



COUNTY ADVISORY BULLETIN

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GRADUAL ELIMINATION OF STATE MANDATED RESPONSIBILITY FOR COUNTY COMMISSIONERS TO PROVIDE EDUCATIONAL SERVICE CENTER (ESC) OFFICE SPACE, UTILITIES & EQUIPMENT

Effective Date: September 5, 2001.

Revised Code Sections: 133.07, 3313.37, and 3319.19.

Lead Sponsor: Carey (R-Wellston).

House Co-Sponsors: Calvert (R-Medina), Core (R-Rushsylvania), Peterson (R-Delaware), Husted (R-Kettering), Grendell (R-Chersterland), Faber (R-Celina), Evans (R-Newark), Metzger (R-New Philadelphia), Buehrer (R-Delta), Hoops (R-Napoleon), Widowfield (R-Cuyahoga Falls), Hughes (R-Columbus), Clancy (R-Cincinnati), Gilb (R-Findlay), Raga (R-Mason), Webster (R-Hamilton), Womer Benjamin (R-Aurora), DeWine (R-Fairborn), Collier (R-Mt. Vernon), Setzer (R-Vandalia), Niehaus (R-New Richmond), Reidelbach (R-Columbus), Flowers (R-Canal Winchester), Cates (R-West Chester), Fessler (R-New Carlisle), Schmidt (R-Loveland), Hagan (R-Alliance).

Senate Co-Sponsors: White (R-Manchester), Jacobson (R-Brookville), Spada (R-Parma Heights), Amstutz (R-Wooster), Johnson (R-Westerville), Carnes (R-St. Clairsville), Harris (R-Ashland), Mead (R-Columbus), Hottinger (R-Newark), Coughlin (R-Cuyahoga Falls), R.A. Gardner (R-Madison), Blessing (R-Cincinnati), Wachtmann (R-Napoleon), Mumper (R-Marion).

Background

For more than two decades, one of the major concerns of many county commissioners has been the outdated requirement in Ohio law that requires counties through the general fund

to provide and equip the offices of the superintendent of an educational service center (formerly known as the county board of education) as well as provide the heat, light, water, and janitorial services for such offices.

This requirement apparently dates from 1914 when county boards were established. For many years, this issue was not a major concern for counties. Most county education offices had a very small staff -- typically just the superintendent, a secretary, and a truant officer. Hence, the cost of the space was not a significant burden. When county boards were established in 1914, their functions were primarily administrative in nature.

However, that started to change in 1955 when the legislature created the Ohio School Survey Committee. Recommendations from the committee moved the county boards into more service functions. Subsequently, legislation was enacted providing state funds for the first time to educational service units for county boards. As a result of the subsidy, fifty-three county boards hired their first elementary supervisor, and thirty others hired their first secondary supervisor. Before 1956 only five county boards had school psychologists on the payroll; five years later, thirty counties had psychologists working.

During the 1960's, with more emphasis on special education and vocational training, the staffs of county boards increased even more. As county boards assumed more responsibilities with a corresponding increase in staff, more county commissioners began to ask why the county should be mandated to support the educational system with general county tax dollars.

To put it simply, this state-mandated responsibility became outdated, did not make practical business management sense, and needed to be changed, from many commissioners' viewpoint. Just as township clerks and county auditors were at one time involved with education, those responsibilities were phased out over time, as the education realm has evolved in Ohio. Furthermore, providing office space and equipment should be tied to the individuals who are involved in the delivery of services and receipt of products or who are directly associated with education programs.

Since 1973, the County Commissioners Association of Ohio (CCAO) has actively sought relief from this outdated state mandate on county government.

Working with the Ohio County Superintendents Association, CCAO was successful in 1991 in establishing the concept of a state subsidy to pay for and to enhance offices for county boards in state law. However, the General Assembly never saw fit to appropriate needed funds to this provision in the Ohio Revised Code.

More recently, county boards of education have continued to evolve. County boards were officially renamed "Educational Service Centers" (ESC's). Also, any ESC serving only one local school district was required to merge with one or more adjacent ESC's before June 1, 1997. In the case of ESC's with an Average Daily Memberships (ADM) of less than 8,000, mergers were to take place no later than June 1, 1999. With the nature of the mergers, some counties that were a part of a joint ESC district were now required to help

finance the ESC space located in another county. Sometimes, those same counties were also being asked to provide “satellite” office space for the ESC in their own home county. In these limited circumstances, consolidation of ESC’s actually resulted in more office space demands.

Last session, historic progress was made when the legislature approved the State and Local Government Commission’s request to allocate unspent moneys from the Mandates Assistance line item to counties to partially reimburse them for providing ESC office space. This very small line item, which totals two million dollars a year, was established to help townships, municipalities, and counties deal with unfunded mandates until such mandates are either funded, repealed, or modified. While this minuscule line item does not in any way fully address all the unfunded mandates on local governments, it is a gesture from the state recognizing that mandates exist and efforts should be made to address them. Once a mandate has been addressed -- through funding, repeal or modification, another mandate affecting local jurisdictions is to be selected to receive consideration for Mandates Assistance.

Prior Law

Prior to Am. Sub. H.B. 94, Ohio law provided that “county commissioners shall provide and equip offices in the county for the use of the superintendent of an educational service center, and shall provide heat, light, water, and janitorial services for such offices.”

In the case of a joint county ESC, the governing board of the ESC is to determine the site of its offices. The board of county commissioners of the county in which the designated site is located shall provide and equip the offices as stated above. The costs of such offices and equipment shall be apportioned among the boards of county commissioners of all counties having any territory in the area under the control of the ESC. The costs are to be allocated based on the portion of local school district pupils under the supervision of the ESC residing in the respective counties. Should there be a dispute as to the amount any board of county commissioners is required to pay, the probate judge of the county in which the greatest number of pupils under the supervision of the ESC reside is to allocate the costs among the counties, and the judge is to notify each board of commissioners of its share of the costs. (Ohio Revised Code 3319.19)

The Ohio Department of Education has promulgated rules on the facilities to be provided by the board of county commissioners. Specifically, the rules provide the following:

- Facilities are to be of quality and quantity to support staff.
- Facilities are to include:
 - work space, professional library, filing facilities, access to telephones, conference space, and restrooms;
 - access to a meeting room to accommodate county board of education meetings and other assemblies in accordance with ORC Section

- 3319.19;
 - adequate equipment.
- Facilities and grounds are to be well maintained and free from hazards and in compliance with fire and safety laws and regulations as evidenced by reports of required fire and health inspections by the appropriate local authority.
- Physical facilities are to be evaluated according to professionally recognized criteria and procedures.

If there are deficiencies in the facilities provided by the board of county commissioners, a plan to correct the matter is to be developed in conjunction with the Ohio Department of Education. (Ohio Administrative Code Section 3301-38-03)

Am. Sub. House Bill 94 – New Law

It is important to first note, that this legislation, Am. Sub. H. B. 94, was the state operating budget bill for the 124th General Assembly. Originally introduced as the “Education Budget,” the legislation in its final form included appropriations for education along with all state agencies, boards, and commissions. Am. Sub. H.B. 94 in its final form is nearly 2,200 pages long. Provisions applying to the ESC office space mandate on counties are just one of the hundreds contained in the bill.

Nevertheless, the legislation does the following:

- Provides boards of county commissioners with a gradual five year phase out of the state mandated requirement of providing ESC office space, utilities, and equipment.
- Authorizes ESC’s to obtain property for office space, whether by lease, purchase, or construction. Furthermore, it provides if an ESC would exercise this authority absent an alternative contractual arrangement with a board of county commissioners before the five year phase out is complete, the board of county commissioners has no obligation to provide space or equipment.
- Authorizes the county to issue debt under ORC 133.07 to help the ESC purchase real and personal property, if an ESC would prefer to purchase or construct space.
- Allows a board of county commissioners and the ESC to enter into a contract to continue to provide space, utilities, and/or equipment if the two parties are willing outside of and beyond the five year phase out period.

Each of these provisions is explained in further detail below.

One provision not contained in Am. Sub. H.B. 94 is a new state allocation or line item

explicitly for ESC's to pay for office space. CCAO was not opposed to the legislature including such a provision, and quite frankly, the inclusion of new money for this sole purpose may have taken some local pressure off boards of county commissioners to continue providing space above and beyond the phase out schedule through alternative agreements. Nevertheless, CCAO's contention throughout the consideration of Am. Sub. H.B. 94 simply was that county commissioners should not be the entity mandated by the state to provide space and utilities to ESC's.

Gradual Five Year Phase Out – Declining State Mandated Responsibility

Am. Sub. H.B. 94 provides boards of county commissioners with a gradual five year phase out of the state mandate to provide ESC space, equipment, heat, light, water, and janitorial services for such offices, including any unanticipated or unexpected increases in the costs beyond the "final estimated cost amount" (this term is defined below).

Beginning in State Fiscal Year 2003 (which is July 1, 2002), commissioners are responsible for 80 per cent of such costs. This expense decreases each year thereafter by 20 per cent until there is no state mandated obligation beginning in State Fiscal Year 2007 (which is July 1, 2006). This is outlined below:

Beginning State Fiscal Year (Calendar Year)	State Mandated Obligation on Counties Based on Per Cent of Costs
SFY 2002 (July 1, 2001 - June 30, 2002)	100%
SFY July 2003 (July 1, 2002 - June 30, 2003)	80%
SFY July 2004 (July 1, 2003 - June 30, 2004)	60%
Beginning State Fiscal Year (Calendar Year)	State Mandated Obligation on Counties Based on Per Cent of Costs
SFY 2005 (July 1, 2004 - June 30, 2005)	40%

SFY 2006 (July 1, 2005 - June 30, 2006)	20%
SFY 2007 (July 1, 2006 and thereafter)	0%

Beginning in State Fiscal Year 2007 (CY July 1, 2006), no board of county commissioners will have a state-mandated obligation to provide and equip offices for an ESC or to provide heat, light, water, or janitorial services for such offices. However, a board of county commissioners may continue to provide space or utilities to an ESC through an alternative agreement via a contract if both the commissioners and ESC wish to continue such a relationship. (Ohio Revised Code 3319.19)

Gradual Five Year Phase Out – Process to Determine Costs Among BCC & ESC

There is a process in Am. Sub. H.B. 94 by which commissioners need to work with the ESC to determine and come to a consensus on the amount of space being provided, the value of that space, and other costs incurred by the county for utilities, janitorial services, equipment, and any other related costs. This process is outlined in the attached flowcharts.

Before March 31st of 2002, 2003, 2004, and 2005, a board of county commissioners must make a written estimate of the total cost it will incur for the ensuing state fiscal year (that is the time period from July 1 through June 30). The total estimate is to include:

- The total square feet of space to be utilized by the educational service center.
- The total square feet of any common areas that should be reasonably allocated to the center and the methodology for making this allocation.
- The actual cost per square foot for both the space utilized by and the common area allocated to the center.
- An explanation of the methodology used to determine the per square foot cost.
- The estimated cost of providing heat, light, and water, including an explanation of how these costs were determined.
- The estimated cost of providing janitorial services including an explanation of the methodology used to determine this cost.

- Any other estimated costs that the board anticipates it will occur and a detailed explanation of the costs and the rationale used to determine such costs.

A copy of the total estimate is to be sent to the Superintendent of the ESC no later than April 5. (While the law does not require the board of county commissioners to adopt the cost estimate by resolution, it is suggested, that before sending the cost estimate to the Superintendent, the board adopt the cost estimate by resolution and direct the clerk to transmit it to the Superintendent.)

The Superintendent is to review the total estimate and notify the board of county commissioners, no later than 20 days after receipt of the estimate, either of the following:

- there is agreement with the estimate; or
- any specific objections to the estimates and the reasons for the objections.

If the Superintendent agrees with the estimate, it shall become the “final total estimate of cost.” Failure of the Superintendent to make objections to the estimate by the 20th day after receipt of it shall be deemed to mean that the Superintendent is in agreement with the estimate. (While the law does not require the board of county commissioners to provide the Superintendent with the estimate by certified mail or any other specific fashion, commissioners should consider appropriate means to assure adequate documentation is available as to when the Superintendent actually received the estimate.)

If the Superintendent provides specific objections to commissioners, the board of county commissioners shall review the objections, may modify the original estimate, and shall send a revised total estimate to the Superintendent within 10 days after receiving the Superintendent’s objections. (Again, CCAO recommends that a board of county commissioners adopt any revised cost estimate by resolution.) The Superintendent must respond to the revised estimate within 10 days after its receipt. If the Superintendent agrees with it, it is to become the “final total estimated cost.” If the Superintendent fails to respond within those 10 days, the Superintendent shall be deemed to have agreed with the revised estimate. If the Superintendent disagrees with the revised estimate, the Superintendent is to send his/her specific objections to the commissioners.

Should the Superintendent have sent specific objections to the revised estimate within the required time, the probate judge of the county which has the greatest number of resident local school district pupils under the supervision of the ESC is to determine the final estimated cost and certify this amount to the Superintendent and the board of county commissioners prior to July 1. (Ohio Revised Code 3319.19)

Authorization for ESC to Obtain Office Space

It has been CCAO’s understanding that prior to Am. Sub. H.B. 94, ESC’s have had limited authority to obtain office space. Therefore, authority was sought and is given in Am. Sub.

H.B. 94 to authorize a governing board of an ESC to do the following:

- Acquire,
- Lease,
- Enter into a contract to purchase, lease or sell real and personal property, and
- Construct, enlarge, repair, renovate, furnish, or equip facilities, buildings, or structures for the ESC's purposes.

Furthermore, the governing board of an ESC may enter into loan agreements, including mortgages, for the acquisition of such property.

Beginning State Fiscal Year (Calendar Year)	State Mandated Obligation on Counties Based on Per Cent of Costs
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If the governing board exercises any of these powers to acquire office or classroom space, the board of county commissioners has no obligation to provide and equip offices and to provide heat, light, water, and janitorial services, unless there is an alternative agreement/contract as provided by Section 3313.37 (D) of the Revised Code (which is explained in this bulletin). (Ohio Revised Code 3313.37)

Authority to Issue County Debt to Help ESC Finance Office Space

Counties are authorized in Section 133.07 (C) (19) to issue securities for the acquisition of real and personal property for an ESC. These securities are not to be considered in calculating the net indebtedness of a county.

However, there must be a contract between a board of county commissioners and the ESC, as specified in Section 3319.19 of the Revised Code, whereby the ESC agrees to pay the county an amount equal to the debt charges on the issued securities on or before the date those charges fall due. (Ohio Revised Code 133.07 & 3313.37)

Alternative Agreements

Am. Sub. H.B. 94 also enables a board of county commissioners and governing board of an ESC to develop alternative agreements for space, equipment, and utilities, if the parties so desire. The goal of Am. Sub. H.B. 94 was to provide eventual definitive relief to commissioners from the state mandate of providing space, equipment, and utilities, and to provide local flexibility to commissioners to continue a relationship with an ESC if both parties desire.

Am. Sub. H.B. 94 allows a board of county commissioners and the governing board of an ESC to enter into a contract for providing and equipping offices and for providing heat,

light, water, and janitorial services for such offices. The term of any such contract is not to exceed 4 years and may be renewed for additional periods. Any such contract is to supersede the provisions of Division (D) (1) of Section 3319.19 of the Revised Code, which entails the phase-out language outlined above. If an alternative agreement is developed through a contract, the ESC can not be charged, at any time, any additional amount for space or services beyond the amount specified in such contract.

In the case of a joint-county ESC, each board of county commissioners in the counties served by the ESC must adopt a resolution approving an alternative agreement/contract in order for the contract to take effect. (Ohio Revised Code 3319.19)

Conclusion

CCAO would like to express its appreciation to the Taft Administration, including OBM Assistant Director Tim Keen, for their willingness to tackle this issue. CCAO also would like to recognize the support of the legislature and the extensive grassroots efforts county commissioners put forth in order to obtain legislative relief from this outdated state mandate.

CCAO also would like to express its appreciation to the Ohio County Superintendents Association for their review and comment on this bulletin, as well as their professionalism in responding to Am. Sub. H.B. 94 and this issue over many years.

If you have any questions about this bulletin, please contact Cheryl Subler, CCAO Senior Policy Analyst, at (614) 221-5627 or at csubler@ccao.org.

Sample Resolution

A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY
PROVIDING A WRITTEN ESTIMATE OF TOTAL COST TO THE
SUPERINTENDENT OF THE _____ EDUCATIONAL SERVICE CENTER
FOR
THE PERIOD BEGINNING ON JULY 1, _____ AND ENDING JUNE 30, _____.

Commissioner _____ moved the adoption of the following resolution:

WHEREAS pursuant to ORC Section 3319.19 (D) this Board is responsible for ____% of the final total estimated cost to provide and equip the office of the Superintendent of the Educational Service Center and to provide heat, light, water, and janitorial services for the period beginning July 1, _____ and ending June 30, _____;

(Note: insert appropriate percentage and years as follows:

80% beginning July 1, 2002 and ending June 30, 2003

60% beginning July 1, 2003 and ending June 30, 2004

40% beginning July 1, 2004 and ending June 30, 2005

20% beginning July 1, 2005 and ending June 30, 2006

0% beginning July 1, 2006 and thereafter)

WHEREAS the Board of County Commissioners of _____ County is required pursuant to ORC Section 3319.19 (C) to make a written estimate of total costs for the ensuing year not later than March 31; and

WHEREAS the Board of County Commissioners of _____ County must send the estimate to the Superintendent not later than April 5, _____; and

WHEREAS the Board of County Commissioners of _____ County and the Superintendent of the _____ Educational Service Center have not entered into an agreement pursuant to ORC Section 3319.19 (D) (2);

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of _____ County:

Section 1. The Board hereby adopts its written estimate of total cost, attached here to as Exhibit #1 for the period beginning July 1, _____, and ending June 30, _____.

Section 2. Exhibit #1 includes the statutorily required data and information as follows:

25. The total square feet of space to be utilized by the educational service center.
26. The total square feet of any common areas that should be reasonably allocated to the center and the methodology for making the allocation.
27. The actual cost per square feet for both the space utilized by and the common area allocated to the center.
28. An explanation of the methodology used to determine the per square foot cost.
29. The estimated cost of providing heat, light, and water, including an explanation of how the costs were determined.
30. The estimated cost of janitorial services, including an explanation of the methodology used to determine this cost.
31. Any other estimated costs that the Board anticipates it will incur and a detailed explanation of the costs and the rationale used to determine such costs.

Section 3. The Clerk is directed to transmit a copy of the resolution along with a copy of Exhibit #1 to the Superintendent not later than April 5, ____.

Section 4. The Clerk is further directed to transmit these materials to the Superintendent by certified mail, return receipt requested.

BE IT FURTHER RESOLVED that pursuant to ORC 3319.19 (C), the Superintendent shall review the total estimate and shall notify the Board not later than twenty days after receipt of the written estimate of either agreement with the estimate or any specific objections. Agreement by the Superintendent will result in this estimate becoming the final total estimate of cost. Failure by the Superintendent to make objections by the twentieth day after receipt shall be deemed to mean that the Superintendent is in agreement with the estimate.

Seconded by Commissioner _____

ROLL CALL VOTE:

ATTEST _____
County Commissioners Clerk

Sample Resolution

A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF COUNTY
REVIEWING THE OBJECTIONS MADE BY THE
SUPERINTENDENT OF THE _____ EDUCATIONAL SERVICE CENTER
CONCERNING THE TOTAL ESTIMATE OF COST
ADOPTED BY THIS BOARD ON _____ (date)
AND ADOPTING A REVISED TOTAL ESTIMATE OF COST

Commissioner _____ moved the adoption of the following resolution:

WHEREAS on _____ this Board adopted a total estimated cost of providing and equipping the offices of the _____ Educational Service Center and for providing heat, light, water and janitorial services for said offices; and

WHEREAS the Clerk transmitted a copy of the estimate by certified mail, return receipt requested on _____; and

WHEREAS on _____ the Superintendent notified this Board of specific objections to the estimate and the reasons for the objections;

NOW THEREFORE BE IT RESOLVED BY the Board of County Commissioners of _____ County as follows:

Section 1. The Board has reviewed the objections of the Superintendent and finds that

Option 1. The objections are not well taken and the Board re-adopts as the revised estimate of total cost the original estimate which is attached as Exhibit #1.

Option 2. Objections _____, _____, and _____ are well taken and objections _____ and _____ are not well taken, and the Board adopts a revised estimate of total cost which is attached as Exhibit #1.

Option 3. The objections made the Superintendent are well taken, and the Board adopts a revised estimate of total cost which is attached as Exhibit #1.

Section 2. The Clerk is directed to deliver the revised estimate of total cost to the Superintendent within 10 days after receipt of objections from the Superintendent by either certified mail, return receipt requested, or by personal service to the office of the Superintendent.

BE IT FURTHER RESOLVED that the Superintendent shall respond to the revised estimate of total cost within 10 days after receipt. Agreement by the Superintendent shall make the revised estimate of total cost the final total estimated cost. Failure of the Superintendent to respond within the required time shall be deemed as agreement by the Superintendent. If the Superintendent objects to the revised estimate, specific objections shall be sent to the Board within 10 days after receipt of the revised estimate, and the Probate Judge shall make a determination of the final estimated cost prior to July 1, ____.

Seconded by Commissioner _____

ROLL CALL VOTE:

ATTEST _____
County Commissioners Clerk