for which the waiver of competitive selection is being requested.

9. Vendor Address of Principal Place of Business: The address of the vendor's principal place of business.

10. City: The vendor's city of its principal place of business.

11. State: The vendor's state of its principal place of business.

12. County (Ohio Only): If the vendor's location of its principal place of business is in Ohio, the name of the county in which it is located.

13. Vendor ID: The vendor's identification number.

14. Contract Amount: The actual dollar amount that requires the waiver of competitive selection. This amount should include any allowances and change order fees or contingency amounts included in the contract.

## TRANSFER INFORMATION

TRANSFER INFORMATION										Hide
Edit	From To Agency	FY	Fund Group	Fund Code	Appropriation Line Item	Appropriation Line Item Name	Transfer Amount	Previously Released Amount		
15	16	17	18	19	20	21	22	23	24	
OSU01	12	123456	TEST	\$100.00	\$500.00					
25	26	27	28	29	30	31	32	33	34	
OSU01	12	654321	TEST2	\$100.00	\$500.00					
Add New										

15. From To Agency: The appropriation line item from which the transfer is being requested.

16. Fund Group: This field is no longer required for requests entered after July 1, 2007.

17. Fund Code: The code designating the fund from which the transfer is being requested.

18. Appropriation Line Item: The six-digit appropriation line item assigned by State Accounting. (Example: 200321).

19. Appropriation Line Item Name: The exact appropriation line item name from which the transfer is being requested.

20. Transfer Amount: The appropriation amount requested to be transferred. (NOTE: This is the amount that has not been previously approved for release by the Controlling Board or by the Director of OBM.)

21. Previously Released Amount: If an appropriation previously released by the Controlling Board is involved in the transfer, the appropriation amount requested to be transferred. (NOTE: This is the amount that has been previously approved for release by the Controlling Board or by the Director of OBM but has not been encumbered.) Do not list the entire amount previously released for the project, just the released dollar amount included in the transfer request.

22. From To Agency: The appropriation line item to which the transfer is being requested.

23. Fund Group: This field is no longer required for requests.

24. Fund Code: The code designating the fund to which the transfer is being requested.

25. Appropriation Line Item: The six-character appropriation line item name to which the transfer is being requested. Assigned by State Accounting. (Example: 235321)

26. Appropriation Line Item Name: The exact appropriation line item name to which the transfer is being requested.

27. Transfer Amount: The appropriation amount requested to be transferred. (NOTE: This is the amount that has not been previously approved for release by the Controlling Board or by the Director of OBM.)

28. Previously Released Amount: This field blank.

## FUNDING INFORMATION

FUNDING INFORMATION							Hide
Edit	Fund Group	Fund Code	Appropriation Line Item		Appropriation Line Item Name	Type	Total Amount
Add New	29	30	31	32		33	\$0.00

29. Fund Group: This field is no longer required for requests.

30. Fund Code: The code designating the fund from which the release is being requested.

31. Appropriation Line Item: The six-digit appropriation line item from which the release is being requested. Assigned by State Accounting. (Example: 250401)



32. Appropriation Line Item Name: The exact appropriation line item name from which the release is being requested.

33. Total Amount: The exact appropriation amount being requested for release or approval.

**NOTE for Colleges and Universities:** When requesting a release from Basic Renovations, include only the previously released amount that relates to this project. Do not include the total amount of Basic Renovation appropriations that have been released to date.

## SIGNATURES

SIGNATURES	
<div style="border: 1px solid black; padding: 2px; display: inline-block;">34</div>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">35</div>
_____ Agency Director or Authorized Agent	_____ On The Date Of
_____ Date	_____ Controlling Board President/OBM Director

34. Agency Director or Authorized Agent: A signature of the agency director or his or her designee is required by the agency prior to submitting the request.

35. On The Date Of: The date that the agency director or authorized agent signs the request.

## AGENCY CONTACT

AGENCY CONTACT					36	Hide
First Name		MI	Last Name	Title		
Phone		Fax		E-Mail		
<input type="button" value="Update Agency Contact"/>						

36. Agency Contact: The information requested in these fields for the primary agency/institution contact regarding questions about the request.

**REQUIRED EXPLANATION OF REQUEST**

REQUIRED EXPLANATION OF REQUEST		37	Hide
<b>Summary Paragraph:</b> The text included in the following summary paragraph text box will be the request description included in the agenda. If this request is for a waiver of competitive selection, please complete the required information questions and then return to this page to systematically create the summary paragraph. You may then edit the system-created summary paragraph.  To systematically create the summary paragraph or to replace the text with the system-created summary paragraph, click the following button: <input type="button" value="Create Summary"/>			
The Budget and Management respectfully requests Controlling Board approval to {complete the summary paragraph for this request}.			
<small>[Note: Only the first 2000 characters will be saved.]</small>			
<b>Subsequent Paragraphs:</b> Provide a detailed explanation of the nature of the request and any additional background information relative to this request. Click <a href="#">here</a> for instructions on information required for each type of request.			
<small>[Note: Only the first 6000 characters will be saved.]</small>			
<b>Related CBR No.:</b>			
<small>[Note: Only the first 200 characters will be saved.]</small>			
<input type="button" value="Check Spelling"/>			
<input type="button" value="Save and Continue"/>			

37. Required Explanation of Request: The following components are to be included with each Capital Request.

- Summary Paragraph
- Subsequent Paragraphs
- Project Budget
- Responses to Required Information Questions (Waivers of Competitive Selection, only)
- Attachments, where applicable

***Required Explanation Checklist***

This checklist format will guide you through the required information sections for the type of request being prepared. For each type of request, an example of a summary paragraph and suggestions for subsequent paragraphs are provided to assist in preparing your explanation.

**Summary Paragraph**

The first paragraph should be a brief summary in the format specified below based on the particular type of request. Choose one of the following examples or a combination of the following examples based on the nature of the request.

**R—Release of Funds**

“The {agency or institution name} respectfully requests Controlling Board approval to release \$\_\_\_\_\_ for the {project name} project in {name of city, name of county}. {DAS/GSD/SAO project number for DAS-administered projects}”

**T—Transfer of Appropriation**

“The {agency or institution name} \_\_\_\_\_ respectfully requests Controlling Board approval to transfer \$\_\_\_\_\_ from {line item name} to {line item name} for the {project name} project in {name of city, name of county}. {DAS/GSD/SAO project number for DAS-administered projects}.”

**W—Waiver of Competitive Selection & Release of Funds-Service Contracts\*** “The {agency or institution name} \_\_\_\_\_ respectfully requests Controlling Board approval to release \$\_\_\_\_\_ and to waive competitive selection to contract with {contractor name}, {contractor city, state, county (Ohio vendors only) of its principal place of business}, to provide {type of service} for the {project name} project in {name of city, name of county}. {DAS/GSD/SAO project number for DAS-administered projects}” (NOTE: For *Contract Amendments*, please replace “to contract” with the phrase “to modify the contract”).

**W—Waiver of Competitive Selection & Release of Funds-Purchase of Supplies or Equipment\***

“The {agency or institution name} \_\_\_\_\_ respectfully requests Controlling Board approval to release \$\_\_\_\_\_ and to waive competitive selection to purchase {item(s)} from {vendor name}, {vendor city, state, county (Ohio vendors only) of its principal place of business}, for the {project name} project in {name of city, name of county}. {DAS/GSD/SAO project number for DAS administered projects}”

**\*Most requests for a waiver of competitive selection will also require the release of funds.**

**CI—Change of Intent**

“The {agency or institution name} \_\_\_\_\_ respectfully requests Controlling Board approval of a change of intent for previously released funds in the amount of \$\_\_\_\_\_ for the {project name} project in {name of city, name of county}. {DAS/GSD/SAO project number for DAS-administered projects, if applicable}”  
Other Common Request Combinations, Summary Paragraphs, and Examples

**T, R, W—Transfer Funds, Release Different Amount, and Waiver of Competitive Selection**

“The {agency or institution name} respectfully requests Controlling Board approval to transfer \$\_\_\_\_\_ from {line item name} to {line item name}; to release \$\_\_\_\_\_ for the {project name} project in {name of city, name of county}; and, to waive competitive selection to {contract/purchase} with {contractor name}, {contractor city, state, county (Ohio vendors only) of its principal place of business}, for {service type, purchase type}. {DAS/GSD/SAO project number for DAS-administered projects}”

**R, W—Release Funds and Waiver of Competitive Selection, Different Amount as Release** “The {agency or institution name} respectfully requests Controlling Board approval to release \$\_\_\_\_\_ for the {project name} project in {name of city,

name of county}, which includes a waiver of competitive selection in the amount of \$\_\_\_\_\_ to contract with {contractor name}, {contractor city, state, county (Ohio vendors only) of its principal place of business}, for {type of service}. {DAS/GSD/SAO project number for DAS-administered projects}”

### **Subsequent Paragraphs**

These paragraphs should provide a written explanation providing as much detail as necessary for a complete understanding of the request. Include any of the following information, as appropriate to the type of request being prepared.

#### **T—Transfer of Funds**

Explain why amounts are being transferred, including a reason why amounts are no longer needed in the appropriation line item and the project from which appropriations are being transferred. Provide a brief history of the capital projects involved in the transfer.

#### **R—Release of Funds**

(Purchase of Equipment)

Explain the intended use of the equipment for which funds are being released. Provide a brief explanation of the scope of this capital project, including prior and future phases of the project.

Low bidder not selected—If for some reason the lowest bidder is not awarded the contract involved in the release of funds presented in the request, explain why.

Equipment List: A request for a release of capital appropriations for the purchase of equipment must include a list of each item being purchased with the actual quoted price. Estimates are not acceptable. Please itemize the list of equipment on the request form as follows:

- Vendor(s) Name and Complete Address
- Item Name
- Quantity
- Per Unit Pricing
- Total Cost
- Vendor’s Identification Number
- Method of Selection (within local bid threshold, competitively bid, Inter-University Council contract/state term contract/state term schedule, or sole source)
- A release and permit from DAS is not required

(For a complete discussion about the eligibility of using capital appropriations for the purchase of equipment, see Section II.)

**R—Release of Funds (Construction or Professional Services Contracts)** Describe the services or work to be performed by the contractor(s) included in this request for a release of capital funds. Describe the selection process used in the selection of the contractor(s). Provide a brief explanation of the scope of this capital project, including prior and future phases of the project.

Low bidder not selected—If for some reason the low bidder is not awarded the contract for which the release of funds is requested, explain why.

**CI—Change of Intent**

Explain the nature of the change and why funds are no longer future phases of the project.

**W—Waiver of Competitive Selection** (New Professional Service Contracts) Provide a detailed written explanation describing as necessary the nature of the request. Describe the service for which competitive selection is being waived. Provide background information relative to the history of project for which the waiver of competitive selection is being sought. Suggestions for these paragraphs based on the type of request include the following:

**Prior phases of the project**

**If the contract is a portion of a multi-phase project, indicate the phases of the contract with this vendor, including future phases of the project.**

**Specify the deliverables or describe the scope of work of the contract.**

**Low bidder not selected—If for some reason the low bidder is not awarded the contract involved in this release of funds presented in the request, explain why.**

**W—Waiver of Competitive Selection** (Contract Amendment)

Provide a detailed written explanation of the nature of the request.

Describe the circumstances requiring an amendment to services for which competitive selection is being waived. Provide background information relative to the history of the project for which the waiver of competitive selection is being sought. Suggestions for these paragraphs based on the type of requests, include the following:

**Prior phases of the project**

**If the contract is a portion of a multi-phase project, indicate the phases of the contract with this vendor, including future phases of the project.**

**Specify the deliverables or describe the scope of work to be performed under the contract.**

**Low bidder not selected—If for some reason the low bidder is not awarded the contract for which the release of funds is requested, explain why.**

**W—Waiver of Competitive Selection** (Purchase of Equipment)

Provide a detailed written explanation of the nature of the request.

Describe the circumstances requiring a waiver of competitive selection for the purchase of equipment. Provide background information relative to the history of the project.

Equipment List: A request for a release of capital appropriations for the purchase of equipment must include a list of each item being purchased with the actual quoted price. Estimates are not acceptable. Please itemize the list of equipment on the request form as follows:

**Vendor(s) Name and Complete Address**

**Item Name**

**Quantity**

**Per Unit Pricing**

**Total Cost**

**Vendor's Identification Number**

## Project Budget

All requests utilizing capital appropriations must include a project budget.

Provide a project budget outlining the various components involved, including the estimated project budget, the actual and/or revised budget, the previously approved releases of funds, and the amount of the current request. This information provides the history of the project. A suggested format follows:

### *The "XYZ" Project Budget (GSD Project Number, if Applicable)*

	ESTIMATED * AMOUNT	ACTUAL AMOUNT	PREVIOUSLY ** RELEASED	AMOUNT THIS REQUEST
Construction (Name of each contractor with Vendor ID Number)	\$	\$	\$	\$
Professional Services—  Associate Architect/ Engineer, Construction Manager, etc. (Name of each contractor, type of service to be provided, and Vendor ID Number)	\$	\$	\$	\$
Allowances and Change Order Fees	\$	\$	\$	\$
Local Administration/ SAO Fees	\$	\$	\$	\$
Percent for Art	\$	\$	\$	\$
Equipment	\$	\$	\$	\$
Contingency & Pre-Bid Expenses	\$	\$	\$	\$
<b>TOTALS</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

\*Insert a column for a "Revised" project estimate, if applicable.

\*\*Universities: If Local funds are being utilized for this project, insert a column outlining how local funds are to be used.

\*\*\*For a discussion of what are considered to be "contingency and pre-bid expenses" and "allowances and change order fees" see Section II.

## Required Information Questions—Waiver of Competitive Selection

Depending upon the nature of the Capital Request, a waiver of competitive selection may be required.

For requests that include a waiver of competitive selection, provide responses to the following required information based on whether the waiver is for architect, engineering, or other professional services contracts, amendments to professional services contracts, or purchases of equipment.

**Architect, engineering, or other professional services contracts**

**NOTE:** If this construction-related project is *administered by DAS/GSD/SAO* and requires a waiver of competitive selection for the Architect/Engineer or Construction Manager, contact your project administrator in DAS/GSD/SAO for completion of the responses to the required information questions. If this construction-related project is *locally administered*, and requires a waiver of competitive selection for the Architect/Engineer or Construction Manager, the agency/institution of higher education is responsible for completion of the responses to the required information questions.

Please type all questions or requests for information and provide a response. The request package will be returned to the agency if the questions or requests for information are not provided with the response.

1. Type of service to be provided:
2. Selection Process.
  - a. How was the Request For Proposal (RFP) publicized or advertised? Explain.
  - b. Number of proposals distributed.
  - c. Number of days in which interested parties had to respond to the RFP.
  - d. Number of proposals received.
  - e. For each proposal received provide (or attach a list):
    - Name
    - Complete Address of the principal place of business
    - Amount of each proposal
  - f. Identify who rated the responses and was involved in the selection of the contractor.
3. Identify the selected contractor and explain why this contractor was selected.
4. Contractor's location of its principal place of business:
5. Contractor's location from which all or most of contract work will be performed, different from the location of its principal place of business:
6. Identify all state contracts that the selected contractor has had since the beginning of the previous fiscal year through this fiscal year to date. Include contracts for this agency or institution of higher education.
  - a. Total number of contracts: \_\_\_\_\_
  - b. For each, list the state agency \_\_\_\_\_ and the contract amount \$ \_\_\_\_\_
7. Provide the following employee information:

	Nationwide	Ohio
Total No. of Employees		
% Women	%	%
% Minorities	%	%

8. What percent of the work will be done by subcontractors? \_\_\_\_\_



If more than 50 percent, provide the same employee information for each subcontractor as requested in #7 above for the contractor.

9. Fee Analysis: For architect and engineer contracts, other professional design services contracts, and construction management services, also provide a fee analysis that includes the following:

- a. Total estimated construction cost \$\_\_\_\_\_
- b. Provide the following information regarding the contractor's fees for the services to be performed.

Fee Analysis	Contract Amount	Percent Of Total Construction Cost
Professional Design Services and/or Construction Management Services	\$	%
Change Order Fee Allowance	\$	%
Soil Test & Surveys	\$	%
Other (Explain)	\$	%

Refer to the requirements of Revised Code Sections **153.65-153.70**.

**Amendments to architect, engineering, or other professional services contracts**

1. Type of service to be provided.
2. Identify the vendor and location of vendor's principal place of business.
3. Explain why the contract is being amended.
  - Change in scope of work?
  - Change in the amount of hours of service required?
  - Change in deliverables?
  - Change in rate or amount?
  - Miscellaneous substantive error.
4. What is the effect of the contract amendment on the project?
5. Using the following example, provide the dates of previous Controlling Board approvals for this contract. Indicate whether the approvals were for the initial contract or previous amendments to this contract. In addition, provide the information regarding the contract amount(s) depending upon the type of contract previously approved by the Controlling Board.

**Example:**

*Initial Contract*—Total amount of the initial contract or number of hours and the rate per hour.

*Amendment*—Total amount of the amended contract (initial + amendment) or total number of hours (initial + amendment) and the total rate per hour (initial contract + contract amendment).

Example:

CB Approval Date	Type of Contract	Total Amount or # of Hours and Rate/Hour
7/1/93	Initial	\$100,000.00
9/30/94	Amendment	\$125,000.00

6. In addition to the revised project budget, provide a revised fee analysis that includes the following:

Fee Analysis	Original Contract Amount	Original Percent Of Total Construction Cost	Revised Contract Amount	Revised Percent Of Total Construction Cost
Professional Design Services and/or Construction Management Services	\$	%		
Change Order Fee Allowance	\$	%		
Soil Test & Surveys	\$	%		
Other (Explain)	\$	%		

Refer to the requirements of Revised Code Sections **153.65-153.70**.

### **Purchases of equipment**

1. Identify the equipment and provide the amount of each item.

Example: Name of the Item: Price Per Unit of Each Item x Number of Units = Amount.

2. Selection Process:

- How was the Request for Proposal (RFP)/Request for Quote (RFQ) publicized or advertised? Explain.
- Number of proposals/quotes distributed.
- Number of days in which interested parties had to respond to the RFP/RFQ.
- Number of proposals received.
- For each proposal received provide (or attach a list):
  - Name
  - Complete address of principal place of business
  - Amount of proposal
- Identify who rated the responses and was involved in the selection of the vendor.

3. Indicate the selected vendor and explain why this vendor was selected.

4. Provide the complete address of the vendor's principal place of business.

## Attachments

Attachments, in addition to the responses to the Required Information Questions, provide helpful information for understanding the nature of the request. The following table outlines the required attachments in *italics* for requests involving capital appropriations by project administration designation and project component. A description of each attachment is provided also.

Project Administration		
PROJECT COMPONENT	AGENCY/INSTITUTION OF HIGHER EDUCATION	DAS/GSD/SAO
Professional planning/ design/ engineering or construction management services	<i>Preapproval for agency administration</i>  State agency: Attach a copy of recommendation letter from DAS.  Higher education institutions: Not required.	<i>DAS planning/design/ /engineering or construction management recommendation letter</i>
Construction contracts	<i>Preapproval for agency administration:</i> State agency: Attach a copy of the preapproval letter from DAS.  Higher education institutions: Not required.  <i>Bid tabulations/price quotations</i>	<i>DAS construction contract award letter.</i>
Purchase of equipment	<i>Bid tabulations/price quotations</i>  <i>Sole source vendor letter, if applicable.</i>	<i>DAS equipment purchase award letter.</i>  <i>Bid tabulations/price quotations</i> <i>Sole source vendor letter, if applicable</i>

*Preapproval for agency administration:* Attach a copy of the notification from DAS/GSD/SAO authorizing the agency to administer the capital project.

*DAS Planning/Design/Engineering or Construction Management Services*

*Recommendation Letter:* Attach a copy of the notification from DAS/GSD/SAO of its recommendation that states the name of the contractor and the amount to be released for the planning/design/engineering or construction management services contract.

*DAS Construction Contract Award Letter:* Attach a copy of the notification from DAS/GSD/SAO of their recommendation that states the name(s) of the contractor(s) and the amount to be released for the contract(s). *Bid Tabulations/Price Quotations:* Attach a copy of the bid tabulations or applicable price quotation with the lowest and most responsible bid circled for requests to release funds for construction contracts or equipment purchases, which have awarded by the competitive selection required for the particular type of contract.

*DAS Equipment Purchase Award Letter:* Attach a copy of the notification from DAS/GSD/SAO of their recommendation which states the name(s) of the vendor(s), the itemized list of equipment, and the amount to be released for the vendor(s) for the purchase of equipment.

*Sole Source Vendor Letter:* If a waiver of competitive selection is requested and the agency has proposed to purchase equipment or services from a sole source, provide a letter from the vendor explaining the justification for the sole source designation. For institutions of higher education, provide a letter from the institution's purchasing department justifying that the proposed purchase is from a sole source supplier.

## Operating Request—Detailed Instructions

The Operating Request is submitted primarily for requesting approval from the Controlling Board to waive competitive selection for the procurement of non-capital funded supplies or services that exceed the Controlling Board threshold for a particular vendor pursuant to **Revised Code Section 127.16 (B)(1)**. (For a detailed discussion of the threshold, see Section II.) “Services” include the furnishing of labor, time or effort by a person(s) which may be technical, non-technical, consulting, advisory, professional or non-professional in nature. “Supplies” include all property, including, but not limited to, equipment, insurance, materials, with the exception of land. In addition, pursuant to **Revised Code Section 127.16 (B)(2)**, the Operating Request is submitted for approval to enter into real estate lease agreements.

The Operating Request may also be submitted for various types of actions requiring Controlling Board approval as defined throughout the statutes. This request should not be used for any action involving capital appropriations.

The Operating Request for a waiver of competitive selection for various procurement activities can be divided into eight categories. Each of these categories has specific and different required information. Provide the required information based on the type of request. The eight types are as follows:

1. New Contracts
2. Contract Amendments
3. Contract Renewals
4. Purchases of Supplies
5. Non-Real Estate Leases
6. New Real Estate Leases
7. Real Estate Lease Addendums
8. Real Estate Lease Renewals/Holdovers

Detailed instructions for each type of request are divided into three sections:

***Form Contents*** describe the parts of the form itself and the information required on the form.

***Required Explanation of Request*** describes the information required for the explanation of the request to be included on the form and Continuation forms.

- Summary Paragraph
- Subsequent Paragraph(s)
- Responses to Required Information Questions

***Attachments*** describe other material that must be submitted with the form as part of the request.

**Form Contents—Operating Request****GENERAL INFORMATION**

Complete Fields 1-4.

CB Request		New	Open	Delete	Check Status
Meeting Date:	02/13/2012	OPERATING REQUEST			Controlling Board Request No.: OBM0100058
Status:	New	1			
GENERAL INFORMATION					
Agency Name	2	Operating Request	3	Fiscal Year(s)	
Budget and Management	<input type="radio"/> Waiver of Competitive Selection (Revised Code Section 127.16B) <input type="checkbox"/> No Competitive Opportunity <input type="checkbox"/> Agency Released Competitive Opportunity <input checked="" type="radio"/> Agency released competitive opportunity (Revised Code Section 127.162) <input type="radio"/> Other Statutory Authority/Bill Section: <input type="text"/> <input checked="" type="radio"/> Operating Transfer Request (Revised Code Section 127.14) <input type="checkbox"/> Appropriation <input type="checkbox"/> Cash <input type="checkbox"/> Other Statutory Authority/Bill Section: <input type="text"/>				Bill No.
Institution/Division Administration					4
				Eligible for OBM Director Approval?	
				<input type="radio"/> Yes <input checked="" type="radio"/> No	

1. Controlling Board Request No.: A ten-character code that identifies the request. The first three characters are to be the agency code, and the remaining numbers are generated sequentially by the e-Controlling Board. (e.g. OBM0100007)
2. Agency Name: Name of the agency completing request.
3. Operating Request: The applicable Controlling Board authorization for this request.
  - Waiver of Competitive Selection involving operating appropriations (Section 127.16B)
  - Other Statutory Authority/Bill Section: Cite Revised Code or Temporary Law Section specifying the requirement for Controlling Board approval.
4. Bill No.: The Bill Number(s) referencing the source of the appropriation applying to this request.

**VENDOR INFORMATION**

If a Waiver of Competitive Selection or Agency Released Competitive Opportunity is requested, fields 5-14.

VENDOR INFORMATION							Hide
Vendor ID	Address Code	Vendor Name	Vendor Address of Principal Place of Business				
10		5	6				
FY	Contract Amount	Release & Permit #	City	State	County (Ohio Only)	Zip Code	
11	12 \$0.00		7	OH	8	9	
13	14 \$0.00		Owner Agency		OBM(		

5. Vendor Name: The vendor's name for which the waiver of competitive selection is being sought.

6. Vendor Address of Principal Place of Business: The address of the vendor's principal place of business.
7. City: The city of the vendor's principal place of business.
8. State: The state of the vendor's principal place of business.
9. County (Ohio Only): If the vendor's principal place of business is located in Ohio, the county in which it is located.
10. Vendor ID: Enter the vendor's identification number.

**NOTE: If the request for a waiver of competitive selection covers more than one fiscal year in a biennium, the amount of the contract must be divided between the first fiscal year of the biennium and the second year of the biennium.**

11. FY: The current fiscal year for which a waiver of competitive selection is being sought.
12. Contract Amount: The actual dollar amount that requires the waiver of competitive selection for the current year of the fiscal biennium.
13. FY: The second fiscal year, within the fiscal biennium, for which a waiver of competitive selection is being sought.
14. Contract Amount: If a waiver of competitive selection is being sought for both fiscal years in a fiscal biennium, the actual dollar amount that requires the waiver of competitive selection for the second year of the fiscal biennium.

## FUNDING INFORMATION

**Fields 15-22 for the Funding Information relative to this request are for a waiver of competitive selection.**

**NOTE: If there is more than one fund code, appropriation line item, or appropriation line item name being utilized for this request, the amount of the contract/purchase from each source must be shown in the appropriate fields.**

FUNDING INFORMATION							Hide
Edit	Fund Group	Fund Code	Appropriation Line Item		Appropriation Line Item Name	Type	Total Amount
Add New	15	16	17	18		19	\$0.00

15. Fund Group: Not required for requests.
16. Fund Code: The code designating the fund from which the waiver of competitive selection is being requested.
17. Appropriation Line Item: The six-digit line item from which the waiver of competitive selection is being requested.  
(Example: 400001)



18. Appropriation Line Item Name: The exact appropriation line item name from which the waiver of competitive selection is being requested.

19. Total Amount: The total amount being requested for approval for a waiver of competitive selection in the current fiscal year.

**NOTE:** Repeat by selecting “Add New” for a different Fiscal Year.

## SIGNATURES

SIGNATURES	
<div style="border: 1px solid black; padding: 2px; display: inline-block;">23</div>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">24</div>
_____ Agency Director or Authorized Agent	_____ On The Date Of
_____ Date	_____ Controlling Board President/OBM Director

23. Agency Director or Authorized Agent: A signature of the agency director or his or her designee is required by the agency prior to submitting the request.

24. On The Date Of: The date that the agency director or authorized agent signs the request.

## AGENCY CONTACT

AGENCY CONTACT					25	Hide
First Name		MI	Last Name	Title		
Phone		Fax		E-Mail		
<input type="button" value="Update Agency Contact"/>						

25. Agency Contact: The information requested in these fields for the primary agency/institution contact regarding questions about the request.

**REQUIRED EXPLANATION OF REQUEST**

REQUIRED EXPLANATION OF REQUEST	26	Hide
<b>Summary Paragraph:</b> The text included in the following summary paragraph text box will be the request description included in the agenda. If this request is for a waiver of competitive selection, please complete the required information questions and then return to this page to systematically create the summary paragraph. You may then edit the system-created summary paragraph.  To systematically create the summary paragraph or to replace the text with the system-created summary paragraph, click the following button: <input type="button" value="Create Summary"/>		
The Budget and Management respectfully requests Controlling Board approval to {complete the summary paragraph for this request}.		
<i>[Note: Only the first 2000 characters will be saved.]</i>		
<b>Subsequent Paragraphs:</b> Provide a detailed explanation of the nature of the request and any additional background information relative to this request. Click <a href="#">here</a> for instructions on information required for each type of request.		
<i>[Note: Only the first 6000 characters will be saved.]</i>		
<b>Related CBR No.:</b>		
<i>[Note: Only the first 200 characters will be saved.]</i>		
<input type="button" value="Check Spelling"/>		
<input type="button" value="Save and Continue"/>		

26. See Required Information sections below.

For each type of request for a waiver of competitive selection, an example of a Summary Paragraph and suggestions for Subsequent Paragraphs are provided to assist you in preparing your explanation. In addition, certain Responses to Required Information Questions are to be included as part of the explanation of the request.

**New Contracts****Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format:

"The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ {per Fiscal Year} to contract with {vendor name}, {vendor city, state, county (Ohio vendors only) of its principal place of business} to provide {service/ deliverables} for the {describe the program/project}."

### **Subsequent Paragraphs**

Provide a written explanation describing, in detail, the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection is being sought. Suggestions for these paragraphs, based on the type of request, should include the following:

**Objectives of the project or program requiring a contract**

**Prior phases of the project or program requiring a contract**

**If the contract is a portion of a multi-phase project or program, indicate the phases of the contract, including future phases of the project or program.**

### **Required Information Questions**

1. Selection Process: Was this contract subject to selection by a Request for Proposal (RFP) process? Provide the responses to the requested information for either A or B.

A. If no, explain why this contract was not subject to an RFP process.

B. If yes, type and answer the following requests for information.

1) If a Request for Proposal (RFP) for this service was issued, how was the RFP publicized or advertised? Explain.

2) Number of proposals distributed.

3) Number of days in which interested parties had to respond to the RFP.

4) Number of proposals received.

5) For each proposal received provide (or attach a list):

Name

Complete address of the principal place of business

Amount of proposal

6) Explain why this contractor was selected.

7) Indicate who rated the responses and was involved in the selection of the contractor.

2. Identify the selected contractor and provide the contractor's address (city, state, and county, Ohio vendors only) of its principal place of business.

3. Contractor's location from which all or most of contract work will be performed, if different from the location of principal place of business.

(For institutional agencies, cite the location of the institution, including the city and county, where services are to be performed.)

4. Institutional agencies only: Is the contractor currently performing services at the institution listed above? If yes, provide the date that the contractor first began performing services at this state institution.

5. Specify the deliverables of this contract or describe the scope of service(s) to be performed by this contractor.

6. Cite the account category being used for this purchase of service(s).

7. Duration of this contract (beginning and ending dates) within the fiscal biennium.
8. Is the contractor already performing work under this contract?  
If yes, answer a, b, and c.
- On what date did the contractor begin work?
  - Are you requesting retroactive approval of the contract?
  - If yes, give the requested retroactive effective date.
9. Identify all state contracts that the selected contractor has had approved by the Controlling Board since the beginning of the last fiscal year through this fiscal year to date. Also, include contracts approved for this agency or institutions of higher education.
- Total number of contracts: \_\_\_\_\_
  - For each contract list the state agency \_\_\_\_\_ and the contract amount \$ \_\_\_\_\_
10. Is this contractor in compliance with Buy America and Buy Ohio?  
Explain.
11. Provide the following Employee Information:
- Nationwide Ohio
  - Total Number of Employees
  - Percentage of Women
  - Percentage of Minorities
12. What percent of the work will be done by subcontractors? \_\_\_\_\_  
If more than 50 percent, provide the same information for each subcontractor as requested in number 11 above for the contractor.
13. Provide all subsequent renewal schedules (beginning and ending dates) and amounts associated with this contract. A contract renewal is the exercise of an option to enter into a subsequent contract with a vendor in accordance with renewal provisions specified in a preceding contract.
- NOTE: All Amounts must be shown in amounts per fiscal year.

## **Contract Amendments**

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format:

"The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$ \_\_\_\_\_ {per Fiscal Year} to amend/modify the contract with {vendor name}, {vendor city, state, county of its principal place of business} to provide {service/deliverables} for the {describe program/project}."

### **Subsequent Paragraphs**

Provide a detailed written explanation of the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection to amend a contract is being sought. Suggestions for these paragraphs include:

**Objectives of the project or program requiring a contract amendment**

**Prior phases of the project or program**

**If the contract is a portion of a multi-phase project or program, indicate the phases of this contract, including future phases of the project or program.**

### **Required Information Questions**

Please type all questions or requests for information and provide a response.

Examples do not need to be re-typed.

1. Identify the contractor and provide the contractor's address of its principal place of business.
2. Explain why this contract is being amended and the effect of the amendment on the project or program. For example, any of the following, or combination of the following, would require a contract amendment.

**Change in vendor?**

**Change in scope of work?**

**Change in the amount of hours of personal service required?**

**Change in deliverables?**

**Change in rate or amount?**

**Miscellaneous substantive error in the original contract.**

3. Specify the deliverables of this contract or describe the scope of service(s) to be performed by this contractor.
4. Cite the account category being used for this purchase of service(s).
5. Using the following example, provide the dates of previous Controlling Board approvals for this contract. Indicate whether the approvals were for the initial contract, amendments to this contract, or previous renewals for this contract. In addition to the date(s) of Controlling Board approval, provide the following information depending upon the type of contract previously approved by the Controlling Board.

*Initial Contract*—Total amount of the initial contract or number of hours and the rate/hour. NOTE: All amounts must be shown in amounts per fiscal year.

*Amendment*—Total amount of the amended contract (initial + amendment) or total number of hours (initial + amendment) and the total rate/hour (initial contract + contract amendment + contract renewals within the biennium) NOTE: All Amounts must be shown in amounts per fiscal year.

*Renewal*—Total amount of the renewed contract or the total number of hours and the total rate/hour. NOTE: All amounts must be shown in amounts per fiscal year.

Example:

CB Approval Date	Type of Contract	Amount per FY or # of Hours & Rate per Hour per	FY
7/1/93	Initial	\$100,000.00 \$ 75,000.00	FY94 FY95
9/30/94	Amendment	\$125,000.00	FY95
7/1/95	Renewal	\$125,000.00 \$ 25,000.00	FY96 FY97

6. If this contract amendment affects the total amount of the contract or the total number of hours and total rate per hour, provide the new rate information.

**NOTE:** All amounts must be shown in amounts per fiscal year.

7. Duration of this contract (beginning and ending dates) within the fiscal biennium, including amendment.

8. Provide all subsequent renewal schedules (beginning and ending dates) and amounts associated with this contract.

**NOTE:** All amounts must be shown in amounts per fiscal year.

## Contract Renewals

### Summary Paragraph

The first paragraph of the request should be a summary paragraph in the following format:

"The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ {per fiscal year} to renew the contract with {vendor name}, {vendor city, state, county of its principal place of business} to provide {service/deliverables} for the {describe program/project}."

### Subsequent Paragraphs

Provide a detailed written explanation of the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection for the renewal of this contract is being sought. Suggestions for these paragraphs include the following:

**Objectives of the project or program requiring the renewal of a contract**

**Prior phases of the project or program**

**If the contract is a portion of a multi-phase project or program, indicate the phases of the contract, including future phases of the project or program.**

### Required Information Questions

1. Identify the contractor and contractor's address of its principal place of business.

2. Provide a brief history of the project or program being affected by the work of this contractor.
3. Specify the deliverables of this contract or describe the scope of the services to be performed by renewing this contract.
4. Cite the account category being used for this purchase of service(s).
5. Using the following example, provide dates of previous Controlling Board approvals for this contract. Indicate whether the approvals were for the initial contract, amendments to this contract, or previous renewals for this contract.

*Initial Contract*—Total amount of the initial contract or total number of hours and the total rate per hour. NOTE: All amounts must be shown in amounts per fiscal year.

*Amendment*—Total amount of the amended contract (initial + addendum) or total number of hours (initial + addendum) and the total rate per hour (initial contract + contract addenda + contract renewals within the biennium) NOTE: All amounts must be shown in amounts per fiscal year.

*Renewal*—Total amount of the renewed contract or the total number of hours and the total rate per hour. NOTE: All Amounts must be shown in amounts per fiscal year.

Example:

CB Approval Date	Type of Contract	Amount per FY or # of Hours & Rate per Hour per FY	FY
7/1/93	Initial	\$100000.00	FY94
		\$ 75000.00	FY95
9/30/94	Amendment	\$125000.00	FY95
7/1/95	Renewal	\$125000.00	FY96
		\$ 25000.00	FY97

6. Provide the total amount of the contract renewal or total number of hours and total rate per hour.
7. Is this contract rate an increase in the total amount of the contract or the rate per hour over the previous contract rate? If yes, explain why.
8. Duration (beginning and ending dates) of this contract renewal within the fiscal biennium.
9. Provide all subsequent renewal schedules (beginning and ending dates) and amounts associated with this contract.  
NOTE: All amounts must be shown in amounts per fiscal year.



## **Purchases of Supplies or Equipment**

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format:

"The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ {per fiscal year} to purchase {supply/equipment} from {vendor name}, {vendor city, state, county (Ohio vendors only) of its principal place of business} for the {describe the program/project}."

### **Subsequent Paragraphs**

Provide a detailed written explanation of the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection for the purchase of supplies/equipment is being sought. These paragraphs should include an explanation of the objectives of the project or program requiring the supplies or equipment.

### **Required Information Questions**

Please type the question or request for information and provide a response. Examples do not need to be re-typed.

1. Identify the supply or supplies/equipment and provide the amount of each item.

Example

Name of the Item: Price Per Unit x Number of Units = Amount of Each Item

NOTE: If purchasing the supply or supplies/equipment from more than one vendor, identify each vendor, and provide the above information.

2. Cite the account category being used for this purchase.

3. Selection Process: Was this purchase subject to selection by a Request for Proposal (RFP) process? Provide the responses to the requested information for either A or B.

A. If no, explain why this purchase was not subject to an RFP process.

B. If yes, type and answer the following requests for information.

1) If a Request for Proposal (RFP) for this purchase was issued, how was the RFP publicized or advertised? Explain.

2) Number of proposals distributed.

3) Number of days in which interested parties had to respond to the RFP.

4) Number of proposals received.

5) For each proposal received, provide (or attach a list):

Name

Complete address of the principal place of business

Amount of proposal

- 6) Explain why this vendor was selected.
- 7) Indicate who rated the responses and was involved in the selection of the vendor.
4. Is this vendor in compliance with Buy America and Buy Ohio?  
Explain.

## **Non Real-Estate Leases**

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format:

“The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ to lease {description of leased item} with {vendor name}, {vendor city, state, county of their principal place of business} for the {describe project/program}.”

### **Subsequent Paragraphs**

Provide a detailed written explanation of the nature of the request, including background information relative to the project or program for which the waiver of competitive selection for the leased item is being sought. These paragraphs should include an explanation of the cost benefit to the agency that will be leasing the item(s) as compared to purchasing the item(s).

### **Required Information Questions**

Please type each question or request for information and provide a response.

1. Describe item(s) being leased.
2. Cite the account category for this lease of equipment.
3. Selection Process: Was this purchase subject to selection by a Request for Proposal (RFP) process? Provide the responses to the requested information for either A or B.
  - A. If no, explain why this purchase was not subject to an RFP process.
  - B. If yes, type and answer the following requests for information.
    - 1) If a Request for Proposal (RFP) for this purchase was issued, how was the RFP publicized or advertised? Explain.
    - 2) Number of proposals distributed.
    - 3) Number of days in which interested parties had to respond to the RFP.
    - 4) Number of proposals received.

- 5) For each proposal received provide (or attach a list):  
 Name  
 Complete address of the principal place of business  
 Amount of proposal

6) Explain why this vendor was selected.

7) Indicate who rated the responses and was involved in the selection of the vendor.

4. Identify all state contracts/agreements that the selected vendor has had approved by the Controlling Board for this vendor since the beginning of the last fiscal year through this fiscal year to date. Also include contracts/agreements approved for this agency.

- a. Total number of contract/agreements: \_\_\_\_\_  
 b. For each, contract/agreement list the state agency \_\_\_\_\_ and the contract/agreement amount \$ \_\_\_\_\_

5. Is this vendor in compliance with Buy America and Buy Ohio? Explain

6. Provide the following Employee Information:

	Nationwide	Ohio
Total No. of Employees		
% Women	%	%
% Minorities	%	%

7. Cost to lease the item over the term of the lease:

- g. Net unit cost: \$ \_\_\_\_\_  
 h. Number of items \_\_\_\_\_  
 i. Total item cost (net unit cost x number of items): \$ \_\_\_\_\_  
 j. Any trade-in allowance: \$ \_\_\_\_\_  
 k. Adjusted total item cost (c - d): \$ \_\_\_\_\_  
 l. Stated or implied interest rate: \_\_\_\_\_  
 m. Periodic payment amount (principal + interest): \$ \_\_\_\_\_  
 n. Number of payments: \_\_\_\_\_  
 o. Amount of total payments (g x h): \$ \_\_\_\_\_  
 p. Installation or other costs payable to the lessor \$ \_\_\_\_\_  
 q. Total lease cost (i + j): \$ \_\_\_\_\_  
 r. Sum of one-time costs related to putting the leased item into service and payable to parties other than the lessor: \_\_\_\_\_  
 s. Total cost (k + l) \$ \_\_\_\_\_

8. Duration of lease agreement (beginning and ending dates) within the fiscal biennium.

9. Is the agency already leasing the item covered by the lease agreement?

If yes, answer a, b, and c.

- a. On what date did the agency begin to lease the item?  
 b. Are you requesting retroactive approval of the lease?  
 c. If yes, give the requested retroactive effective date.

10. If applicable, provide all subsequent renewal schedules (beginning and ending dates) and amounts associated with this lease agreement.

NOTE: All amounts must be shown in amounts per fiscal year.

11. If applicable, provide the renewal cost associated with this lease agreement: (Renewal Cost = Renewal Rate x Number of Payments).

- a. If renewal option, state renewal rate: \$\_\_\_\_\_
- b. Total renewal cost: \$\_\_\_\_\_

12. If purchase option, state purchase price: \$\_\_\_\_\_

13. Disclosures: If applicable, complete:

- a. Penalty for failure to renew: \$\_\_\_\_\_
- b. Contingent penalties or obligations, escalator clauses providing for rate or cost increases, etc.: \$\_\_\_\_\_

## **New Real Estate Leases**

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format:

"The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ {per fiscal year} to lease commercial {type of real estate} space from {lessor name}, {lessor city, state, county (Ohio vendors only) of its principal place of business} for the {agency, institution and/or division}."

### **Subsequent Paragraphs**

Provide a detailed written explanation of the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection to affect a new real estate lease is being sought.

### **Required Information Questions**

Please type the question or request for information and provide a response.

1. Tenant agency and division: \_\_\_\_\_
2. Identify the type of real estate. (Office, Warehouse, Storage, Laboratory, Parking, or Other) \_\_\_\_\_
3. Location of property (street address, city, county, state, zip code).
4. Identify the owner/lessor of the property and provide the complete address of its principal place of business.
5. Explain why the agency is relocating. Or, if the agency is not relocating, explain why a new lease has been negotiated.

6 Identify the number of other sites considered for this agency's real estate lease. Include the completed address of each of the sites.

7. Is the agency already occupying the space that is covered by the lease agreement? If yes, answer a, b, and c.

- a. On what date did the agency begin occupancy?
- b. Are you requesting retroactive approval of the lease agreement?
- c. If yes, give the requested retroactive effective date.

8. Duration of the lease (beginning and ending dates of this lease agreement) within the fiscal biennium.

9. Identify all state lease agreements or contracts in which the selected lessor has been approved by the Controlling Board anytime since the beginning of the last fiscal year through this fiscal year to date. Also include all lease agreements or contracts approved for this agency.

- d. Total number of lease agreements or contracts: \_\_\_\_\_
- e. For each list the state agency \_\_\_\_\_ and the lease/contract amount \$ \_\_\_\_\_ per fiscal year.

10. Lease Cost: Identify the cost to lease the property over the term of the lease:

- f. Rate per square foot: \$ \_\_\_\_\_
- g. Number of square feet: \$ \_\_\_\_\_
- h. Tenant improvements (lump sum or total cost per square foot): \$ \_\_\_\_\_
- i. Contingency Amount \$ \_\_\_\_\_
- j. Other amounts payable to lessor (either lump-sum or over the course of the lease), such as parking, utilities, maintenance and repairs, janitorial, trash removal, security, insurance, taxes, etc.
- k. (Total of other amounts): \$ \_\_\_\_\_

11. Total lease cost (sum of [a x b] + [c+d+e]) payable to lessor over the lease term: \$ \_\_\_\_\_

12. Sum of *one-time costs* related to putting the property into service and payable to parties other than the lessor (amounts payable to lessor should be included in [e] above): total of costs for moving, new furniture and equipment, telephone and computer installation, etc. \$ \_\_\_\_\_

13. Total Cost (sum of 11+ 12) above: \$ \_\_\_\_\_

14. If a renewal option is applicable, provide all renewal schedules for this lease agreement (starting and ending dates), the number of square feet, the rate per square foot and total amount of the lease per fiscal year.

Example:

Renewal Period	Rate Per Square Foot per FY	Number of Square Feet	Total Lease Cost per F Y	F Y
7/1/95-6/30/96	\$15.00	4,000	\$60,000.00	FY96
7/1/96-6/30/97	\$15.00	4,000	\$60,000.00	FY97

15. If purchase option, state purchase price: \$\_\_\_\_\_
16. Disclosures: Complete, if applicable.
- Penalty for failure to renew: \$\_\_\_\_\_
  - Contingent penalties or obligations, escalator clauses providing for rate or cost increases, etc.: \$\_\_\_\_\_
- c. Explain nature of the costs identified in b.

## **Real Estate Lease Addenda**

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format: "The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ {per fiscal year} to effect an addendum to a commercial real estate lease for {type of real estate} space with {lessor name}, {lessor city, state, county (Ohio only) of its principal place of business} for the {agency, division}."

### **Subsequent Paragraphs**

Provide a detailed written explanation of the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection for a real estate lease addendum is being sought.

### **Required Information Questions**

- Tenant Agency and Division:
- Identify the type of real estate. (Office, Warehouse, Storage, Laboratory, Parking, Other) \_\_\_\_\_
- Identify the location of property (street address, city, county (Ohio only), state and zip code).
- Identify the owner/lessor and provide the complete address of its principal place of business.
- Why the lease is being addended? Any of the following, or combination of the following would require a lease addendum. Explain.
  - Increase in square footage?
  - New or additional tenant improvements?
  - Change in rate or amount?
  - Substantive change in terms of the lease (i.e., additional services to be provided by lessor)?
  - Miscellaneous substantive error in current lease agreement?
- What is the effect of the proposed lease addendum on the agency?

7. Using the following example, provide the dates of previous Controlling Board approvals for this lease within the current biennium. Indicate whether the approvals were for the original lease, addenda to this lease, or previous renewals for this lease.

CB Approval Date	Type of Lease Agreement	Total # of Sq Ft.	Amount per Sq. Ft.	Amount per FY	FY
7/1/93	Original	10,000	\$10.00	\$100,000.00	FY94
			\$10.00	\$100,000.00	FY95
9/30/94	Addendum	11,000	\$10.00	\$110,000.00	FY95
7/1/95	Addendum	11,000	\$11.00	\$121,000.00	FY96
				\$121,000.00	FY97

8. Provide the following information regarding this lease agreement:

	Current Lease		Addended Lease	
Rate per square foot	\$	FY	\$	FY
	\$	FY	\$	FY
Number of square feet				
Tenant Improvements—Lump	\$	FY	\$	FY
Sum or Per Sq. Ft.? Specify.	\$	FY	\$	FY
Other Amounts. Specify.	\$	FY	\$	FY
	\$	FY	\$	FY
Total Lease Cost (Sum)	\$	FY	\$	FY
	\$	FY	\$	FY

9. Duration of lease (beginning and ending dates) within the fiscal biennium, including addendum.

10. Provide all renewal schedules, starting and ending dates, and the total lease cost per each fiscal year.

Example:

Renewal Period	Rate Per Square Foot per FY	Number of Square Feet	Total Lease Cost per FY	FY
7/1/97-6/30/98	\$12.00	11,000	\$132,000.00	FY98
7/1/98-6/30/99	\$12.00	11,000	\$132,000.00	FY99



## Real Estate Lease Renewal or Real Estate Lease Holdover

### Summary Paragraph

The first paragraph of the request should be a summary paragraph in the following format: "The {agency or institution name} respectfully requests Controlling Board approval to waive competitive selection in the amount of \$\_\_\_\_\_ {per fiscal year} to renew/holdover a commercial real estate lease for {type of real estate} space with {lessor name}, {lessor city, state, county (Ohio only) of its principal place of business} for the {agency, division}."

### Subsequent Paragraphs

Provide a detailed written explanation of the nature of the request. Provide background information relative to the project or program for which the waiver of competitive selection for the renewal/holdover of the commercial real estate lease is being sought.

### Required Information Questions

Please type the question or request for information and provide a response.

Examples do not need to be re-typed.

1. Tenant agency and division.
2. Identify the type of real estate. (Office, Warehouse, Storage, Laboratory, Parking, Other) \_\_\_\_\_
3. Identify the type of lease agreement—Real Estate Lease Renewal or Real Estate Lease Holdover.
4. Identify the owner/lessor and provide the complete address of their principal place of business.
5. Identify location of property (street address, city, county, state, and zip code).
6. Using the following example, provide dates of previous Controlling Board approvals for this lease agreement within the current biennium. Indicate whether the approvals were for the original lease agreement, addenda to this lease agreement, previous renewals or previous holdovers for this lease agreement.

CB Approval Date	Type of Lease Agreement	Total # of Sq Ft.	Amount per Sq. Ft.	Amount per FY	FY
7/1/93.	Original	10,000	\$10.00	\$100,000.00	FY94
7/1/93.	Original	10,000	\$10.00	\$100,000.00	FY95
9/30/94	Addendum	11,000	\$10.00	\$110,000.00	FY95
7/1/95	Renewal	11,000	\$11.00	\$121,000.00	FY 96
7/1/95	Renewal	11,000	\$11.00	\$121,000.00	FY97

7. Provide the following information regarding this lease agreement.

	Current Lease		Lease Renewal or Holdover	
Rate per square foot	\$	FY	\$	FY
	\$	FY	\$	FY
Number of square feet				
Tenant Improvements—Lump Sum or Per Sq. Ft.? Specify	\$	FY	\$	FY
	\$	FY	\$	FY
Other Amounts. Specify.	\$	FY	\$	FY
	\$	FY	\$	FY
Total Lease Cost (Sum)	\$	FY	\$	FY
	\$	FY	\$	FY

8. Duration of lease (beginning and ending dates) including expiration date of renewal (holdover).

9. Provide all renewal schedules, starting and ending dates, and the total lease cost per each fiscal year.

Example:

Renewal Period	Rate Per Square Foot per FY	Number of Square Feet	Total Lease Cost per FY	FY
7/1/97-6/30/98	\$12.00	11,000	\$132,000.00	FY98
7/1/98-6/30/99	\$12.00	11,000	\$132,000.00	FY99

10. For **holdover agreements only**, provide the anticipated date of approved new lease agreement.

### Attachments—Operating Request

In addition to the Operating Request form, all Continuation forms, and Vendor Continuation forms, where applicable, the following Attachments for each type of request for a waiver of competitive selection are to be provided. Review Section IV for instructions on assembling a complete Controlling Board request package.

**New Contract**—Assemble in this order following the responses to the Required Information Questions.

- **Copy of approved Release and Permit from DAS—State Purchasing or OIT. If purchasing from a blanket Release & Permit issued by DAS, provide a copy of the Release and Permit that exempts this purchase.**
- **Sole source justification letter, if applicable**
- **Request for Proposal (RFP)—A copy of the actual RFP as it was distributed to prospective bidders.**
- **Response to RFP from selected vendor.**
- **Contract, specifying the amount and the duration of the contract, signed by the vendor only.**

**Contract Amendment**—Assemble in this order following the responses to the Required Information Questions.

- **Copy of the contract amendment, specifying the amount and the duration of the contract, signed by the vendor only.**
- **When applicable, a copy of approved Release and Permit from DAS State Purchasing or OIT. If purchasing from a blanket Release and Permit issued by DAS, provide a copy of the Release and Permit that exempts this purchase.**

**Contract Renewal**—Assemble in this order following the responses to the Required Information Questions.

- **Copy of approved Release and Permit from DAS-State Purchasing or OIT. If purchasing from a blanket Release and Permit issued by DAS, provide a copy of the Release and Permit that exempts this purchase.**
- **Recent sole source justification letter, if applicable**

**A copy of the contract renewal or a copy of a letter from the agency to the vendor informing the vendor that the agency is exercising its option to renew the contract pursuant to the terms of the original contract. This contract or letter must specify the duration of the renewal and the amount of the contract per fiscal year.**

**Purchase of Supplies or Equipment**—Assemble in this order following the responses to the Required Information Questions.

- **Copy of approved Release and Permit from DAS—State Purchasing or OIT. If purchasing from a blanket Release and Permit, provide a copy of the Release and Permit that exempts this purchase.**
- **Sole source justification letter, if applicable.**
- **Request for Proposal (RFP)/Request for Quote (RFQ)**
- **Response to RFQ from selected vendor on vendor's stationery**

**Non Real-Estate Leases**—Assemble in this order following the responses to the Required Information Questions.

- **Copy of approved Release and Permit from DAS—State Purchasing or OIT. If purchasing from a blanket Release and Permit, provide a copy of the Release and Permit that exempts this purchase.**
- **Sole source justification letter, if applicable.**
- **Request for Proposal (RFP)/Request for Quote (RFQ)**
- **Response to RFP/RFQ from selected vendor on vendor's stationery. The duration of the lease and the amount per fiscal year must be specified in the response from the selected vendor.**

**New Real-Estate Lease**—Assemble in this order following the responses to the Required Information Questions.

- **New real estate lease signed by the lessor (only).**

**Real-Estate Lease Addendum**—Assemble in this order following the responses to the Required Information Questions.

- **Real estate lease amendment signed by the lessor (only).**

**Real-Estate Lease Renewal or Real-Estate Lease Holdover**—Assemble in this order following the responses to the Required Information Questions.

- **Copy of DAS letter to the lessors notifying them of the agency’s intent to renew (holdover), with renewal (holdover) terms, pending approval by Controlling Board.**

### **Transfer of Operating Request—Detailed Instructions**

The Transfer of Operating Request form may be submitted to seek Controlling Board approval for the various actions to adjust an agency’s operating budget as listed below:

- **Transfer of operating appropriation.**
- **Transfer of cash.**
- **Transfer of operating appropriation and cash.**
- **Transfer from the Emergency Purposes appropriation line item (Revised Code Section 127.14), including earmarked portions of the line item, or other specific Controlling Board appropriation line items as provided in the temporary law of the appropriations act.**

NOTE: Review the scenarios in Section II, “Do I Need to Come to the Controlling Board?” before preparing a Transfer of Operating Request. The detailed instructions are divided into two sections:

#### ***Form Contents – Transfer of Operating Appropriations Request***

Describe the parts of the form itself and the information required on the form. A blank form with numbered fields accompanies the instructions.

#### **Required Explanation of Request**

Describes the information required for the explanation of the request to be included on the form and Continuation Forms.

- **Summary Paragraph**
- **Subsequent Paragraph(s)**

## Form Instructions—Transfer of Operating Appropriations Request

### GENERAL INFORMATION

CB Request		
Meeting Date: 02/13/2012	OPERATING REQUEST	Controlling Board Request No.: OBM0100058
Status: New		1 Reset
GENERAL INFORMATION		
Agency Name 2	Operating Request	Fiscal Year(s)
Budget and Management	<input checked="" type="radio"/> Waiver of Competitive Selection (Revised Code Section 127.16B) <input type="checkbox"/> No Competitive Opportunity <input type="checkbox"/> Agency Released Competitive Opportunity <input type="radio"/> Agency released competitive opportunity (Revised Code Section 127.162) <input type="radio"/> Other Statutory Authority/Bill Section: <input type="text"/> <input checked="" type="radio"/> Operating Transfer Request (Revised Code Section 127.14) <input type="checkbox"/> Appropriation 3 <input type="checkbox"/> Cash <input type="checkbox"/> Other Statutory Authority/Bill Section: <input type="text"/>	<input type="text"/> Bill No. 5 Eligible for OBM Director Approval? 4 <input type="radio"/> Yes <input checked="" type="radio"/> No

1. Controlling Board Request No.: A ten-character code that identifies the request. The first three characters are to be the agency's code and the remaining numbers are generated by the e-Controlling Board.

2. Agency Name: Name of the agency completing request.

3. Operating Transfer Request: The transfer action being requested.








- Appropriation
- Cash
- Other Statutory Authority/Bill Section (Specify)

4. Eligible for OBM Director Approval?: Yes or No to identify whether this request is eligible for approval by the Director of OBM as specified in the Guidelines for Transfer of Operating Appropriation.

(Refer to Section II for a discussion of eligibility for approval by the Director of OBM.)

5. Bill No.: The Bill Number(s) referencing the source of the appropriation applying to this request.

**TRANSFER INFORMATION**

TRANSFER INFORMATION										Hide
Edit	From To Agency	FY	Fund Group	Fund Code	Appropriation Line Item	Appropriation Line Item Name	Transfer Amount	Previously Released Amount		
 	 OSU01	12	8	9	123456	TEST	12	\$100.00	\$500.00	
 	 OSU01	14	15	16	654321	TEST2	19	\$100.00	\$500.00	
Add New	 OSU01									

6. **From To Agency:** This field is associated with the appropriation line item and/or fund from which the transfer is being requested.

7. **FY:** The fiscal year for the appropriation line item and/or fund for which the transfer "From" applies.

8. **Fund Group:** Not required for requests after July 1, 2007.

9. **Fund Code:** The code designating the fund from which the transfer is being requested.

10. **Appropriation Line Item:** The six-digit line item from which the transfer of appropriation is being requested. Assigned by State Accounting (Example: 772723).

11. **Appropriation Line Item Name:** The exact appropriation line item or fund name from which the transfer of appropriation and/or cash is being requested.

12. **Transfer Amount:** The appropriation and/or cash amount requested to be transferred.

13. **From To Agency:** This field is associated with the appropriation line item or fund to which the transfer is being requested.

14. **FY:** The fiscal year for the appropriation line item or fund for which the transfer "To" applies.

15. **Fund Group:** Not required for requests after July 1, 2007.

16. **Fund Code:** The code designating the fund to which the transfer is being requested.

17. **Appropriation Line Item:** The six-digit line item to which the transfer of appropriation is being requested. Assigned by State Accounting. (Example: 772721)

18. **Appropriation Line Item Name:** The exact appropriation line item or fund name to which the transfer is being requested.

19. **Transfer Amount:** The appropriation and/or cash amount requested to be transferred.

**SIGNATURES**

SIGNATURES	
20	21
_____ Agency Director or Authorized Agent	_____ On The Date Of
_____ Date	_____ Controlling Board President/OBM Director

20. Agency Director or Authorized Agent: A signature of the agency director or his or her designee is required by the agency prior to submitting the request.

21. On The Date Of: The date that the agency director or authorized agent signs the request.

**AGENCY CONTACT**

AGENCY CONTACT					22	Hide
First Name		MI	Last Name		Title	
Phone		Fax		E-Mail		
<input type="button" value="Update Agency Contact"/>						

22. Agency/Institution Contact: The information requested in these fields for the primary agency/institution contact regarding questions about the request.

**REQUIRED EXPLANATION OF REQUEST**

REQUIRED EXPLANATION OF REQUEST	23	Hide
<b>Summary Paragraph:</b> The text included in the following summary paragraph text box will be the request description included in the agenda. If this request is for a waiver of competitive selection, please complete the required information questions and then return to this page to systematically create the summary paragraph. You may then edit the system-created summary paragraph.  To systematically create the summary paragraph or to replace the text with the system-created summary paragraph, click the following button: <input type="button" value="Create Summary"/>		
The Budget and Management respectfully requests Controlling Board approval to {complete the summary paragraph for this request}.  [Note: Only the first 2000 characters will be saved.]		
<b>Subsequent Paragraphs:</b> Provide a detailed explanation of the nature of the request and any additional background information relative to this request. Click <a href="#">here</a> for instructions on information required for each type of request.  [Note: Only the first 6000 characters will be saved.]		
<b>Related CBR No.:</b>  [Note: Only the first 200 characters will be saved.]		
<input type="button" value="Check Spelling"/> <input type="button" value="Save and Continue"/>		

23. Required Explanation of Request: A detailed written explanation describing why the request for transfer is being submitted. The first paragraph should include the names



and the amount of appropriations and/or cash involved with the request. Generally, this paragraph reflects the summary that appears on the Controlling Board meeting agenda.

Use the Continuation form if additional space is necessary.

For each type of request for a transfer of appropriation and/or cash, an example of a Summary Paragraph and suggestions for Subsequent Paragraphs are provided to assist you in preparing your explanation. In addition, certain Responses to Required Information Questions are to be included as part of the explanation of the request.

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format: "The {agency} respectfully requests Controlling Board approval to transfer \${specify amount} of {cash, appropriation, or cash and appropriation} from {appropriation line item/fund name} to {appropriation line item/fund name} for the {specify project or program}.

NOTE: For a transfer of general Emergency Purposes appropriation, the OBM analyst will assist in providing information that should be included in the explanation of request.

### **Subsequent Paragraphs**

Provide a written explanation describing, using as much detail as necessary, the nature of the request for the transfer of appropriation and/or cash. Provide background information relative to the project or program for which the transfer is being sought.

NOTE: For a transfer of earmarked Emergency Purposes appropriation, or other specific Controlling Board appropriations, the agency should explain how it has met the terms and conditions specified in the temporary law of the appropriations act for requesting the transfer.

### **Required Information Questions**

1. How will the additional appropriation and/or cash be used? Provide the following information below relative to this transfer:

Account Category	Account Category Description	Current Appropriation Authority	Requested Increase in Appropriation	Total Appropriation Authority
500	Personal Services			
510	Purchased Personal Services			
520	Maintenance			
530	Equipment			
550	Subsidy			
570	Capital			
590	Transfer			

2. Provide a short description of each item affected by this transfer in the table above. For example, if transferring appropriation to a subsidy line item, provide details on the added recipients or the new allocation formula for distribution of moneys. For account category 500, responses to specific questions in number 5 below are required.
3. Will this transfer be used to maintain current service levels, expand an existing program or activity, or begin a new program? Explain.
4. Based upon the response to number 3, explain how these services or programs would have been funded if this additional of funding were not available.
5. Account category 500—Personal Services:
  - l. Explain why changes are being requested in the personal services account category 500.
  - m. How many existing staff are being affected by this transfer and from what appropriation line item are they currently being paid?
  - n. How would these existing staff have been affected if these additional funds were not available?
  - o. Will new staff be hired as a result of the additional funds? If so, how many?
  - p. How will these additional staff members and their associated operating expenses be paid for in subsequent fiscal years?
6. List any other transfers involving these appropriation line items and/or cash approved by the Controlling Board in the current biennium, including the date and requested amount of the adjustment(s).

## **Fund/Appropriation Request—Detailed Instructions**

The Fund/Appropriation Request may be submitted for requesting the following adjustments to an agency's operating budget during a fiscal biennium, pursuant to Revised Code Section 131.35.

- **Increase in Appropriation Authority**
- **Creation of a New Fund**
- **Establish Appropriation Authority**

The detailed instructions for preparing requests of this nature are divided into three sections:

### ***Form Contents***

Describe the parts of the form and the information required on the form.

**Required Explanation of Request** describes the information required for the explanation of the request to be included on the form and Continuation Forms.

### **Summary Paragraph**

### **Subsequent Paragraph(s)**

### **Responses to Required Information Questions**

**Attachments** list additional information that should be submitted with the Request, when applicable.

## Form Instructions—Fund/Appropriation Request

### GENERAL INFORMATION & FUNDING INFORMATION

CB Request									
Meeting Date: 02/13/2012		FUND APPROPRIATION REQUEST				Controlling Board Request No.: OBM0100054			
Status: New									
<b>GENERAL INFORMATION</b>									
Agency Name		Authorization Requested Pursuant to Revised Code Section 131.35						Fiscal Year(s)	
Budget and Management		<input type="checkbox"/> Increase Appropriation Authority <input type="checkbox"/> Create a New Fund <input type="checkbox"/> Establish Appropriation Authority						Bill No.	
Institution/Division Administration									
<b>FUNDING INFORMATION</b>									
Edit Delete	Fund Group	Fund Code	Appropriation Line Item	Fund/Appropriation Line Item Name	FY	Current Appropriation Amount	Amount of Increase or New Fund	Total Appropriation Amount	
Add New	5	6	7	8	9	10	11		
						0.00	0.00	0.00	
						0.00	0.00	0.00	

1. Controlling Board Request No.: A ten-character code that identifies the request. The first three characters are to be the agency's code and the remaining numbers are automatically generated by the e-Controlling Board.
2. Agency Name: The name of the agency completing the request.
3. Authorization Requested Pursuant to Revised Code Section 131.35: The Fund/Appropriation action being requested. (Check all that apply.)
  - Increase Appropriation Authority
  - Create a New Fund
  - Establish Appropriation Authority
4. Bill No.: The bill number(s) referencing the source of the appropriation.
5. Fund Group: Not required for requests.
6. Fund Code: The code designating the fund for which the adjustment is being requested.
7. Appropriation Line Item: The line item for which the adjustment is being requested. Assigned by State Accounting. (Example: 772723)
8. Appropriation Line Item Name: The exact appropriation line item or fund name for which the adjustment is being requested.
9. FY: The current fiscal year associated with the requested authorization.

10. Current Appropriation Amount: The current appropriation amount for the current year of the fiscal biennium.

11. Amount of Increase or New Fund: The amount of appropriation authority requested for an increase or creation for the current year of the fiscal biennium.

## SIGNATURES

SIGNATURES	
<div style="border: 1px solid black; padding: 2px; display: inline-block;">12</div>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">13</div>
_____ Agency Director or Authorized Agent	_____ On The Date Of
_____ Date	_____ Controlling Board President/OBM Director

12. Agency Director or Authorized Agent: A signature of the agency director or his or her designee is required by the agency prior to submitting the request.

13. On The Date Of: The date that the agency director or authorized agent signs the request.

## AGENCY CONTACT

AGENCY CONTACT					Hide
First Name	<input type="text"/>	MI	<input type="text"/>	Last Name	<input type="text"/>
Phone	<input type="text"/>	Fax	<input type="text"/>	Title	<input type="text"/>
		E-Mail	<input type="text"/>		
<input type="button" value="Update Agency Contact"/>					

14. Agency Contact: The information requested in these fields for the primary agency contact regarding questions about the request.

**REQUIRED EXPLANATION OF REQUEST**

REQUIRED EXPLANATION OF REQUEST	15	Hide
<b>Summary Paragraph:</b> The text included in the following summary paragraph text box will be the request description included in the agenda. If this request is for a waiver of competitive selection, please complete the required information questions and then return to this page to systematically create the summary paragraph. You may then edit the system-created summary paragraph.  To systematically create the summary paragraph or to replace the text with the system-created summary paragraph, click the following button: <input type="button" value="Create Summary"/>		
The Budget and Management respectfully requests Controlling Board approval to {complete the summary paragraph for this request}.		
<small>[Note: Only the first 2000 characters will be saved.]</small>		
<b>Subsequent Paragraphs:</b> Provide a detailed explanation of the nature of the request and any additional background information relative to this request. Click <a href="#">here</a> for instructions on information required for each type of request.		
<small>[Note: Only the first 6000 characters will be saved.]</small>		
<b>Related CBR No.:</b>		
<small>[Note: Only the first 200 characters will be saved.]</small>		
<input type="button" value="Check Spelling"/>		
<input type="button" value="Save and Continue"/>		

15. Required Explanation of Request: Provide a written explanation describing the nature of the request being submitted for an adjustment to an agency's operating budget (Increase in Appropriation, Creation of a Fund, or the Establishment of Appropriation Authority).

**Summary Paragraph**

The first paragraph of the request should be a summary paragraph in the following format:

"The {agency} respectfully requests Controlling Board approval to {create/ increase} {appropriation authority/fund} in the amount of \$\_\_\_\_\_ in {appropriation line item/fund} {specify appropriation line item name/fund name}."

**Subsequent Paragraphs**

Provide a detailed written explanation describing why the request for an adjustment to the agency's operating budget (Increase in Appropriation, Creation of a Fund, or the Establishment of Appropriation Authority) is being submitted. Provide additional background information regarding the projects or programs benefiting from the appropriation adjustment. Use the Continuation form if additional space is necessary.

**Required Information Questions**

1. Identify the source of additional revenue (e.g., increase in fee, increase in state or federal grants, etc.).
2. If applicable, explain why creating and/or increasing a new fund and/or line item is more appropriate than depositing the revenue into an existing fund and increasing the appropriation authority of an existing line item.

3. Time line: Has the revenue been received?
- If so, provide the receipt date of the revenue.
  - If not, when is the revenue expected to become available?
4. For federal funds only, provide the following information:
- Grant identification number from the Catalogue of Federal Domestic
  - Assistance:
  - Amount of state matching funds required:
  - Source (appropriation line item) of that match:
  - Statutory or executive authority for participation in the program.

Include a brief summary of the text or a copy of the reference.

5. How will the additional appropriation and/or cash be used?  
Provide the following information below relative to this budgetary adjustment:

**NOTE:** If a new fund and new appropriation authority are being requested, the “Current” and “Requested” columns are not required.

Account Category	Account Category Description	Current Appropriation Authority	Requested Increase in Appropriation	Total Appropriation Authority
500	Personal Services			
510	Purchased Personal Services			
520	Maintenance			
530	Equipment			
550	Subsidy			
570	Capital			
590	Transfer			

6. For each additional amount shown in the table, provide a short description of what the dollars will be used to accomplish. For example, if increasing a subsidy account category, provide detail on the added recipients or the allocation formula for distribution of moneys. For account category 500, respond to specific questions in number 9 below.

7. Will this transfer be used to maintain current service levels, expand an existing program or activity, or begin a new program? Explain.

8. Based upon the response to number 7, explain how these services or programs would have been funded if this additional of funding were not available.

9. Account Category 500—Personal Services:
- Explain why changes are being requested in the personal services account category 500.
  - How many existing staff are being affected by this transfer and from what appropriation line item are they currently being paid?

- c. How would these existing staff have been affected if these additional funds were not available?
- d. Will new staff be hired as a result of the additional funds? If so, how many?
- e. How will these additional staff members and their associated operating expenses be paid for in subsequent fiscal years?

10. List any other transfers involving these appropriation line items and/or cash approved by the Controlling Board in the current biennium, including the date and requested amount of the adjustment(s).

### ***Attachments and Supplemental Information***

**Authorization**—For federal funds, you may attach a Catalogue of Federal Domestic Assistance (CFDA) excerpt, legislation, or Revised Code section.

**Subsidy Distribution Information**—If applicable, you may attach a spreadsheet outlining the distribution of subsidy monies.

## **Emergency Purposes Transfers**

In the case of a transfer from the Emergency Purposes Fund 911-614, the Controlling Board, upon approving the transfer, will provide written notice to the agency regarding the agency's reporting requirements under ORC Section 127.14. The Board Secretary will provide the notice and monitoring to ensure the required reporting is completed by the agency and, upon completion, made available to the Board.

## **Real Estate Acquisition Request—Detailed Instructions**

The Real Estate Acquisition Request form may be submitted to seek approval by the Controlling Board of any combination of the various actions listed below:

- Acquisitions of real estate with capital appropriations (Release of Capital Appropriations).
- Transfer of capital appropriations for the acquisition of real estate.
- Acquisition of real estate by a higher education institution regardless of the source of funds (Revised Code Section 3333.071).
- Other Statutory Requirements for Controlling Board approval involving the acquisition of real estate.

The detailed instructions are divided into three sections:

### ***Form Contents***

Describe the parts of the form and the information required on the form.

**Required Information** describes the information required for the explanation of the request to be included on the form and Continuation Forms.

Summary Paragraph

Subsequent Paragraph(s)

**Attachments** describe other material that must be submitted with the request.



## Form Instructions—Real Estate Acquisition

### GENERAL INFORMATION

CB Request		
<a href="#">New</a> <a href="#">Open</a> <a href="#">Delete</a> <a href="#">Check Status</a>		
Meeting Date: 02/13/2012	CAPITAL REQUEST	Controlling Board Request No.: COT0100017
Status: New	1 <a href="#">Reset</a>	
GENERAL INFORMATION		
Agency Name	<input type="radio"/> Real Estate Acquisition 3 <input type="radio"/> Release of Capital Funds(R.C.Sec. 127.14G) <input type="radio"/> Transfer of Capital Funds(R.C.Sec. 127.14G and/or Sec. 127.15) <input type="radio"/> Higher Education Authorization Request(Sec. 3333.071) <input type="radio"/> Other Statutory Authority/Bill Section:	Fiscal Year(s)
Central Ohio Technical College 2		4
Institution/Division Business & Finance		
Eligible for Local Administration?	<input type="radio"/> Capital Request <input type="radio"/> Release of Capital Funds(R.C.Sec. 127.14G) <input type="radio"/> Transfer of Capital Funds(R.C.Sec. 127.14G and/or Sec. 127.15) <input type="radio"/> Waiver of Competitive Selection(R.C.Sec. 127.16B) <input type="checkbox"/> No Competitive Opportunity <input type="checkbox"/> Agency Released Competitive Opportunity <input type="radio"/> Agency Released Competitive Opportunity(R.C.Sec. 127.162) <input type="radio"/> Release Percent for Arts(R.C.Sec. 3379.10) <input type="radio"/> Other Statutory Authority/Bill Section: <input type="radio"/> Other:	Bill No.
<input type="radio"/> Yes <input checked="" type="radio"/> No		5
		Eligible for OBM Director Approval?
		<input type="radio"/> Yes <input checked="" type="radio"/> No
Save and Continue		

1. Controlling Board Request No.: The ten-character code that identifies the request. The first three characters are to be the agency's code and the remaining numbers are automatically generated by the e-Controlling Board.

2. Agency Name: The name of the agency completing request.

3. Real Estate Acquisition: all of the following that apply:

- Release of Capital Funds (R. C. Sec. 127.14G)
- Transfer of Capital Funds (R.C. Sec. 127.14G and/or Sec. 127.15)
- Higher Education Authorization Request (Sec. 3333.071)
- Other Statutory Authority/Bill Section: Cite reference requiring Controlling Board approval.

4. Fiscal Year(s): The fiscal year for which the request applies.

5. Bill No.: The bill number(s) referencing the source of the appropriation.

**REAL ESTATE DESCRIPTION**—Fields 6-27 describe the real estate being acquired.

REAL ESTATE DESCRIPTION										Hide	
Owner		No. of Acres	Acres Previously Purchased in Area	Balance of Acres to be Purchased	Purchase is Addition to Real Estate Area of						
6		7	8	9	10						
Option Price		Name of 1st Appraiser		Name of 2nd Appraiser							
Total	Per Acre	15		18							
11	\$0.00	12	\$0.00								
Taxation Value (100%)		Value of 1st Appraiser		Value of 2nd Appraiser							
Total	Per Acre	Total	Per Acre	Total	Per Acre	Total	Per Acre				
13	\$0.00	14	\$0.00	16	\$0.00	17	\$0.00	19	\$0.00	20	\$0.00
County		Township/Municipality		If Local Funds are to be used, state the source of the funds							
21		22		23							
Most Recent Sale of Real Estate				Second Most Recent Sale of Real Estate							
Date	Price	Date	Price								
24	25	26	27								

6. Owner: The full name of the current owner of the property.

7. No. of Acres: The number of acres being acquired.

8. Acres Previously Purchased In Area: The number of acres previously acquired in area.

9. Balance of Acres to be Purchased: If this acquisition is part of a master plan (universities, state parks or forests, etc.) or other strategy involving additional contemplated land acquisitions, this is the remaining number of acres anticipated to be acquired in this area.

10. Purchase is Addition to Area of: The proper name of the area (project or program site) being affected by this real estate acquisition.

11. Option Price—Total: The total amount of the price of the real estate.

12. Option Price—Per Acre: Enter the option price—Total for the real estate divided by number of acres.

13. Taxation Value (100%)—Total: The taxable valuation of the property as determined on the records of the county auditor. If applicable, this amount should be split between land and buildings.

14. Taxation Value (100%)—Per Acre: The amount calculated by dividing the total taxable value by the number of acres. Appraised Value—Fields 15-20:

**NOTE About Appraisals**: One independent appraisal is required for all real estate acquisitions whose total option price is *less than* \$100,000.00. For real estate acquisitions whose total option price is *greater than or equal to* \$100,000.00, two independent appraisals are required.

15. Name of 1<sup>st</sup> Appraiser: The full name of appraiser #1.

16. Value of 1<sup>st</sup> Appraiser—Total: The total amount of the appraised value as documented by appraiser #1.

17. Value of 1st Appraiser—Per Acre: The total amount of the appraised value as documented by appraiser #1 divided by the total number of acres.

*For requests **for real estate acquisitions whose total option price is greater than or equal to \$100,000.00**, a second appraisal is required. Complete Fields 18-20.*

18. Name of 2<sup>nd</sup> Appraiser: (for acquisitions greater than \$100,000 only) The full name of appraiser #2.

19. Value of 2<sup>nd</sup> Appraiser—Total: (for acquisitions greater than \$100,000 only) The total amount of the appraised value as documented by appraiser #2.

20. Value of 2<sup>nd</sup> Appraiser—Per Acre: (acquisitions greater than \$100,000 only) The total amount of the appraised value as documented by appraiser #2 divided by the total number of acres.

21. County: The county where the property is located.

22. Township/Municipality: The township/municipality where the property is located.

**NOTE**: For Institutions of Higher Education only, please complete field 23.

23. If Local Funds are to be used, state the Source of the Funds: If local funds are to be used for the acquisition of the property, this is the source of those funds. If local funds are not to be used for the acquisition of the property, enter "N/A."

24. Most Recent Sale of Real Estate—Date: The date of the most recent sale of this property.

25. Most Recent Sale of Real Estate—Price: The total price of the most recent sale of this property.








**NOTE**: Complete fields 26-27 only if the second-most-recent sale of this property was less than twenty years ago.

26. Second-Most-Recent-Sale of Real Estate—Date: The date of the second-most-recent sale of this property.

27. Second-Most-Recent-Sale of Real Estate—Price: The total price of the second-most-recent sale of this property.

**TRANSFER INFORMATION**

If a Transfer of Capital Appropriations for the acquisition of this property is being requested, Complete Fields 28-39.

TRANSFER INFORMATION										Hide
Edit	From To Agency	FY	Fund Group	Fund Code	Appropriation Line Item	Appropriation Line Item Name	Transfer Amount	Previously Released Amount		
 	 OSU01	12	29	30	123456 31	TEST 32	33 \$100.00	34 \$500.00		
 	 OSU01	12	36	37	654321 38	TEST2 39	40 \$100.00	41		
Add New	 OSU01									

28. **From To Agency:** This field is associated with the appropriation line item from which the transfer is being requested for the acquisition of this property.

29. **Fund Group:** Not required for requests.

30. **Fund Code:** The code designating the fund from which the transfer is being requested for the acquisition of this property.

31. **Appropriation Line Item:** The line item from which the transfer is being requested for the acquisition of this property. Assigned by State Accounting. (Example: 220145)

32. **Appropriation Line Item Name:** The exact appropriation line item name from which the transfer is being requested for the acquisition of this property.

33. **Transfer Amount:** The appropriation amount requested to be transferred for the acquisition of this property. (NOTE: This is the amount that has not been released previously by the Controlling Board.)

34. **Previously Released Amount:** If appropriation previously released by the Controlling Board is involved in the transfer, this is the appropriation amount requested to be transferred for the acquisition of this property.

(NOTE: This is the amount that has been previously released by the Controlling Board but has not been encumbered). It should not be the entire amount previously released from this appropriation line item, just the dollar amount requested to be transferred for the acquisition of this property.

35. **From To Agency:** This field is associated with the appropriation line item to which the transfer is being requested for the acquisition of this property.

36. **Fund Group:** Not required for requests.

37. **Fund Code:** The code designating the fund to which the transfer is being requested for the acquisition of this property.

38. **Appropriation Line Item:** The line item to which the transfer is being requested for the acquisition of this property. Assigned by State Accounting. (Example: 120695)

39. Appropriation Line Item Name: The exact appropriation line item name to which the transfer is being requested for the acquisition of this property.

40. Transfer Amount: The appropriation amount requested to be transferred for the acquisition of this property. (NOTE: This is the amount that has not been previously released by the Controlling Board.)

41. Previously Released Amount: This field should be blank.

## FUNDING INFORMATION

**Complete fields 42-46 to provide for the release of capital appropriations or approval to use local funds for the acquisition of land.**

FUNDING INFORMATION							Hide
Edit	Fund Group	Fund Code	Appropriation Line Item		Appropriation Line Item Name	Type	Total Amount
Add New	42	43	44		45		46 \$0.00

42. Fund Group: Not required for requests after July 1, 2007.

43. Fund Code: The code designating the fund from which the release of capital funds is being requested for the acquisition of this property.

44. Appropriation Line Item: The line item from which the release of capital funds is being requested for the acquisition of this property. Assigned by State Accounting. (Example: 300565)

45. Appropriation Line Item Name: The exact appropriation line item name from which the release of capital appropriations is being requested for the acquisition of this property.

**NOTE:** For Institutions of Higher Education only, if local funds are to be used for the acquisition of this property, LOCAL FUNDS should be in field #45.

46. Total Amount: The exact appropriation amount of capital appropriations being requested for release (or local funds for institutions of higher education) for the acquisition of this property. *NOTE: For Institutions of Higher Education, if local funds are being used for the acquisition of this property, the exact amount should be in field #46.*

**SIGNATURES**

SIGNATURES	
<div style="border: 1px solid black; padding: 2px; display: inline-block;">47</div> _____ Agency Director or Authorized Agent	<div style="border: 1px solid black; padding: 2px; display: inline-block;">48</div> _____ On The Date Of
_____ Date	_____ Controlling Board President/OBM Director

47. **Agency Director or Authorized Agent:** A signature of the agency director or his or her designee is required by the agency prior to submitting the request.

48. **Date:** The date that the agency director or authorized agent signs the request.

**AGENCY/INSTITUTION CONTACT**

AGENCY CONTACT <div style="border: 1px solid black; padding: 2px; display: inline-block;">49</div>					Hide
First Name	MI	Last Name	Title		
Phone	Fax	E-Mail			
<input type="button" value="Update Agency Contact"/>					

49. **Agency Contact:** Enter the information requested in these fields for the primary agency/institution contact regarding questions about the request.

**REQUIRED EXPLANATION OF REQUEST**

REQUIRED EXPLANATION OF REQUEST <div style="border: 1px solid black; padding: 2px; display: inline-block;">50</div>	Hide
<b>Summary Paragraph:</b> The text included in the following summary paragraph text box will be the request description included in the agenda. If this request is for a waiver of competitive selection, please complete the required information questions and then return to this page to systematically create the summary paragraph. You may then edit the system-created summary paragraph.  To systematically create the summary paragraph or to replace the text with the system-created summary paragraph, click the following button: <input type="button" value="Create Summary"/>	
The Budget and Management respectfully requests Controlling Board approval to {complete the summary paragraph for this request}.  <div style="border: 1px solid gray; height: 40px;"></div>	
<small>[Note: Only the first 2000 characters will be saved.]</small> <b>Subsequent Paragraphs:</b> Provide a detailed explanation of the nature of the request and any additional background information relative to this request. Click <a href="#">here</a> for instructions on information required for each type of request.  <div style="border: 1px solid gray; height: 40px;"></div>	
<small>[Note: Only the first 6000 characters will be saved.]</small> <b>Related CBR No.:</b>  <div style="border: 1px solid gray; height: 20px;"></div>	
<small>[Note: Only the first 200 characters will be saved.]</small> <input type="button" value="Check Spelling"/>	
<input type="button" value="Save and Continue"/>	

50. **Required Explanation of Request:** Provide a detailed written explanation of the nature of the project requiring the acquisition of this property. The first paragraph should be a brief summary, including the amount involved with the request.

In subsequent paragraphs, provide additional background information regarding the history of the project and the intended use of the property.

### **Summary Paragraph**

The first paragraph of the request should be a summary paragraph in either of the following formats:

#### **Approval to use non-capital funds for the Acquisition of Real Estate**

"The {agency or institution name} respectfully requests Controlling Board approval to purchase {#} of acre(s) of real estate in {specify county} in the amount of \$\_\_\_\_\_ from {name of owner(s)} for an addition to the {name of project or master plan requiring the acquisition of this real estate}."

#### **Approval to Release and/or Transfer Capital Appropriations for the Acquisition of Real Estate**

"The {agency or institution name} respectfully requests Controlling Board approval release \$\_\_\_\_\_ for the purchase of { # } of acres of real estate in {specify county} from {name of owner(s)} for an addition to the {name of project or master plan requiring the acquisition of this real estate}."

### **Subsequent Paragraph(s)**

Provide additional background information regarding the intended use of the property whether it is to serve as the site for a new building, continued use of existing structures on the piece of property, for parking, for future expansion of a campus or nature preserve. In addition, please explain if eminent domain or some other legal action is involved in the acquisition of the property.

### **Attachments**

Appraisals—Controlling Board Procedures require one appraisal for any land acquisitions whose total option price is *less than* \$100,000.00. For land acquisitions whose total option price is *greater than or equal to* \$100,000.00, Controlling Board procedures require two appraisals.

*See discussion regarding supplemental documents (e.g., appraisals) exceeding fifty pages.*



## **Section IV—Controlling Board Request Processing Information and Timelines**

This section provides general processing information regarding interaction with the Controlling Board. By following these procedures regarding submitting requests and taking prompt action after requests are approved by the Board, an agency can ensure a successful Controlling Board experience.

This section is divided into the following topic areas:

- Controlling Board On-Line
- The Controlling Board Request Package
- Preparing to Submit a Controlling Board Request Package
- Controlling Board Request Review
- Emergency Approvals
- Planning Ahead: Preparing Encumbering Documents
- After the Meeting

### **Controlling Board Online Resources**

The Controlling Board calendar, meeting agendas, this substantive manual, and the technical manual for entering requests are available online at <http://www.ecb.ohio.gov>.

**For technical support please contact OBM ITO Support Help Desk by either calling (614) 466-4444 or email to [obm.appsupport@obm.state.oh.us](mailto:obm.appsupport@obm.state.oh.us).**

### ***Deadlines and Request Processing***

This section discusses the various steps involved in the submission of a Controlling Board Request and the deadlines associated with each step. The main steps in the process are as follows:

- Early Communication
- Request Submission
  - Controlling Board
  - Director of OBM
- Late Submission

#### **Early Communication**

For agencies that need assistance in preparing Controlling Board requests, or for requests that are particularly complex or sensitive, it is helpful to communicate with your OBM budget analyst and the Controlling Board President prior to submitting the request.

### **Request Submission-Controlling Board**

Agencies wishing for a request to be heard at a particular meeting must submit their complete e-Controlling Board request **by 9:00 a.m. twenty-one days** prior to the meeting. Agencies are encouraged to submit requests earlier than this date if possible.

The schedule of meeting dates is available from the Controlling Board office and is posted at <http://www.ecb.ohio.gov>. Most meetings are two weeks apart, but at times they are three weeks apart.

**NOTE: Meeting the request submission deadlines is no guarantee of being placed on the agenda.** Setting the agenda is at the discretion of the Controlling Board President. Requests may be deferred, such as ones that require policy clarification, to a later agenda, even if the request was turned in before the 21-day deadline.

### **Request Submission-Director of OBM**

Requests for approval by the Director of OBM may be submitted at any time through e-Controlling Board.

### **Late Submissions**

If you miss the deadline for submitting a request, your request will be scheduled for the next meeting. However, the realities of operating state government create circumstances where flexibility is necessary. In situations where a request submission deadline will be missed, it is imperative that the agency contact the Controlling Board President and the agency's OBM budget analyst as soon as it is known that the submission deadline will be missed.

In making a late submission, the agency must be prepared to explain the nature of the emergency and the consequences to the State if the request is delayed until the next regularly scheduled meeting. The agency must also explain why the request was not, or could not be, submitted in a timely manner. Poor planning on the part of the agency is not a legitimate reason for missing the deadline. The Controlling Board Office will not accept late submissions without prior approval by the President. Agencies should not abuse the ability to make late submissions. Late submissions are considered for only the most exceptional circumstances.

### **Controlling Board Request Review**

- OBM Review
- Request Revisions (if necessary)
- Agenda Publication & Public Inspection
- LSC and Legislative Staff Review
- Request Review Timeline

### **OBM Review**

Once the request package is received, OBM review begins. The schedule allows for technical, substantive, and policy review of the request by OBM. OBM staff will notify the agency if any changes are needed to a submitted request, or if the request requires further explanation.

### ***Request Revisions (if necessary)***

During the review of an agency's request, the President, the Secretary or the OBM budget analyst may determine that a revision should be made to the request prior to publishing the agenda. The agency/institution contact, as listed in the box in the lower left-hand corner of each Controlling Board request form, will be notified by either the Secretary or budget analyst, who will describe the revision that needs to be made. The agency is responsible for coordinating the revisions with the Controlling Board staff. This may involve an agency representative submitting an entirely new set of requests. If an agency determines on its own that a request must be revised, it will need to contact the Controlling Board office at (614) 466-5721 for instructions on how to proceed. Again, the agency will be responsible for making the necessary changes to its request in the Controlling Board office.

All requests need to be revised, if necessary, and approved by OBM by 12:00 p.m. thirteen days prior to the meeting in order to be included on the agenda.

### ***Agenda Publication and Public Inspection***

The Controlling Board President is required to distribute the proposed meeting agenda and copies of agenda items and supplemental documentation to the members of the Controlling Board and the Legislative Service Commission at least seven days prior to the Controlling Board meeting, pursuant to Section 127.13 of the Revised Code. At that time, the agenda items generally are open to public inspection. Copies of meeting agendas are available online at <http://www.ecb.ohio.gov>.

### ***LSC and Legislative Staff Review***

In the seven days before the meeting, the legislative members of the Controlling Board, their staff, and the Legislative Service Commission review the requests. They may contact the agency for questions or clarifications.

### ***Request Review Timeline***

The following chart summarizes the review process of a Controlling Board request from the time it is submitted until the date of the meeting.

**CONTROLLING BOARD REQUEST REVIEW**

Days Prior To The CB Meeting	Day Of The Week	Comments
21	TUESDAY	E-Controlling Board requests due at 9:00 a.m.. OBM review begins.
20	WEDNESDAY	
19	THURSDAY	
18	FRIDAY	
17	SATURDAY	
16	SUNDAY	
15	MONDAY	
14	TUESDAY	
13	WEDNESDAY	Revision Deadline to OBM at 12:00 p.m.
12	THURSDAY	
11	FRIDAY	
10	SATURDAY	
9	SUNDAY	
8	MONDAY	Meeting agenda is published and legislative and LSC review begins.
7	TUESDAY	
6	WEDNESDAY	
5	THURSDAY	
4	FRIDAY	Notification of H.E., Lottery, DVS holds by members
3	SATURDAY	
2	SUNDAY	
1	MONDAY	Post holds for H.E., DVS, and Lottery by 9:00 a.m. Day of Controlling Board Meeting (Publish additional holds, if any)

**Emergency Approvals**

The Controlling Board President has the authority to grant approval to requests that are necessary to react to situations affecting public health, safety, or welfare. In such a dire circumstance, the agency should contact the President immediately and submit a Controlling Board request as soon as possible, preferably by the request submission deadline for the next regularly scheduled meeting. In the meantime, the President may grant conditional approval, and once the request is received, it will be placed on the agenda for the next meeting for consideration by the full Controlling Board. The request should provide the date that Emergency Approval was granted by the President in the explanation of the request.

**Planning Ahead: Preparing the Encumbering Documents**

For most requests, both State Accounting and the agency will follow procedures after the meeting to modify the Ohio Administrative Knowledge System (OAKS) financial

system in order to accommodate the various types of approved requests. OAKS will reflect the modifications between the Wednesday and the Friday after the meeting. Priority may be given to processing requests if the agency makes such a request prior to the meeting, and if the justification for special handling is substantiated.

### ***Vendor Identification Information***

For All Approved Requests Involving Specific Vendors—Correct federal tax identification information in OAKS is critical to processing any encumbering documents in an efficient manner. To correct any of the vendor's tax information, submit an amended W-9 form to the Vendor Compliance Section of the State Accounting division of OBM.

### ***State of Ohio Purchase Order—Non-Capital Appropriations***

#### **Waiver of Competitive Selection or Agency Released Competitive Opportunity using Non-Capital Appropriations**

As soon as possible after approval, the agency must encumber funds with a State of Ohio Purchase Order (ORDE) for the purchase of supplies and services in the amount approved by the Controlling Board for the current fiscal year. Any amount approved for the second fiscal year of the biennium must be encumbered promptly in the second fiscal year. Failure to properly encumber the entire amount in this manner for the purchase within the fiscal biennium for which the waiver of competitive selection was approved, will result in the waiver becoming void, and the agency will have to submit a new Controlling Board request in order to make the purchase.

### ***State of Ohio Contract Encumbrance—Capital Appropriations***

#### **Waiver of Competitive Selection or Agency Released Competitive Opportunity using Capital Appropriations, or a Release of Capital Appropriations**

With Controlling Board approval, the agency will encumber funds. Amounts for vendors that have been granted a waiver of competitive bidding or competitive selection in one capital biennium must be encumbered in that biennium.

- In the cases where *capital projects are administered by DAS/General Services Division—Office of the State Architect*, complete the appropriate sections of the contract encumbrance and forward the document to DAS/ General Services Division—Office of the State Architect. DAS will forward the encumbrance document to OBM/State Accounting for review and acceptance in OAKS. For further information, contact DAS/General Services Division—Office of the State Architect.
- In cases where *capital projects are administered by the Agency*, prepare the contract encumbrance and forward the document directly to OBM/State Accounting immediately after the meeting.

## **Section V—At the Meeting**

The Controlling Board meeting is the focal point of the Board's work. Although a great amount of effort is expended before a meeting to facilitate the work of the Board, it is the meeting itself in which the Board grants its approval (or denies approval) of those items presented to it. This section discusses:

- Meeting Overview
- The Agenda
- Order of Business
- Open Meeting Policy/Executive Session
- Protocol
- Meeting Minutes

### **Meeting Overview**

Meetings typically last from two to four hours. In attendance are the Board members, members' staff, LSC liaisons for the four caucuses, agency representatives, and in some cases, representatives of the media and members of the public. Meetings are typically held in the same hearing room: the North Hearing Room in the Senate Annex building. In most cases, the Controlling Board meets approximately every two weeks, with exceptions for holidays, elections, and other special events. Generally, the Controlling Board President publishes the meeting schedule in October for the upcoming calendar year.

### **The Agenda**

The agenda guides the actions of the Board at the meeting. The President has sole authority to set the agenda. After agencies submit requests, the President approves a list of requests to be considered at the next meeting. This agenda is published seven days prior to the meeting. The first items listed on the agenda are elected office holders followed by university items. Since many university representatives must travel long distances to attend meetings, the courtesy is extended to them to consider their items immediately after elected officials. Requests for releases from the Board's emergency purposes account follow university requests. All other items are then ordered alphabetically by agency. Each item is identified by a Controlling Board number (a unique designation consisting of the agency three-letter agency code followed by a seven-digit number).

### **Order of Business**

The following represents the typical order of business at a meeting:

#### **Call to order**

The President typically calls the meeting to order when all members are present.

#### **Roll call of attendance**

The Secretary calls the roll of the members present.

### **Approval of minutes of previous meeting**

The President calls for a motion and a second to the motion to approve the minutes of the previous meeting. Corrections to the previous meeting's minutes are addressed.

### **Agenda deferrals and withdrawals**

The president announces any deferrals or withdrawals from the agenda, which are typically made at the request of the agency.

**Agenda items held for questions** Most requests are approved typically with a "blanket" approval (i.e. in a block). However, those items that members want to hold for further questioning and a separate vote are "held" at the request of any member. The President asks each member for "holds." A "hold" is a member's privilege to exclude an item from the blanket approval. It does not imply that the member will vote against the item.

### **Blanket approval of agenda items not held for questions**

Once all holds are registered, a motion to approve all items not held is in order. Once moved and seconded, the motion is generally agreed to without objection. The Secretary then reads through the agenda indicating which items are approved and which have been withdrawn, deferred, or held. After this reading, there is usually a short break in the proceedings to allow those who no longer have business before the Board to leave the meeting.

### **Disposition of items held for questions**

After the blanket approval, the meeting focuses on the held agenda items. These are typically taken in agenda order. The President, however, may choose to take certain items out of order. This is done usually with the general consent of the members. Reasons for taking items out of order may include the presence of a member of the General Assembly or a statewide elected official interested in speaking to a request, or the desire to accommodate those who may have traveled long distances to speak to a request. Each held item is read and the agency representative is asked to step forward to respond to questions. Board members are given the opportunity to ask questions. The item may be approved without objection, or the objections of members may be noted. The affirmative vote of four members is required for approval of an item. In certain circumstances, a roll-call vote on an item may be requested by one or more members.

### **Amendments to requests**

Some items are held for the purpose of making amendments to the request. Additionally, from time to time, members desire to offer amendments to items based on information revealed during the course of questioning.

### **Signature sheets**

For any item receiving at least one objection, a signature sheet is circulated. This sheet requires the affirmative signature of the members voting for the item and an indication of the objection by the member(s) making the objection.



### **Agenda item add-ons**

After the disposition of items on the regular agenda, the Controlling Board may agree to consider additional items. Members may ask questions as to the nature of the request. The item(s) is then approved (or disapproved) as other regular items.

### **Adjournment**

The President adjourns the meeting at the close of all regular business before the Board.

### **Open Meeting Policy/Closed Sessions/Executive Sessions**

In accordance with Section 121.22 of the Ohio Revised Code, all meetings of the Controlling Board are open meetings. This means that they are open unless action described below is taken to close the meeting or to meet in executive session.

#### ***Closed Meetings***

Revised Code 121.22 (E) provides very specific circumstances under which the Controlling Board may close a meeting. Such closing pursuant to this section relates only to requests that involve the provision of assistance pursuant to Chapter 122 or Chapter 166, which involve assistance provided by the Department of Development.

#### ***Executive Session***

Revised Code Section 121.22 (G) speaks to the limited circumstances under which a public body may hold an executive session. An executive session may be held only after a proper motion and the affirmative roll call vote of a majority of a quorum (3 members) for the sole purpose of considering and of the matters specified in Division (G).

The Controlling Board typically would engage only in matters that would apply under conditions 3 or 5.

#### ***Protocol***

A Controlling Board meeting is conducted in the same manner as most legislative committee meetings. The President presides over the business of the Board. In respect of this responsibility, those speaking before the Board typically begin their address with, "Mr. (or Madam) President, members of the Board, I am (name, title/position) of the (name of department, institution or agency)".

Questions are answered in a similar fashion, referencing first the President and then the member asking the question (e.g. "Mr. President, Senator Smith, the answer to your question is ....."). It is imperative that the presenter speaks clearly into the microphone on the podium.

### ***Meeting Minutes***

The official record of the proceedings of the meeting is contained in the meeting minutes. The minutes are prepared by the Secretary after the meeting. They are distributed to members and staff the Friday before the meeting dates along with the updates to the agenda. Minutes are considered at the next meeting (see above).

## Controlling Board Manual Glossary

This glossary is designed to assist you in understanding the terms referenced in this manual.

Term	Definition
Adjusted Appropriation	The amount of the original appropriation minus any executive order reductions plus net transfers. For prior budget fiscal years, the adjusted appropriation always equals the sum of disbursements and outstanding encumbrances.
Appropriation	An authorization granted by the Ohio General Assembly to make budgetary expenditures and to incur obligations for specific purposes. An appropriation limits the amount that may be spent for a given purpose in a given period of time. No appropriation may be made for a period longer than two years.
Agency Administration of Capital Expense (Local. Administration)	The administration and bidding authority given to state agencies for a construction related project utilizing capital appropriations. This authority may only be granted by the Ohio Department of Administrative Services, Office of the State Architect, or as prescribed by law.
Appropriation Line Item (ALI)	The six-character code that identifies the specific purpose of appropriations as authorized by law and accounted for within its fund. The ALI name indicates the specific purpose of amounts appropriated or expended. ALI codes are used in the accounting system for budgetary reporting and control.
Available Balance	In reference to an ALI, this is the amount available for spending from the ALI. Calculated as original appropriation plus net transfers, minus reductions, spending, unallotted and unassigned amounts.
Biennium	A two-year period that begins July 1 and ends twenty-four months later on June 30.
Budget	A plan of financial operation embodying an estimate of proposed expenditures and obligations for a given period and the proposed means of financing them.
Capital Appropriation Act (Budget Bill)	Capital plan approved by the Ohio General Assembly for all state-financed capital improvements projects.
Cash	Cash is money on deposit in a financial institution under the Treasurer of State's administration. Cash balance is affected by disbursements (decreased) and revenue (increased). Cash is accounted for at the fund level in OAKS.
Contract (New)	An agency's initial contract with a vendor or an agency's subsequent contract with a vendor if the subsequent contract is not based upon the exercise of a renewal option in the prior contract.
Contract (Amendment)	An addition, deletion or revision of a current contract.

Term	Definition
Contract (Renewal)	The exercise of an option to enter into a subsequent contract with a vendor in accordance with a renewal provision specified in a preceding contract.
Controlling Board	The Controlling Board is comprised of the Director of the Office of Budget and Management, or his or her designee, and six members of the Ohio General Assembly. The board provides legislative oversight over certain capital and operating expenditures by state agencies and has approval authority over various other state fiscal and purchasing activities.
Controlling Board Meeting Agenda	The agenda summarizes each request submitted by the Controlling Board President to the Controlling Board for action at a particular Controlling Board meeting.
Controlling Board Meetings	The Controlling Board meets at least once a month. The Board usually meets every other Monday afternoon.
Controlling Board Number	A ten-character code assigned by e-Controlling Board that identifies a particular request. The first three characters are the agency Code and the remaining are automatically assigned by the e-Controlling Board. Once a request is approved, this number serves as the legal authority for the expenditure of appropriation consistent with the approval.
Controlling Board President	The Director of the Office of Budget and Management or his or her designee serves as the President of the Controlling Board.
Controlling Board Secretary	The Director of the Office of Budget and Management designates an employee of OBM to serve as secretary of the Controlling Board. The Secretary assists the President of the Controlling Board and makes and keeps a record of each request received by the Board and the Board's action on the request.
Cumulative Purchase (Controlling Board) Threshold	<p>This threshold is the dollar amount per vendor that establishes when an agency must come to the Controlling Board for a waiver of competitive selection for the purchase of supplies or services.</p> <ol style="list-style-type: none"> <li>1) The cumulative threshold for purchases is \$50,000 for supplies and services and \$75,000 and for real estate leases.</li> <li>2) To determine if a state agency has reached the cumulative threshold for purchases, the amount of the purchase proposed to be made by the state agency shall be combined with both the amount of all the disbursements by the agency to the particular vendor or contractor during the fiscal year and the amount of all outstanding encumbrances of the agency for the vendor or contractor.</li> <li>3) Real estate leases, purchases specified in RC 127.16(E), and purchases for which Controlling Board has granted a waiver of competitive selection shall not be considered.</li> </ol>

<b>Term</b>	<b>Definition</b>
Disbursement	A payment made for any purpose.
Encumbrance	A spending document that legally reserves appropriation from an agency's available appropriation balance that represents purchase orders and contracts entered into by state agencies and institutions of higher education. This document may either be a State of Ohio Purchase Order or State of Ohio Contract Encumbrance.
Equipment	Durable goods, such as computers, desks, chairs or cars.
Expenditures	Payments against appropriations that reduce the cash balance after legal requirements have been met. A fiscal year's expenditures are payments actually made in that fiscal year, regardless of the state fiscal year in which the appropriations were reserved or encumbered for such payments.
Fiscal Year (FY)	A twelve-month period of time used for fiscal planning purposes. The state fiscal year (usually FY, but sometimes abbreviated as SFY) begins on the first day of July and ends at the close of the thirtieth day of June of the succeeding calendar year.
Fund	A separate fiscal and accounting entity with a self-balancing set of accounts. A fund created in the state treasury usually has one or more appropriation line items facilitating expenditures from the fund. If the fund has only one appropriation line item, the ALI name often is the same as the fund name.
(Budget) Fund Group	This category was used in the state's Central Accounting System (CAS) to group similar funds for Ohio's budgetary reporting purposes. For, requests after July 1, 2007, the Ohio Administrative Knowledge System does not require this information.
Legal Authority	The authorization for the expenditure established by a House Bill, Senate Bill, Controlling Board action, or Governor's Executive Order.
Minority Business Enterprise (MBE)	A company that meets criteria established by Ohio Revised Code and certified by the Equal Opportunity Center within the Ohio Department of Administrative Services as a minority business enterprise.
Ohio Office of Budget & Management (OBM)	OBM provides fiscal accounting and budgeting services to state government, which include coordination, development and monitoring of agency operating and capital budgets and the review, processing and reporting of financial transactions made by state agencies.
OBM Budget Analyst	OBM Budget Analysts assist the Governor in developing and implementing the state operating and capital budgets for submission to the Ohio General Assembly. In addition, the analysts provide economic and fiscal forecasting and monitor the state's financial resources and obligations.

<b>Term</b>	<b>Definition</b>
Ohio Revised Code (ORC)	All statutes of permanent and general nature of the state as revised and consolidated into general provisions, titles, chapters, and sections.
Operating Appropriation Act (Budget Bill)	An operating plan approved by the Ohio General Assembly for all state-financed operating activities or programs.
Original Appropriation	The amount appropriated in the original appropriations act.
Purchase	The act of buying, renting, leasing, lease purchasing, or otherwise acquiring supplies or personal services.
DAS Release & Permit	For purchases that exceed DAS' Direct Purchase Authority, an approved Release & Permit is issued by DAS when DAS has determined that procurement of a supply or service by DAS would not be advantageous to the state. The agency may proceed in making the purchase using procurement guidelines provided by DAS.
Release of Capital Appropriation	Authorization that an agency must obtain from the Controlling Board before the agency may expend a capital appropriation. Under certain provisions specified in law, the Director of OBM may authorize the release of capital appropriations.
Service	Includes the furnishing of labor, time or effort by a person(s) which may be technical, non-technical, consulting, advisory, professional or non-professional in nature.
Supply	All property, including, but not limited to, equipment, insurance, materials, with the exception of land.
Transfer of Appropriation	An adjustment of appropriation between two or more appropriation line items that involve the reduction of appropriation in one line item and the increase of appropriation in another line item(s).
Unassigned Amount	Dollar amounts that are appropriated but not allocated to a SAC with a Fiscal Year Allotment Plan. For capital purposes these are amounts not previously released for use.
Vendor Identification Number	The ten-character identification under which the vendor is identified in OAKS.
Waiver of Competitive Selection	Under certain circumstances, the Controlling Board is authorized to waive an agency's obligation to follow competitive selection for the purchase of supplies or services.

## **Appendices**

### **ORC 127.12 Controlling Board; Members; Payment; Substitute Members**

There is hereby created a controlling board consisting of the director of budget and management or an employee of the office of budget and management designated by the director, the chairman of the finance-appropriations committee of the house of representatives, the chairman of the finance committee of the senate, two members of the house of representatives appointed by the speaker, one from the majority party and one from the minority party, and two members of the senate appointed by the president, one from the majority party and one from the minority party.

Notwithstanding section 101.26 of the Revised Code, the legislative members, when engaged in their duties as members of the controlling board, shall be paid at the per diem rate of one hundred fifty dollars, and their necessary traveling expenses, which shall be paid from the funds appropriated for the payment of expenses of legislative committees. In the event of the absence, illness, disability, death, or resignation of a legislative member, the following persons may serve in his absence: for the chairman of the finance-appropriations committee of the house of representatives, the speaker of the house or a member of the house designated by him; for the chairman of the senate finance committee, the president of the senate or a member of the senate designated by him; for a member of the board appointed by the speaker of the house of representatives, or the president of the senate, the speaker or the president, as the case may be, or a member of the house of representatives or of the senate of the same party as such controlling board member, designated by such speaker or president. As used in any statute, "controlling board," unless the context otherwise requires, means the controlling board created by this section.



### **ORC 127.13 Officers; Procedures**

The director of budget and management or his designee shall be president of the controlling board. The president shall prepare the proposed agenda for the meetings of the board and shall provide, at least seven days prior to the meeting, copies of the proposed agenda and supporting documentation to the members of the board and to the legislative budget office of the legislative service commission.

The director shall designate an employee of the office of budget and management to serve as secretary of the controlling board. The secretary shall assist the president of the board and shall make and keep a record of each request received by the board and of its action thereon. The secretary shall certify a copy of the record of each action to each member of the board and to the director.

The controlling board may adopt procedural rules for the conduct of the business of the board, may approve, disapprove, modify as to specific dollar amounts, or defer requests, and may require that a request from the senate, the house of representatives, the supreme court, or an elected member of the executive department as defined in Section 1 of Article III, Ohio Constitution, not currently before the controlling board be added to the agenda for a specified future meeting of the board, provided that such request has been previously submitted to the president for inclusion in the agenda for a board meeting. The controlling board also may adopt rules authorizing the president to act on its behalf in exigent circumstances affecting the public health, safety, or welfare.

The affirmative vote of no fewer than four members of the controlling board shall be required for any action of the board. The board shall meet at least once a month.

## **ORC 127.14 Approval of Transfers of Funds; Limitations; Other Powers**

The controlling board may, at the request of any state appropriation act:

(A) Transfers of all or part of an appropriation within but not between state agencies, except such transfers as the director of budget and management is authorized by law to make, provided that no transfer shall be made by the director for the purpose of effecting new or changed levels of program service not authorized by the general assembly;

(B) Transfers of all or part of an appropriation from one fiscal year to another;

(C) Transfers of all or part of an appropriation within or between state agencies made necessary by administrative reorganization or by the abolition of an agency or part of an agency;

(D) Transfers of all or part of cash balances in excess of needs from any fund of the state to the general revenue fund or to such other fund of the state to which the money would have been credited in the absence of the fund from which the transfers are authorized to be made, except that the controlling board may not authorize such transfers from the accrued leave liability fund, auto registration distribution fund, budget stabilization fund, development bond retirement fund, facilities establishment fund, gasoline excise tax fund, general revenue fund, higher education improvement fund, highway improvement bond retirement fund, highway obligations bond retirement fund, highways obligations construction fund, highway operating fund, horse racing tax fund, improvements bond retirement fund, library and local government support fund, liquor control fund, local government fund, local transportation improvement program fund, mental health facilities improvement fund, Ohio fairs fund, parks and recreation improvement fund, public improvements bond retirement fund, public school building fund, school district income tax fund, state agency facilities improvement fund, state and local government highway distribution fund, state highway safety fund, state lottery fund, undivided liquor permit fund, Vietnam conflict compensation bond retirement fund, volunteer fire fighters' dependents fund, waterways safety fund, wildlife fund, workers' compensation fund, or any fund not specified in this division that the director of budget and management determines to be a bond fund or bond retirement fund;

(E) Transfers of all or part of those appropriations included in the emergency purposes account of the controlling board;

(F) Temporary transfers of all or part of an appropriation or other moneys into and between existing funds, or new funds, as may be established by law when needed for capital outlays for which notes or bonds will be issued;

(G) Transfer or release of all or part of an appropriation to a state agency requiring controlling board approval of such transfer or release as provided by law;

(H) Temporary transfer of funds included in the emergency purposes appropriation of the controlling board. Such temporary transfers may be made subject to conditions specified by the controlling board at the time temporary transfers are authorized. No transfers shall be made under this division for the purpose of effecting new or changed levels of program service not authorized by the general assembly.

As used in this section, "request" means an application by a state agency or the director of budget and management seeking some action by the controlling board.

Whenever there is a transfer of all or part of funds included in the emergency purposes appropriation by the controlling board, pursuant to division (E) of this section, the state agency or the director of the office of budget and management, or his or her designee, receiving such

transfer shall keep a detailed record of the use of the transferred funds. At the earliest scheduled meeting of the controlling board following the accomplishment of the purposes specified in the request originally seeking the transfer, or following the total expenditure of the transferred funds for the specified purposes, the state agency or the director of the office of budget and management, or his or her designee, shall submit a report on the expenditure of such funds to the board. The portion of any appropriation so transferred which is not required to accomplish the purposes designated in the original request to the controlling board shall be returned to the proper appropriation of the controlling board at this time.

Notwithstanding any provisions of law providing for the deposit of revenues received by a state agency to the credit of a particular fund in the state treasury, whenever there is a temporary transfer of funds included in the emergency purposes appropriation of the controlling board pursuant to division (H) of this section, revenues received by any state agency receiving such a temporary transfer of funds shall, as directed by the controlling board, be transferred back to the emergency purposes appropriation.

The board may delegate to the director of budget and management authority to approve transfers among items of appropriation under division (A) of this section.

### **ORC 127.15 Transfer of Capital Appropriation Items**

The controlling board may authorize any state agency for which an appropriation is made, in any act making appropriations for capital improvements, to expend the moneys appropriated otherwise than in accordance with the items set forth, and for such purpose may authorize transfers among items or create new items and authorize transfers thereto, provided that prior to such transfers the agency seeking the same shall notify by mail the elected representatives to the general assembly from the counties affected by such transfers, stating the time and place of the hearing on the proposed transfers thereto. Such transfers among items shall not alter in total the appropriation to any state agency except as otherwise provided by the general assembly. The board may not authorize the transfer of a capital appropriation item of any state agency for use by such agency for operating expenses, except as otherwise provided by the general assembly.

### **ORC 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 or payments or provider agreements under the disability medical assistance program established under Chapter 5115 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 mental retardation and developmental disabilities under sections 5123.18, 5123.182, and 5123.199 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 or the children's health insurance program part II provided for under section 5101.51 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 reimbursements paid to the United States department of veterans affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio veterans' home agency;

(35) Applying to agreements entered into with terminal distributors of dangerous drugs under section 173.79 of the Revised Code.

(E) Notwithstanding division (B)(1) of this section, the cumulative purchase threshold shall be seventy-five thousand dollars for the departments of mental retardation and developmental disabilities, mental health, rehabilitation and correction, and youth services.

(F) When determining whether a state agency has reached the cumulative purchase thresholds established in divisions (B)(1), (B)(2), and (E) 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 thresholds of divisions (B)(1) and (E) of this section only, leases of real estate.

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

### **ORC 127.17 Board to Carry Out Legislative Intent**

The controlling board shall take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the general assembly.

### **ORC 131.35 Expenditures Of Federal Funds; Nonfederal Funds; Transfer And Limits On Expenditure**

(A) With respect to the federal funds received into any fund of the state from which transfers may be made under division (D) of section 127.14 of the Revised Code:

(1 ) No state agency may make expenditures of any federal funds, whether such funds are advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant to specific appropriations of the general assembly identifying the federal program that is the source of funds, are authorized pursuant to section 131.38 of the Revised Code, are authorized by the Controlling Board pursuant to division (A)(5) of this section, or are authorized by an executive order issued in accordance with section 107.17 of the Revised Code, and until an allotment has been approved by the director of budget and management. All federal funds received by a state agency shall be reported to the director within fifteen days of the receipt of such funds or the notification of award, whichever occurs first. The director shall prescribe the forms and procedures to be used when reporting the receipt of federal funds.

(2) If the federal funds received are greater than the amount of such funds appropriated by the general assembly for a specific purpose, the total appropriation of federal and state funds for such purpose shall remain at the amount designated by the general assembly, except that the expenditure of federal funds received in excess of such specific appropriation may be authorized by the controlling board.

(3) To the extent that the expenditure of excess federal funds is authorized, the controlling board may transfer a like amount of general revenue fund appropriation authority from the affected agency to the emergency purposes appropriation of the controlling board, if such action is permitted under federal regulations.

(4) Additional funds may be created by the controlling board to receive revenues not anticipated in an appropriations act for the biennium in which such new revenues are received. Expenditures from such additional funds may be authorized by the controlling board, but such authorization shall not extend beyond the end of the biennium in which such funds are created.

Controlling board authorization for a state agency to make an expenditure of federal funds under division (A)(1) of this section constitutes authority for the agency to participate in the federal program providing the funds, and the agency is not required to obtain an executive order under section 107.17 of the Revised Code to participate in the federal program.

(B) With respect to nonfederal funds received into the waterways safety fund, the wildlife fund, and any fund of the state from which transfers may be made under division (D) of section 127.14 of the Revised Code:

(1) No state agency may make expenditures of any such funds unless the expenditures are made pursuant to specific appropriations of the general assembly.

(2) If the receipts received into any fund are greater than the amount appropriated, the appropriation for that fund shall remain at the amount designated by the general assembly or as increased and approved by the controlling board.

(3) Additional funds may be created by the controlling board to receive revenues not anticipated in an appropriations act for the biennium in which such new revenues are



received. Expenditures from such additional funds may be authorized by the controlling board, but such authorization shall not extend beyond the end of the biennium in which such funds are created.

(C) The controlling board shall not authorize more than ten per cent of additional spending from the occupational licensing and regulatory fund, created in section 4743.05 of the Revised Code, in excess of any appropriation made by the general assembly to a licensing agency except an appropriation for costs related to the examination or reexamination of applicants for a license. As used in this division, "licensing agency" and "license" have the same meanings as in section 4745.01 of the Revised Code.

## **Authority & References**

ORC 124.14(A)  
OAC 123:1-45-01  
OAC 123:1-7

IRS list of 21 common law factors for determining independent contractors.  
OAC 145:5-15

Office of Federal Procurement Policy Letter 92-01. Model Independent Contractor Agreement for Services (available from DAS)

Section 2-302 Model Procurement Code for State and Local Governments  
(ABAIALI)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**OHIO A. PHILIP RANDOLPH  
INSTITUTE, *et al.*,**

Plaintiffs,

v.

**SECRETARY OF STATE, JON HUSTED,**

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 2:16-CV-00303

JUDGE GEORGE C. SMITH

MAGISTRATE JUDGE DEAVERS

---

**DECLARATION OF PAT MCDONALD**

---

I, PAT MCDONALD, hereby declare that:

1. I am presently the Director of the Cuyahoga County Board of Elections and was appointed to this position in 2013. Prior to serving as Director, I served five years as Deputy Director of the Cuyahoga County Board of Elections (2007-2013).
2. The board of elections begins planning for an election many months prior to the election actually occurring. For a presidential election, the planning can begin a year or more prior to the election. A part of the planning is ensuring the budget is set. Budget planning for the board begins the year before the election. The budget for the 2016 Presidential General Election was finalized in 2015, and it is, therefore, difficult to add previously unexpected expenses at this late stage.
3. The board of elections is extremely busy in the weeks preceding any Election Day. Right now, the board is inputting all timely-filed voter registrations, processing absentee ballot applications, sending absentee ballots, conducting in-person absentee voting, ensuring that all polling locations are compliant with federal and state law, preparing for the setup of all polling locations with voting equipment, tables, chairs, and proper signage, and creating the official lists of registered voters for Election Day precincts, among numerous other tasks.
4. I have reviewed the Plaintiffs' proposed order and the Defendant's proposed directive for the above-captioned case.
5. While the Defendant's proposed directive would be difficult to implement less than four weeks prior to Election Day, I believe the Defendant's proposed directive is a reasonable solution and contains the safeguards necessary to ensure the integrity of the voting process.



6. I believe it would be very burdensome to implement Plaintiffs' proposed order at this late stage. This is especially true because Plaintiffs request the mailing of provisional ballots, which only rarely, if ever, occurs under current law. The further back in time we review canceled records, the more difficult it becomes to discern the reason for cancellation.
7. Ohio law generally prohibits the sending and/or casting of a provisional ballot by mail. The only circumstance a provisional ballot can be mailed is when an individual is disabled or confined and would otherwise receive a provisional ballot. *See* Ohio Rev. Code § 3503.16(G). This circumstance very rarely occurs. Allowing additional categories of provisional ballots to be sent and/or received by mail has the chance of causing confusion. At the very least, training would need to occur and the board would need to spend additional money to immediately print additional provisional ballots. Also, the board would need to obtain envelopes large enough to contain the provisional ballot envelopes, as the traditional absentee ballot identification envelopes that the board has on hand are too small to fit the provisional ballot envelopes. The postage required for these larger provisional ballot envelopes would be significantly more expensive than the postage for the absentee ballot identification envelopes. Further, instructions would need to be drafted and included with the provisional ballot mailing to inform voters why they are receiving a provisional ballot by mail.
8. The early voting period has begun, and the board has already sent notices to individuals with insufficient absentee applications. The subsequent sending of a provisional ballot mailing to these voters would be especially confusing at this time.
9. The board's voter registration database does not track subsequent reasons for cancellation, including personal cancellations, convicted felons, deceased voters, voters deemed incompetent by probate court, and voters merged with another county. So, for instance, an individual cancelled pursuant to the National Change of Address Process or Supplemental Process in 2011, who then appears on a 2014 state department of health deceased voters list, would not be marked as deceased in our database because the individual was already cancelled in 2011. The further back in time we go, the greater the propensity for a subsequent reason for cancellation to exist.
10. It is my understanding that the county boards of elections vary in the specificity of information in their databases related to the reasons for cancellation. So, while my county is able to distinguish between individuals cancelled pursuant to the Supplemental Process and NCOA Process in 2015 and 2013, I believe other counties are not able to make such a distinction.

I declare, under penalty of perjury, that the foregoing is true and correct.



PAT MCDONALD

Executed on: October 17, 2016