

PART IV

General Provisions Reform

The General Provisions in Part IV of SB 30 include policies affecting either all state agencies or a specific group of agencies such as the institutions of higher education. The governor, through the powers granted to him by the General Assembly, enforces the policies.

Prior to the state's modern constitution (1971), legislative Sessions were conducted on a biennial basis. If an emergency arose and the General Assembly was not in Session, a means was needed to respond, even if the remedy required actions constitutionally reserved for the legislature.

The policies are financial and cover, but are not limited to, such topics as spending deficits, capital outlay, tuition and fees, agency head compensation, surplus property, etc.

The governor or his designee can move money between programs in an agency. He can administratively increase an agency's general or nongeneral fund appropriations or withhold appropriations. He can even authorize new services to be paid from resources appropriated for existing services.

Decades have elapsed since the General Assembly has asked itself if this delegation of powers makes sense. For example, the structure of state government has changed dramatically since 1971. The General Assembly meets annually. The House and Senate money committees meet throughout the year. And, both money committees have professional staffs.

As part of the proposed reforms, Senate Finance staff re-examined, in terms of its relevancy, each of the major delegated powers. If the original problem or situation requiring the delegated

power can be addressed differently, then it is recommended that the specific power revert to the General Assembly.

For example, because a typical biennial budget is subject to three iterations (i.e., initial passage in the even-year session, amendments in the odd-year session, and “caboose” amendments in the next even-year session), the criteria for transferring funds, withholding appropriations or administratively appropriating funds can be restricted.

It is critical to point out that the reforms do not impede the governor from reacting to an emergency, which would be clearly defined as “a threat to life, safety, health, or property.” In such situations, he would be able to move money or increase appropriations.

In other cases, he would remain empowered to provide for unbudgeted cost increases for statutorily required services or federally mandated services, in order to continue those services at present levels.

In the final analysis, the objective is to ensure that the governor has the powers needed to carry out the policies articulated in the General Provisions without undue usurpation of constitutional authorities belonging to the legislature.

Attached is a “crosswalk” that summarizes the proposed changes.

HB/SB 30	Title	Proposed Cite	Comment
§ 4-1.01	Prerequisites for Payment	§ 4-1.01a	No substantive change
§ 4-1.02 a	Withholding Appropriations	§ 4-1.01 b	Expanded notifications to include G.A.
§ 4-1.02 b.1.	Withhold up to 15 Percent	§ 4-1.02 a	Defines withholding; removes 15% withholding cap
§ 4-1.02 b.2.	Withholding & reorganizations	§ 4-1.02 b.2.	Clarifying language
§ 4-1.03 a	General rules for appropriation transfers	§ 4-1.03 a-g	Provides specific guidance for appropriation transfers
§ 4-1.03 b	Higher Educ. GF appropriations	§ 4-1.02c	Clarifying language
§ 4-1.04 a.	Appropriation reductions due to less revenues	§ 4-1.02 d.1.	Substantive changes setting new withholding cap at 10%
§ 4-1.04 b	GF appropriation reductions due to NGF grants	§ 4-1.02 c	Monies unallotted can't be reallocated for any other purpose by the Gov.
§ 4-1.05 a	General rules to appropriate certain GF revenue	§ 4-1.04	Stricken; Restrictions on setting up new programs
§ 4-1.05 b.1-3.	General rules to appropriate certain NGF revenue	§ 4-1.04 b.1.-3	Clarifying language
§ 4-1.05 b.4.-5.	Reporting & year-end cash balances	§ 4-1.04 b.4.-5.	No substantive change
§ 4-1.06 a-b	Reappropriations of GF & NGF balances	§ 4-1.05 a-b	Requires Gov. to complete reappropriation process by September 1
§ 4-1.06 c	Reverting capital project balances	§ 4-1.05 c	No substantive change
§ 4-1.07 a	Limited continuation of apropiations	§ 4-1.06 a	No substantive change
§ 4-1.07 b	Limitations on cash disbursements	4-1.06 b	Limits cap on transactions; Requires APA concurrence along w/Comptroller
§ 4-1.08	Allotments	§ 4-1.07	No substantive change
§ 4-2.01 a	Soliciting NGF revenues	§ 4-2.01 a	Deletes provision requiring SCHEV approval of VCCS grants & research funds
§ 4-2.01b	Higher Educ. Tuition and Fees	§ 4-2.01 b	No substantive change
§ 4-2.01 c	Higher Educ. Planned excess revenues	§ 4-2.01 c	No substantive change
§ 4-2.02 a	State agency payments into GF	§ 4-2.02 a	No substantive change
§ 4-2.02 b	Receipt date of revenues	§ 4-2.02 c	No substantive change
§ 4-2.02 c	Leases for communications towers	§	Stricken
§ 4-2.03 a	Indirect cost recoveries policy	§ 4-2.03 a	Deletes provision permitting Comptroller to exempt agencies from policy
§ 4-2.03 b	Specific policies for non-Higher Educ. Agencies	§ 4-2.03 b	No substantive change
§ 4-2.03 c	Indirect costs & Higher Educ.	§ 4-2.03 c	No substantive change
§ 4-2.03 d	Regulations	§ 4-2.03 e	No substantive change
§ 4-3.01 a	General policies regarding deficits	§ 4-3.01 a	Clarifying language
§ 4-3.01 b	Unauthorized deficits	§ 4-3.01 b	No substantive change
§ 4-3.01 c	Authorized deficit cap	§ 4-3.01 c	No substantive change
§ 4-3.02 a	Authorized deficit loans	§ 4-3.02 a	Requires Money Committees to be informed w/in 5 calendar days of approval
§ 4-3.02 b	Anticipation loans	§ 4-3.02 b	No substantive change
§ 4-3.03	Capital leases	§ 4-3.03	No substantive change
§ 4-4.00	Capital projects	§ 4-4.00	No changes
§ 4-5.01 a	Claims settlement	§ 4-5.01 a	No changes
§ 4-5.01 b.1.-6.	Student financial assistance for Higher Educ.	§ 4-5.01 b.1.-6.	No changes
§ 4-5.02	Intergovernmental transactions	§	Stricken
§ 4-5.03	Charges for farm labor & farm commodities	§	Move to DOC's appropriation in Part 1 of the budget bill
§ 4-5.04 a	Employment of attorneys	§ 4-5.02 a	No substantive change
§ 4-5.04 b	General Assembly required studies	§ 4-5.02 b	No substantive change
§4-5.04 c	"ROI" & consulting services	§ 4-5.02 c	No substantive change

HB/SB 30	Title	Proposed Cite	Comment
§ 4-5.05 a	Changed cost factors	§ 4-5.03 a	Requires legislative appropriation to change factor instead of DPB approval
§ 4-5.05 b.1.	New state services	§ 4-5.03 b.1.	Deletes provision allowing Gov. to initiate new services w/monies in the Act
§ 4-5.05 b.2	New services in Higher Educ.	§ 4-5.03 b.2.	No substantive change
§ 4-5.05 b.3.	Reporting new services to General Assembly	§ 4-5.03 b.3.	No substantive change
§ 4-5.05 c.	Off-campus sites for Higher Educ.	§ 4-5.03 c.	Clarifying language
§ 4-5.05 d.1.	Performance Measurement-capital projects	§	Stricken
§ 4-5.05 d.2.	Performance Measurement-IT projects	§	Stricken
§ 4-5.05 d.3.-4.	Performance Measurement-budget related	§ 4-5.03 d.1-2.	No substantive change
§ 4-5.06 a	Recruiting Higher Educ. Students	§ 4-5.04 a	No substantive change
§ 4-5.06 b	IT facilities & services	§ 4-5.06 b	No changes
§ 4-5.06 c.1.a.-c.	Motor vehicles	§ 4-5.04 c.1.a.-c.	No substantive change
§ 4-5.06 c.2.	Aviation services	§	Move to DOAV's appropriation in Part 1 of the budget bill
§ 4-5.06 d	Drug purchases	§ 4-5.04 d	No substantive change
§ 4-5.06 e	Telecommunications production	§ 4-5.04 e	Only executive dept. agencies to be subject to Gov's approval
§ 4-5.06 f	Travel	§ 4-5.04 f	No changes
§ 4-5.06 g	Charge card purchases	§ 4-5.04 g	No changes
§ 4-5.07 a	Audits of nonstate agencies	§ 4-5.05 a	No substantive change
§ 4-5.07 b	Definition of nonstate agencies	§ 4-5.05 b	No substantive change
§ 4-5.07 c	Budgeting for interstate compact bodies	§ 4-5.05 c	No substantive change
§ 4-5.08 a	Gubernatorial authority to delegate powers	§ 4-5.06	Reflects changes advocated by Senate Finance & House Appropriations
§ 4-5.09	Lease Payments	§ 4-5.07	Deletes provision allowing Gov. to waive requirements managing leases
§ 4-5.10	Remedial education	§	Move to Sec. Of Education's appropriation in Part 1 of the budget bill
§ 4-5.11	Semiconductor manufacturing grant program	§ 4-5.8	No substantive change
§ 4-5.12	Disposition of surplus real property	§ 4-5.9	No substantive change
§ 4-5.13	Surplus property transfers for Econ. Dev.	§ 4-5.10	No substantive change
§ 4-6.00	Positions and Employment	§ 4-6.00	Brings treatment of agency heads more closely into alignment to other state workers
§ 4-7.01	Manpower control program	§ 4-7.01	Sets criteria for increasing position levels;deletes section on hiring freezes
§ 4-7.01.f.3.	More staff for Cabinet Secretaries	§	Stricken
§ 4-8.01	Governor's Reporting Requirements	§ 4-8.01	Dates unchanged unless specified elsewhere in the act
§ 4-8.01a	Providing financial information	4-8.01a	Provide data in electronic formats
§ 4-8.02	State agencies reports	§ 4-8.02	Requires submission of budget documents to money committees
§§ 4-9.00-4-12.00	Financial condition; severability; conflict w/ other laws; effective date	§§ 4-9.00-4-12.00	No changes

AMENDMENT	TITLE OF NEW SECTION	COMMENT
§ 4-0.01	Operating Policies	All appropriations are declared maximum and conditional on receipt of revenue
§ 4-2.02 b	Define GF revenue for Car Tax	Excludes one-time revenues & payments

PART V

Senate Bill 635 and Senate Bill 465 are incorporated into the budget bill as Part V. The text below is an amendment to Senate Bill 635 and will be included in Part V.

Intangible Holding Company Language

SB 635 language included in SB 30 would be amended to:

- 1) Add “safe harbor” related to transactions involving interest payments among related parties, if --
 - Related member has substantial business operations relating to interest-generating activities, in which at least 5 full-time employees are involved in administering the interest-generating activities; the interest payment is not related to transfer of an intangible asset; and the transaction has a valid business purpose other than avoiding payment of taxes, and one of the following applies:
 - Income is taxed in another jurisdiction;
 - Payments arise from a pre-existing contract in effect before the members became related, and the payments continue to be at arm’s length terms and conditions;
 - Related member engages in business with other non-related parties that generate over \$2.0 million annually;
 - Transaction was done at arm’s length rates and terms and meets any of the following:
 - Money flows to a non-related third party;
 - Associated debt is part of a systematic investment activity that aggregates funds of related members for economies of scale;
 - Associated debt relates to financing the expansion of business operations; or

- Associated debt is for the purpose of restructuring existing debt of related members.
- 2) Add “safe harbor” for intangible costs among related members, if the related member derives at least one-third of its gross revenue from the licensing of intangible property to parties who are not related and the related-member transactions are at rates and terms comparable to those applied to the non-related member(s);
 - 3) Define “arms length rates and terms.”