Ohio Legislative Service Commission

122nd House Bill Analysis

Sub. H.B. 215** This analysis was prepared before the report of the Senate Finance and Financial Institutions Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

122nd General Assembly

(As Reported by S. Finance and Financial Institutions)

(excluding appropriations, fund transfers, and similar provisions)

Reps. Johnson, Thomas, Sykes, O'Brien, Thompson, Perz, Core, Verich, Wilson, Mead, Metzger, Vesper, Fox, Sawyer, Garcia, Corbin, Schuler, Roman, Brading, Ogg, Krebs, Winkler, Clancy, Harris, Householder, Lewis, Mottley, Wise, Coughlin, Williams, Patton, Terwilleger, Stapleton, Padgett, Jacobson

GENERAL

- Requires the Department of Administrative Services rather than the Director of Budget and Management to set the maximum costs of printing state agency reports.
- Specifies that the statute that allows persons holding elective office to administer oaths of office to other elected or appointed officeholders does not prohibit notaries public from also administering oaths.
- Adds the President Pro Tempore of the Senate to the list of legislators and legislative employees to whom the oath of office may be administered by a member of the General Assembly or by a person authorized to administer oaths.
- Requires that General Assembly members receive a travel allowance at the standard mileage rate allowed by the Internal Revenue Service at 31 1/2¢ per mile (in 1997) rather than at 20 1/2¢ per mile as provided in current law.
- Requires payment of additional compensation of $150 per day and necessary traveling expenses to members of the Joint Committee on Agency **r**ule Review.
- Restores language that was erroneously omitted from Am. H.B. 182 of the 121st General Assembly when that act was enrolled that has a substantive effect on the fee a person holding or running for city office must pay when filing a financial disclosure statement with the Ohio Ethics Commission.
- Exempts any bill that contains an appropriation from the requirement that the Legislative Budget Office prepare a local impact statement of the bill after it receives second consideration in the House or Senate if the Legislative Budget Officer determines that the bill could result in a net additional cost to school districts, counties, townships, or municipalities from a new or expanded program or service that they would be required to perform or administer under the bill.
- Requires the Director of Budget and Management to establish procedures for the use of written, electronic, optical, or other communications media for approving payment vouchers.
- Specifies additional permissible uses for the appropriation made for the Governor-elect and requires the Director of Budget and Management to pay the reasonable and necessary expenses from the moneys appropriated for that purpose.
- Removes a requirement that some of the Governor's five appointees to the Governor's Residence Advisory Commission be from different political parties.

- Subjects the Public Utilities Commission's rules to legislative review by the Joint Committee on Agency Rule Review and possible invalidation by the General Assembly.
- Codifies the Treasury Education Fund for the support of finance-related education programs.
- Requires the Auditor of State to place registration fees the Auditor collects for education programs offered to county treasurers into the Auditor of State Training Program Fund instead of the County Treasurer Education Fund.
- Renames the Division of Real Estate in the Department of Commerce, and statutorily recognizes that the Division is responsible for performing certain professional licensing functions.
- Places the Division and Superintendent of Liquor Control under the direction, supervision, and control of the Director of Commerce in carrying out the Liquor Control Law.
- Requires the Department of Aging instead of the Department of Youth Services to act as fiscal agent for the Governor's Community Service Council and transfers the administrative duties of the Department of Youth Services for the Council to the Council on July 1, 1997.
- Authorizes the Women's Policy and Research Commission to sell publications issued by it or by the Women's Policy and Research Center.
- Makes changes to the Technology Investment Tax Credit Program and revises the role of an Edison Center in determining what Ohio entities are eligible to receive investments that qualify for the tax credit.
- Eliminates the requirement that the Minority Development Financing Advisory Board make recommendations to the Director of Development regarding the Department's loan guarantees to small businesses and corporations.
- Changes the conditions for application by a minority business for a surety bond from the Department of Development.
- Grants compensation increases, and makes compensation-related changes, applicable to state employees exempt from collective bargaining coverage and makes other personnel changes applicable to state employees.
- Renames three state funds used by the Department of Administrative Services.
- Removes the State Medical Board and the State Board of Pharmacy from the list of boards for which the Central Service Agency in the Department of Administrative Services provides routine support.
- Allocates responsibility among various state agencies for making reimbursements for occupying space in facilities owned or maintained by the Department of Administrative Services.
- Requires that service charges or fees the Department of Administrative Services collects from entities that receive surplus federal property be deposited in the Investment Recovery Fund.
- Removes the requirement for the collection of user charges to support the State Forms Management Control Center.
- Specifies that the Director of Budget and Management's certification that there is a balance in an appropriation that is not already obligated to pay existing obligations is applicable only to the current fiscal year.

• Eliminates from the Office of Budget and Management the State Clearinghouse for Applications for Federal Funds.
• Codifies language that repeatedly appears in capital appropriation bills concerning the release of money for "general projects" and "specific projects."
• Requires the Director of Budget and Management to identify specific programs for which the General Assembly has appropriated federal funds, and explicitly permits a state agency to spend such funds on the program without first obtaining an executive order.
• Eliminates the requirement that if federal funds received for a specific purpose are less than the amount appropriated for the purpose on the basis of such funds, the total appropriation of both federal and state funds for the purpose must be reduced in proportion to the amount of the reduction in federal funds.
• Provides that Ohio Public Employees Deferred Compensation Board members are trustees of deferred funds and must perform their duties solely in the interest of and for the exclusive benefit of participating employees, continuing members, and their beneficiaries.
• Replaces the members appointed to the National Museum of Afro-American History and Culture Planning Committee from lists of nominees submitted to the Governor by the National Association of Media Women, the National Caucus of Black School Board Members, the National Caucus of the Black Aged, and the National Education Association Black Caucus with four members appointed from the public at large.
• Requires that the Department of Administrative Services administer administrative records of the Ohio Veterans' Children's Home that are required to be maintained by approved records retention schedules.
• Requires the Department of Administrative Services to perform certain business and financial duties relating to the Ohio Veterans' Children's Home.
• Provides for the disposition of certain items of personal property remaining at the Ohio Veterans' Children's Home.
• Repeals uncodified provisions relating to the consolidation of the Home's funds, the disposition of the Home and items of personal property at the Home, and the lease of the Home's Cemetery, Chapel, and Museum.
• Abolishes the Joint Legislative Capital Finance Oversight Committee.
• Permits the Director of Commerce to enter into contracts with persons for the purpose of collecting and remitting to the Department of Commerce unclaimed funds, and excepts these contracts from competitive bidding process with Controlling Board approval.
• Permits the Director of Commerce the option to place unclaimed funds in the Director's possession with a financial organization besides in the Unclaimed Funds Trust Fund, and gives the Director greater discretion as to the manner in which the Director may withdraw funds from financial institutions and from holders of unclaimed funds as necessary for the various purposes that such funds currently may be used by law.
• Requires the Ohio Housing Finance Agency (OHFA) to adopt rules to govern procedures for funding multifamily housing constructed with the assistance of the Agency or pursuant to a program the Agency operates or administers.
• Specifies that the rules OHFA adopts to govern the funding of multifamily housing projects must require that notice of the project be sent to local officials, that OHFA provide a written response to objections it receives from particular local officials, that a public hearing be held in the county in which the project will be located, and that funding be

contingent upon approval of the project by the elected legislative body having jurisdiction over the location of the project.

- Prohibits using funds from the Low- and Moderate-Income Housing Trust Fund to finance any legal services other than the usual and customary legal services associated with the acquisition of housing.
- Requires the Secretary of State to prescribe certain forms related to the perfection of a security interest under Chapter 1309. of the Revised Code and requires secured parties to use the forms in filings for the perfection of security interests; specifies a $9 filing fee for each such statement except for a termination statement; requires a filing officer, upon request, to furnish a copy of a filed financing statement or statement of assignment for a uniform fee of "actual cost per page"; and makes other modifications to the law dealing with the perfection of a security interest.
- Amends the Foreign Corporations Law to eliminate the annual reporting requirement for foreign corporations and the payment of a license fee in initial and additional installments based on the number of shares represented in Ohio.
- Places a cap of $100,000 on the fees that can be charged a domestic corporation authorized to issue shares of capital stock for filing its articles of incorporation, a certificate of amendment to its articles, or a certificate of reorganization or dissolution.
- Modifies the criteria a capital facility must meet in order to be considered an "Ohio arts facility" or a "state historical facility."
- Modifies the time allowed for the Division of Securities to perform certain duties with respect to the review of control bids for any securities of a subject company.
- Expressly prohibits a securities salesperson from selling securities in Ohio without being licensed and thereby makes a violation a fifth degree felony and subject to a fine.
- Exempts contracts the Ohio Arts and Sports Facilities Commission administers from the Capital Donations Fund from various requirements generally applicable to public contracts, including requirements concerning central purchasing, competitive bidding, minority set-asides, and the awarding of contracts to certain campaign contributors.
- Changes the procedure by which a board of elections leases its offices or rooms so that the board of county commissioners may reject the lease before an agreement is entered into.
- Requires the state to bear the cost of an election in a precinct that is open solely for the purpose of submitting to the voters a statewide ballot issue, and requires the state to bear the cost of the advertising of statewide ballot issues in newspapers when the advertising is required by law.
- Requires the Secretary of State to adjust the maximum amount a judge of an election may receive in compensation per diem to reflect increases in the federal Minimum Wage Law, and makes other changes regarding those judges' compensation.
- Requires that State Lottery Commission members be paid a $5,000 annual salary, payable in monthly installments.
- Requires the Director of the State Lottery Commission to include an accounting of all transfers made from any lottery funds in the Treasurer of State's custody to benefit education, as part of the relevant financial information made available monthly to the Commission.
- Permits the Director of the State Lottery Commission to enter into agreements to assist

organizations that deal with problem gambling.

- Requires fees collected and money received by the Ohio Athletic Commission be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund rather than to the credit of the General Revenue Fund.
- Revises penalties for violation of energy conservation rules applicable to specified buildings.
- Abolishes a requirement that the Board of Building Standards adopt rules for thermal efficiency for certain buildings.
- Makes revisions in the laws governing group life, credit life, and credit accident and health insurance.
- Exempts employees of the House of Representatives and the Senate from the Ohio Minimum Wage Law.
- Makes the Department of Administrative Services responsible for reviewing, processing, certifying or contesting, and administering all workers' compensation claims filed by employees of state agencies, offices, institutions, boards, and commissions, except for public colleges and universities.
- Authorizes the Department to contract with a third party administrator to administer claims arising under the state's occupational injury leave program.
- Permits the Department to select a managed care organization for state agencies, offices, institutions, boards, and commissions, except for public colleges and universities, that have not selected one.
- Permits the Administrator of Employment Services to sell real estate no longer needed by the Bureau of Employment Services and sets conditions on the use of proceeds from any such sale.
- Creates the Bureau of Employment Services Building Consolidation Fund and the Bureau of Employment Services Building Enhancement Fund to retain the proceeds from the Administrator's sale of real estate no longer needed by the Bureau.
- Allows the use of amounts in the Liquor Control Fund to pay the operating expenses of the Liquor Control Commission.
- Authorizes D-5 liquor permit holders who operate agency liquor stores to offer for sale tasting samples of beer, wine, and mixed beverages.
- Allows liquor-sales agents appointed by the Division of Liquor Control to provide and accept gift certificates and to accept credit cards and debit cards for the retail purchase of spirituous liquor.
- Prescribes conditions under which a manufacturer may secure and hold a financial interest in the establishment, maintenance, or promotion of the business or premises of any C or D liquor permit holder.
- Eliminates the requirement of Am. Sub. H.B. 438 of the 121st General Assembly, effective July 1, 1997, that when the Registrar of Motor Vehicles receives a notice from a clerk of court or traffic violations bureau that a person who was issued a traffic citation failed to present proof of financial responsibility to the law enforcement officer and to the court or bureau, the Registrar must conduct an investigation to determine whether the person was operating the motor vehicle without proof of financial responsibility being in effect.
- Clarifies provisions requiring the State Board of Examiners of Architects to determine the

amounts of fees for applications for examination and certification as an architect in Ohio.

- Changes the final destination of fine payments received by the State Board of Cosmetology from the Cosmetology Adjudication Fund to the Occupational Licensing and Regulatory Fund.
- Increases existing license and renewal fees that may be charged in connection with the regulation of embalmers, funeral directors, and the operation of funeral homes, and increases penalties for late renewals of embalmers and funeral directors.
- Repeals a requirement that most boards and commissions that conduct a licensing examination in connection with a regulated occupation or profession do so at the state fairgrounds in Columbus, Ohio.
- Eliminates the authority of the Director of Budget and Management to transfer excess money from the Occupational Licensing and Regulatory Fund to the General Revenue Fund.
- Eliminates the requirement that the Columbus office of the Public Utilities Commission (PUCO) be open on Saturdays.
- Requires that notice, by the PUCO of the granting of a rehearing, be sent by regular, instead of registered, mail.
- Changes the fees chargeable by the PUCO and Power Siting Board for copies of documents.
- Creates the Public Utilities Commission Operating Fund and the Consumers' Counsel Operating Fund and requires that the sums assessed against railroads and public utilities to pay for administering PUCO, and the sums assessed against public utilities to pay for administering the Office of the Consumers' Counsel, be deposited into the new funds rather than into the General Revenue Fund.
- Reduces from four weeks to two weeks the frequency of publication by the PUCO of advance newspaper notice regarding a permanent abandonment of utility service or facilities.
- Eliminates a requirement that the PUCO publish advance newspaper notice in affected counties of a hearing on a complaint filed against a public utility.
- Eliminates a requirement that, if such a complaint is filed, the PUCO serve notice on the complainants and utility not more than 30 days before a hearing is held (but leaves unchanged the requirement that the notice be provided not less than 15 days beforehand).
- Reduces from three, to two, the number of weeks in which the PUCO must publish in affected counties advance newspaper notice of a hearing on a complaint filed against a telephone company.
- Authorizes the PUCO under specified circumstances to eliminate certain data reporting requirements by an electric light company regarding its fuel procurement practices.
- Eliminates the requirement that the PUCO conduct a monthly review of fuel cost and use data provided by a company.
- Eliminates certain specified reports by the PUCO relating to fuel procurement and use for electric generation and associated PUCO regulation.
- Extends by two years a date affecting the PUCO's rule-making authority regarding hazardous materials transportation and similarly extends the life of the Hazardous Materials Advisory Panel.

- Makes changes affecting the calculation of the per-truck fee that is a component of the apportioned per-truck registration fee paid by carriers of hazardous materials.
- Makes a change affecting the calculation of background investigation fee for a uniform permit as a carrier of hazardous wastes.
- Eliminates the Hazardous Wastes Background Investigation Fund (HWBIF) and provides that background investigation fees be credited instead to the Hazardous Materials Registration Fund.
- Extends by two years a date affecting the crediting of forfeitures as between the General Revenue Fund and the Hazardous Materials Transportation Fund (HMTF), which is used to fund hazardous materials emergency response planning and training.
- Regarding the tourist-oriented directional sign program operated by ODOT, expands the definition of an eligible commercial activity to include an antique shop, craft store, or gift store.
- Requires the Director of Transportation to issue highway construction specifications that facilitate the reuse in such projects of petroleum contaminated sands, gravel, and soils that are removed during the repair, removal, or closure of underground storage tanks that are under the jurisdiction of the Chief of the Bureau of Underground Storage Tanks.
- Places in the classified civil service certain employees of the Governor's Office of Veterans Affairs and requires that technical personnel of the Office be honorably discharged or honorably separated veterans of the United States armed forces.
- Requires the Legislative Service Commission to conduct a study to identify possible sources of funding to be used by the Division of Travel and Tourism in the Department of Development to encourage residents of other states to travel to Ohio.
- Revises the authority granted to the Director of Public Safety and the Registrar of Motor Vehicle concerning random checks to verify the proof of financial responsibility by directing the Registrar to establish a pilot program by January 1, 1998 and requiring that a permanent program be established by January 1, 2000.
- Includes a default provision relating to effective dates, stating that except as specifically provided in the bill, the codified and uncodified sections of law in it are not subject to the referendum and go into immediate effect.
- Requires that the Stabilization Reserve Fund, created under the Medical Malpractice Insurance Law, remain in existence until all Fund moneys are distributed.
- Creates the Professional Services Contract Review Committee to review all contracts for professional services entered into by the Departments of Rehabilitation and Correction, Mental Health, Mental Retardation and Developmental Disabilities, and Youth Services for fiscal years 1996 and 1997.

CONTENT AND OPERATION

Maximum costs for printing agency reports

(secs. 3.17 and 125.42)

Current law requires the Director of Budget and Management annually to set a maximum cost per page and a maximum total cost for the printing by any board, commission, council, or other public body of the state of any annual report or other report that it is required by law to produce. No board, commission, council, or other public body is authorized to expend or incur the expenditure of any amount in excess of these maximum amounts without the Director's prior approval. The maximum amounts do not apply to courts or the General Assembly. The bill transfers the duty to set these maximum printing costs from the Director of Budget and Management to the Department of Administrative Services.

Administering of oaths of office by notaries

(sec. 3.24)
Current law allows every person holding an elected office under the Constitution or laws of Ohio to administer oaths of office to persons elected or appointed to office if those persons are elected or appointed to offices within the geographical limits of the elected officer's constituency, except that members of the General Assembly may administer oaths of office to persons elected or appointed to any office. Current law specifies that this provision does not forbid the judge of a court established by the Ohio Constitution from administering an oath to any person. The bill specifies that this provision also does not forbid a notary public commissioned in Ohio from administering an oath to any person.

Administration of the oath of office to the President Pro Tempore of the Senate

(sec. 101.23)

Under current law, the oath of office may be administered to the following persons by a member of the General Assembly or by a person authorized to administer oaths: senators and representatives, the President of the Senate, the Speaker and Speaker Pro Tempore of the House of Representatives, the Clerk of the Senate, the Executive Secretary and Legislative Clerk of the House of Representatives and their assistants, and the Sergeant at Arms and Assistant Sergeant at Arms of each house.

The bill allows a member of the General Assembly or a person authorized to administer oaths to administer the oath of office to the President Pro Tempore of the Senate, in addition to the persons named in the preceding paragraph.

Travel allowance for General Assembly members

(sec. 101.27)

Current law requires that each member of the General Assembly receive a travel allowance of 20 1/2¢ per mile each way for mileage once a week during the session from and to the member's place of residence, by the most direct highway route of public travel to and from the seat of government, to be paid quarterly on the last day of March, June, September, and December of each year. The bill requires instead that each member receive a travel allowance per mile each way at the standard mileage rate allowed by the Internal Revenue Service for computing employee car expenses. According to the 1997 Federal Tax Guide, the 1997 standard mileage rate is 31 1/2¢ per mile.

Additional compensation for members of the Joint Committee on Agency Rule Review

(sec. 101.35)

Existing law generally prohibits General Assembly members from serving on any committee or commission that is authorized or created by the General Assembly and that provides other compensation than actual and necessary expenses (sec. 101.26, not in the bill). The bill provides that members of the Joint Committee on Agency Rule Review (which consists of five House members and five Senate members) must be paid at the per diem rate of $150, and their necessary traveling expenses, when engaged in their duties as members of the Committee. These amounts must be paid from the funds appropriated for the payment of expenses of legislative committees.

The bill provides in temporary law that these new benefits are available only to a member of the Committee whose term in the General Assembly begins on or after the provision's effective date.

Financial disclosure statement filing fee

(sec. 102.02(E))

Under current law, every person who holds or is a candidate for elective office in this state must file a financial disclosure statement with the appropriate ethics commission (sec. 102.02(A)); for most of those persons, the appropriate ethics commission is the Ohio Ethics Commission (sec. 102.01(F)). The filing fee for persons required to file a financial disclosure statement with the Commission is $25 and may be paid by any person, unless a different fee is imposed by law and unless the law specifies that the officeholder or candidate must pay the fee (sec. 102.02(E)(1)). Under the Ethics Law prior to the enactment of Am. H.B. 182 of the 121st General Assembly (which did not deal with filing fees), the filing fees in the amounts indicated for the following offices had to be paid by the officeholder or candidate: for state office, except member of the State Board of Education, $50; for the office of member of the United States Congress or member of the General Assembly, $25; for county office, $25; for city office, $10; for the office of member of the State Board of Education, $10; for the office of member of a board of education or educational service center governing board, $5; and for the position of business manager, treasurer, or superintendent of a school district or educational service center, $5. When Am. H.B. 182 was enrolled, the fee for city office was omitted from the provision of the Ethics Law that specifies the filing fees for particular offices and that requires the officeholder or candidate to pay the fee. The effect of this

omission was that the fee for city office was no longer part of that provision, as if it had been repealed (*Ritzman v. Campbell* (1915), 93 Ohio St. 246, Syllabus Branch 2). Therefore, the filing fee for a person holding or a candidate for city office is $25, rather than $10, and that person is not required to pay the fee himself or herself.

The bill corrects the omission made when Am. H.B. 182 was enrolled, restoring the filing fee for city offices to $10 and requiring the officeholder or candidate to pay that fee (sec. 102.02(E)(2)).

Exemption of appropriation bills from local impact statements

(sec. 103.143)

The bill exempts any bill that contains an appropriation from the requirement that the Legislative Budget Office prepare a local impact statement after the bill receives second consideration. Specifically:

(1) Whenever a bill introduced into the House or Senate receives second consideration, the Legislative Budget Officer must review it immediately and determine whether the bill could result in a net additional cost to school districts, counties, townships, or municipalities from any new or expanded program or service that they would be required to perform or administer.

(2) If the Legislative Budget Officer determines that the bill could result in such a cost, the Legislative Budget Office must prepare a local impact statement as soon as possible, but not later than 30 days after the bill is scheduled for a first hearing in the house in which the bill originated or not later than 30 days after being requested to do so by the chairman of the committee. Copies of the statement must be sent to the Governor, Speaker of the House, President of the Senate, sponsor of the bill, minority leaders of both houses, and chairman of the committee to which the bill has been assigned.

(3) Immediately after determining the potential for a net additional cost, the Legislative Budget Officer must notify the sponsor of the bill, chairman of the committee to which the bill has been assigned, and presiding officer and minority leader of the house in which the bill originated by signing and dating a statement to be delivered to them.

(4) No bill for which a local impact statement is required may be voted out of committee until after the committee members have received and considered the statement (or revised statement if the bill was amended in committee) unless the bill is voted out of committee by two-thirds of its members.

(5) Any time a bill is amended, LBO must, as soon as reasonably possible, revise the local fiscal impact statement to reflect changes made by amendment.

Solid Waste Law study

(Section ____)

The bill requires the State and Local Government Commission to study the costs of implementing the Solid Waste Law since its amendment in June 1988. A report of that study must be provided to the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House and Senate standing committees that deal with environmental issues, within one year after this provision's effective date.

Means of approving payment vouchers

(secs. 103.21, 126.21, 171.05, 924.10, 3701.502, 3769.10, 3770.06, 3773.56, 4117.02, 4123.31, 4123.418, 4701.20, 4703.50, 4709.06, 4713.19, 4715.06, 4717.09, 4723.31, 4725.06, 4725.45, 4729.65, 4731.38, 4733.08, 4736.06, 4740.03, 4741.03, 4747.03, 4753.04, 4757.31, 4759.08, 4901.19, 5119.53, and 5703.21; Sections 212 and 232)

The bill requires the Director of Budget and Management to establish procedures for the use of written, electronic, optical, or other communications media for approving payment vouchers. A voucher is an authorization prepared for making a payment and usually indicates the accounts in which the transaction is to be recorded. Current law requires certain designated officials to sign the vouchers of certain state boards, commissions, councils, and departments. The bill requires that the vouchers of these boards, commissions, councils, and departments be "approved" rather than "signed" by the officials designated in current law.

Appropriation for the Governor-elect

(secs. 107.30 and 126.26)

Under existing law, in each year in which a new Governor is elected, a gubernatorial transition committee is appointed. The Director of Budget and Management chairs the committee. (Sec. 107.29, not in the bill.) The General Assembly is required to make an appropriation from unearmarked funds in the General Revenue Fund for the purchase of supplies and equipment and the payment of salaries for the Governor-elect's immediate staff during the period of transition. The bill

adds to the Director of Budget and Management's duties as chairperson of the transition committee a duty to pay the reasonable and necessary expenses incurred by or on behalf of the Governor-elect from money appropriated for that purpose. The bill also requires that the appropriation for the Governor-elect be made to the Office of Budget and Management, and adds the following to the list of purposes for which the appropriation may be used: rental or other charges for office space, the rental or purchase of equipment and furniture, printing and distribution of the inaugural address, and other reasonable expenses of the Governor-elect during the period of transition.

Appointees to the Governor's Residence Advisory Committee

(sec. 107.40)

The Governor's Residence Advisory Commission, which provides for the acquisition and conservation of furnishings for the Governor's residence, consists of nine members, five of whom are appointed by the Governor with the advice and consent of the Senate. The bill removes a requirement that no more than three of the Governor's appointees to that Commission be affiliated with the same political party.

Legislative review of Public Utilities Commission rules

(secs. 111.15 and 119.01; Sections 152 and 153)

Existing law requires that a rule-making agency or a board, commission, department, division, or bureau of government file the full text of a proposed rule, amendment, or rescission with the Joint Committee on Agency Rule Review (JCARR), which is a permanent legislative committee that was created in the General Assembly in 1978. JCARR is composed of ten members, five from the House of Representatives and five from the Senate. JCARR reviews rules and may recommend to the General Assembly that it adopt a concurrent resolution invalidating a proposed rule, amendment, or rescission if it finds that (1) the rule-making agency has exceeded the scope of its statutory authority in proposing the rule, amendment, or rescission, (2) a conflict exists with another rule, amendment, or rescission, or with the legislative intent of the statute under which the rule-making agency proposed the rule, amendment, or rescission, or (3) the rule-making agency failed to prepare a complete and accurate rule summary and fiscal analysis of the rule, amendment, or rescission. This review procedure is known as "legislative review and invalidation."

The bill clarifies any ambiguity in existing law by providing that the Public Utilities Commission (PUC) is a "commission," when adopting rules under a federal or state statute, and a "rule-making agency," that falls under the requirement that it submit its rules for legislative review and invalidation. The bill ratifies any previous rules, adopted prior to the effective date of the amended provision, that the PUC did not file with JCARR for legislative review, insofar as that omission otherwise may raise a question with respect to the validity of the rule.

Under existing law, each state agency is required to assign a review date for each of its rules that are subject to legislative review. The review date must be not later than five years after the rule's effective date. A rule is reviewed to determine whether it should be continued, amended, or rescinded, taking into consideration the purpose, scope, and intent of the statute under which it was adopted; whether it needs amendment or rescission to give more flexibility at the local level or to eliminate unnecessary paperwork; or whether it duplicates, overlaps with, or conflicts with other rules.

Uncodified law in the bill provides that within 180 days of the effective date of the provision amended by the bill, the PUC must assign a review date, in accordance with the five-year cyclical rule review requirement, to any rules adopted prior to the effective date of the provision amended by the bill.

Treasury Education Fund

(sec. 113.21)

The bill codifies the Treasury Education Fund, which was created in uncodified law in the last two biennial operating appropriations acts as a fund in the state treasury. The Fund must be used to support various education programs, such as programs on capital project financing, local government investment, linked deposits, and other finance-related topics. The Fund is to consist of gifts, grants, and contributions received by the Treasurer of State for the Fund's purposes. The Treasurer of State must administer the Fund and adopt rules for the distribution of its money. Money in the Fund is not to be used to replace other money expended by local programs for similar purposes.

Registration fees for education programs offered by the Auditor of State and the Treasurer of State

(secs. 117.44 and 321.46)

Current law requires the Auditor of State and the Treasurer of State to conduct education programs for persons elected for the first time to the office of county treasurer, and to hold annual continuing education programs for persons who continue to hold the office of county treasurer. The Auditor of State determines the manner and content of the programs

in the subject areas of governmental accounting and portfolio reporting and compliance, and certain other areas, and the Treasurer of State determines the manner and content of the programs in the subject areas of investments and cash management and certain other areas.

The Auditor of State and the Treasurer of State may charge counties a registration fee that will meet actual and necessary expenses of the training of county treasurers. The County Treasurer Education Fund is used by both of these officers to pay the actual and necessary expenses of any education programs they hold for county treasurers as described in the preceding paragraph, and the registration fees collected are paid into that Fund.

The bill requires that only the Treasurer of State use the County Treasurer Education Fund to pay the expenses of the education programs, and that registration fees collected by just the Treasurer of State for the programs be paid into that Fund. The bill requires that registration fees collected by the Auditor of State for the education programs be paid into the Auditor of State Training Program Fund, established in current law, and requires the Auditor of State to use that Fund to pay the expenses of those programs. The Auditor of State Training Program Fund is currently used to pay the expenses of the education training programs conducted by the Auditor of State to train persons elected for the first time as township clerks, city auditors, and village clerks, and to pay the expenses of the annual training of village clerks; registration fees paid for those programs are placed into that Fund.

The bill clarifies that the Auditor of State and the Treasurer of State may each charge a registration fee for the education programs they offer to county treasurers.

Division of Real Estate renamed; professional licensing functions recognized

(secs. 121.04, 121.08, 4707.011, 4735.01, 4735.05, 4749.02, 4763.01, and 4767.01; Section 156)

The bill changes the name of the Division of Real Estate in the Department of Commerce to the Division of Real Estate and Professional Licensing. Likewise, the office of Superintendent of Real Estate is renamed the office of Superintendent of Real Estate and Professional Licensing.

To statutorily recognize that the Division of Real Estate is currently performing certain professional licensing functions, the bill expressly states that the Division of Real Estate and Professional Licensing, through the Superintendent, is responsible for administering the Auctioneers Law (Chapter 4707.), the Real Estate Brokers Law (Chapter 4735.), the Private Investigators and Security Services Law (Chapter 4749.), the Real Estate Appraisers Law (Chapter 4763.), and the Cemetery Registration Law (Chapter 4767.).

Status of the Division of Liquor Control within the Department of Commerce

(secs. 121.07 and 4301.10; Section 211)

Existing law specifies that on July 1, 1997, the Department of Liquor Control becomes the Division of Liquor Control within the Department of Commerce. The law provides that in acquiring spirituous liquor and selecting and monitoring state liquor agencies, in issuing permits, in operating the Beer and Wine Section, and in performing or exercising all other regulatory functions, powers, or duties vested by law in the Superintendent of Liquor Control, the Superintendent of Liquor Control and the Division are independent of and not subject to the control of the Department or Director of Commerce. Existing law also provides that certain administrative functions of the Division to be determined by the Director of Commerce are subject to the Director's final authority.

The bill removes the provisions described in the immediately preceding paragraph. Thus, although current law requires the Division and Superintendent of Liquor Control to perform certain duties, and authorizes them to exercise certain powers, in carrying out the Liquor Control Law, the bill's repeal of the provisions described in the immediately preceding paragraph also makes the Superintendent and the Division subject to a provision of existing law that places them under the direction, supervision, and control of the Director of Commerce and requires them to perform such duties as the Director prescribes.

Transfer of duties regarding the Governor's Community Service Council

(sec. 121.40; Section 176)

Existing law requires the Department of Youth Services to serve as the fiscal agent to the Governor's Community Service Commission. The bill requires the Department of Aging instead of the Department of Youth Services to act as fiscal agent for the Governor's Community Service Council and transfers the administrative duties of the Department of Youth Services for the Council to the Council on July 1, 1997. The bill provides for the transfer of employees, books, and other items related to the transfer of fiscal agent authority and administrative authority from the Department of Youth Services to the Department of Aging.

The bill defines "fiscal agent" to mean technical support, including the following: (1) preparing and processing payroll and other personnel documents that the Council executes as the appointing authority, (2) maintaining ledgers of accounts and reports of account balances, and monitoring budgets and allotment plans in consultation with the Council, and (3) performing other routine support services that the **d**irector of **a**ging or the Director's designee and the Council or its designee consider appropriate to achieve efficiency.

The bill confers additional fiscal authority on the Council, including the following: (1) sole authority to draw funds for any and all federal programs in which the Council is authorized to participate, (2) sole authority to expend funds from their accounts for programs and any other necessary expenses the Council may incur and its subgrantees may incur, and (3) responsibility to cooperate with and inform the Department of Aging as fiscal agent to ensure that the Department is fully apprised of all financial transactions.

The bill authorizes the **d**epartment of Aging to determine fees to be charged to the **c**ouncil, which must be in proportion to the services performed for the **c**ouncil. The bill requires the Council to pay fees owed to the Department from a general revenue fund of the Council or from any other fund from which the Council's operating expenses are paid.

Women's Policy and Research Commission sale of publications

(sec. 121.52)

Under current law, the Women's Policy and Research Center is under the supervision of the Women's Policy and Research Commission. The Center's duties include making available to the appropriate appointing authorities lists of persons qualified for appointment to positions in state government, educating the public on the status of women and on the impact of public policy on women, issuing reports and recommendations regarding women's policy issues, and analyzing current and proposed public policies to determine their impact on women and reporting the analyses to the appropriate authorities.

The Women's Policy and Research Commission, among its other functions, establishes policies and procedures governing the operation of the Center and furnishes an annual written report of its activities. The Commission is authorized to accept gifts, donations, benefits, and other funds from any public agency or private source to carry out any or all of the Commission's or Center's powers or duties.

All expenses incurred by the Commission and the Center in carrying out their duties are payable solely from the Commission's funds. All gifts, donations, benefits, and other funds received by the Commission are deposited in the Women's Policy and Research Commission Fund in the state treasury.

The bill authorizes the Commission to sell publications issued by it or by the Center. All proceeds from the sale of these publications must be deposited in the Women's Policy and Research Commission Fund.

Changes to the Technology Investment Tax Credit Program

(secs. 122.15, 122.151, 122.152, 122.153, 122.154, and 122.29)

Under existing law, an investor or group of investors who propose to make an investment in certain Ohio entities engaged in a qualified trade or business that primarily involves research and development, technology transfer, or the application of new technology developed through research and development or acquired through technology transfer, may apply to an Edison Center for a nonrefundable tax credit against any state tax liability. The Edison Center determines whether the investor should be recommended for the tax credit. One of the eligibility requirements the Center considers is that the Ohio entity cannot be a related member of the investor, as defined in the corporation franchise tax law.

The Edison Center sends a written notice of its initial determination of eligibility for the tax credit to the Industrial Technology and Enterprise Advisory Council. The Council establishes a three-person subcommittee to review the determination and the subcommittee issues a final determination of approval or disapproval of the tax credit.

Existing law also provides that a business may apply to an Edison Center for a determination as to whether the business is an Ohio entity eligible to receive investments that qualify an investor for a tax credit. To qualify as an "Ohio entity," the entity must have its principal place of business in Ohio and have at least 50% of its gross assets or employees in this state. The Edison Center notifies the business of its final determination.

The bill specifies that an investment in an Ohio entity must be in money, which is defined as United States currency, or a check, draft, or cashier's check for United States currency, payable on demand and drawn on a bank. The bill expands the qualified trade or business in which an investor may invest to include biotechnology, but not any trade or business involving a hospital, a private office of or group practice of licensed health care professionals, or a nursing home.

The bill revises the qualifications for a business to be an Ohio entity. The entity must have its principal place of business

in Ohio and have at least 50% of its gross assets and 50% of its employees in this state.

The bill also revises the eligibility requirements for an investor. The investor cannot be an insider, which the bill defines as an individual who owns, controls, or holds power to vote 5% or more of the outstanding securities or a business. Additionally, if a group of investors apply for the tax credit, an Edison Center may disqualify from the group any investor who is not eligible and recommend that the remaining investors in the group receive the tax credit. The bill limits a group to not more than 20 investors.

The role of the Edison Center becomes more advisory in the review of Ohio entities eligible to receive investments that qualify for the tax credit. Under the bill, the Center issues an initial determination of eligibility, rather than the final determination, and forwards the initial determination to the Industrial Technology and Enterprise Advisory Council. The Council reviews the Center's initial determination and makes the final determination of whether a business is an Ohio entity eligible to receive investments of money that qualify for the tax credit.

The bill authorizes the Director of Development to adopt rules to implement the Technology Investment Tax Credit Program.

Department of Development loan guarantees to small businesses and corporations

(sec. 122.73)

Current law requires the Minority Development Financing Advisory Board to make recommendations to the Director of Development regarding applications for certain types of financial assistance under programs administered by the Department of Development. The bill eliminates the requirement that the Board make such recommendations to the Director regarding the Department's loan guarantees to small business and corporations. The Board must continue to advise the Director on the administration of that loan guarantee program.

Applications for surety bonds for minority businesses

(sec. 122.89)

Current law allows the Director of Development to execute bonds as surety for minority businesses as principals, on contracts with the state, any political subdivision or instrumentality of the state, or any person as the obligee. The Director, with the advice of the Minority Development Financing Advisory Board, is required to adopt rules under the Administrative Procedure Act establishing procedures for application for surety bonds by minority businesses and for review and approval of applications. The Board's rules must provide, among other things, that in order to apply for a bond to the Director, the minority business must submit documentation, as the Director requires, to demonstrate that a minority business has been denied a bond by two surety companies. The bill provides that the rules described in the preceding sentence must require the minority business to demonstrate that it has either (1) been denied a bond by two surety companies or (2) applied to two surety companies for a bond and, after a 60-day period, has neither received nor been denied a bond.

Compensation increases, and compensation-related changes, applicable to state employees exempt from the Public Employees' Collective Bargaining Law; other personnel changes applicable to state employees

(secs. 124.136, 124.15, 124.152, 124.18, 124.181, 124.34, 124.382, 124.383, 124.385, and 124.391)

The bill grants, on the first day of the pay periods that include July 1, 1997, July 1, 1998, and July 1, 1999, pay raises of approximately 3% to "exempt" employees (state employees paid directly by warrant of the Auditor of State who are exempt from the Public Employees Collective Bargaining Law and whose positions are included in the job classification plan established by the Director of Administrative Services) (sec. 124.152). The bill also authorizes a merit pay supplement of up to 1 1/2% of their step rate for exempt employees of the office of the Treasurer of State. The rate at which this supplement is granted must be based on performance standards established by the Treasurer of State, and any supplements must be administered on an annual basis. (Sec. 124.181(O).)

The bill allows exempt employees, legislative employees, Supreme Court employees, and employees of the Governor's office to elect to receive $2,000 for adoption expenses in lieu of receiving four weeks of paid maternity leave benefits (sec. 124.136(A)(2)). The bill excludes the use of sick leave from being considered active pay status for purposes of earning overtime pay or compensatory time for employees paid directly by warrant of the Auditor of State and provides that, in the case of employees not so paid, their appointing authority must determine whether sick leave should be considered active pay status for these purposes (sec. 124.18(A) and (D)).

The bill also provides that when state employees paid directly by warrant of the Auditor of State use sick leave, the compensation they receive is at a rate determined by the Director of Administrative Services, rather than at the employee's hourly base rate of pay as required under current law, and that when such state employees choose to receive a

cash benefit for unused sick leave at the end of the year, the benefit is determined by the Director of Administrative Services, rather than being paid at the rate of one hour at the employee's base rate of pay for every two hours of unused sick leave credit converted as required under present law (secs. 124.382(D) and 124.383(A)(2)). The bill removes from existing law the provision that allows state employees paid directly by warrant of the Auditor of State to be disciplined after using sick leave on six or more "occasions" in a 12-month period (sec. 124.382(G)).

The bill provides that when a state employee is assigned to work at a higher level position for a continuous period of more than two weeks, but not more than two years, because of a vacancy, the employee's pay may be established at a rate that is approximately 4% above the employee's current base rate, rather than at least 5% as under current law (sec. 124.181(J)). The bill allows classified state employees to receive a pay increase of approximately 4% for promotions and clarifies the procedure for reassigning employees who have been at the maximum step of their previous pay range for more than 26 pay periods (sec. 124.15(E) and (G)).

The bill also (1) provides that state employees paid directly by warrant of the Auditor of State must have completed one year of continuous state service immediately prior to the date of disability to become eligible for disability leave benefits, (2) excludes compensatory leave from the types of paid leave that state employees paid directly by warrant of the Auditor of State may donate to other employees under a provision of present law that allows the donation of paid leave, and (3) allows classified employees to be fined up to five days' pay (secs. 124.34, 124.385(A), and 124.391(A)).

Changing the names of three funds used by DAS

(secs. 125.15, 125.28, 125.83, and 125.831)

The bill renames three funds used by the Department of Administrative Services as follows:

(1) The Office Services Fund, which the bill renames the General Services Fund;

(2) The Building Maintenance Fund, renamed the Facilities Management Fund;

(3) The Transportation Services Fund, renamed the Fleet Management Fund.

Removal of the Medical Board and Board of Pharmacy from Central Service Agency support

(secs. 125.22 and 3729.40)

Under existing law, the Central Service Agency in the Department of Administrative Services provides routine support to specified state licensing boards. The bill removes the State Medical Board and the State Board of Pharmacy from those boards designated to receive the Agency's support. In addition, the bill requires the State Medical Board to provide the Ohio Health Care Data Center certain information that is provided under current law by the Central Service Agency.

Money collected from state agencies occupying space in state facilities

(sec. 125.28)

Current law requires each state agency that is supported in whole or in part by non-General Revenue Fund money and that occupies space in specified state buildings to reimburse the General Revenue Fund for the cost of occupying that space in the ratio that the occupied space in each facility attributable to that money bears to the total space occupied by the state agency in the facility. Current law also requires all agencies that occupy space in facilities owned or maintained by the Department of Administrative Services, except the State of Ohio Data Center and the Governor's mansion, to reimburse the Department for the cost of occupying the space. The bill replaces the requirement described in the preceding sentence with a requirement that all agencies that occupy space in the Old Blind School, the Ohio Departments Building, or the General Services Facility reimburse the Department for the cost of occupying the space. The bill also requires the Director of Administrative Services to determine the amount of debt service, if any, to be charged to building tenants and to collect reimbursements for those amounts.

The bill provides that each agency that is supported in whole or in part by non-General Revenue Fund money and that occupies space in any other facilities owned and maintained by the Department of Administrative Services must reimburse the Department for the cost of occupying that space, including the cost of any debt service, in the ratio that the occupied space in each facility attributable to that money bears to the total space occupied by the state agency in the facility.

The money collected by the Department is deposited, under current law, into the state treasury to the credit of the Building Maintenance Fund. The bill requires that only the money collected for the operating expenses of facilities owned or maintained by the Department be deposited into the state treasury to the credit of the Facilities Management Fund, which the bill creates to replace the Building Maintenance Fund. The bill requires that all money collected for debt service be deposited into the General Revenue Fund.

Current law requires that the cost of space in state-owned or state-leased facilities be determined by the Director of Administrative Services on the basis of costs for comparable space in privately owned facilities. The bill replaces this requirement with a requirement simply that the Director determine the reimbursable cost of such space.

Fees collected in connection with the disposal of surplus federal property

(sec. 125.87)

In conformance with federal law, current law allows the Department of Administrative Services to acquire, distribute, and dispose of federal real and personal property not required by federal departments, agencies, boards, and commissions, for the purpose of making such property available for use to eligible state civil defense, health, and educational institutions and organizations; state departments, agencies, boards, and commissions; bodies political and corporate, political subdivisions, or other district, regional, or similar authorities established by or pursuant to law; and certain other specified entities (sec. 125.84). The Department receives, approves or disapproves, and processes applications from eligible entities that need and can utilize federal property (sec. 125.86). Entities that receive the surplus federal property must pay to the Department such service charges or fees as the Department requires in connection with the property. The bill requires that all such service charges or fees collected by the Department be paid into the state treasury to the credit of the Investment Recovery Fund.

User charges to support the State Forms Management Control Center

(repealed sec. 125.94)

Existing law establishes the State Forms Management Control Center and requires it to perform various duties regarding forms management for state agencies (secs. 125.92 and 125.93, not in the bill). The law requires that the Center be supported by user charges to be determined by the Director of Administrative Services in consultation with the Director of Budget and Management. The rate must be sufficient to defray the Center's operating expenses, and all moneys collected from the user charges must be deposited in the state treasury to the credit of the Office Services Fund. The bill repeals the provisions regarding the collection and deposit of user charges and their use to support the Center.

Certification by the Director of Budget and Management

(sec. 126.07)

Existing law provides that no contract, agreement, or obligation involving the expenditure of money chargeable to an appropriation, nor any resolution or order for the expenditure of money chargeable to an appropriation, is valid, unless the Director of Budget and Management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations. The amendment clarifies that the Director is certifying that there is a balance in the appropriation not already obligated to pay existing obligations, in an amount equal to the portion of the contract, agreement, obligation, resolution, or order to be performed in the current fiscal year.

Elimination of the State Clearinghouse for Applications for Federal Funds

(sec. 126.12)

Under existing law, the State Clearinghouse for Applications for Federal Funds reviews state agencies' applications for federal grants; compiles and analyzes data from entities applying for, and maintains an information system on, federal grants; serves as the Governor's designation as Ohio's single point of contact with federal agencies to implement a federal Executive Order; and prepares and administers a statewide indirect cost allocation plan that provides for the recovery of statewide indirect costs from any fund of the state. The State Clearinghouse is in the Office of Budget and Management.

The bill eliminates the State Clearinghouse and all of its duties, except the duty to prepare and administer a statewide indirect cost allocation plan. That duty becomes the responsibility of the Office of Budget and Management.

Release of money for capital improvements

(sec. 126.14)

With slight modifications, the bill places in codified law a provision that has appeared in uncodified language in the main capital appropriations bills for a number of years. The provision requires Controlling Board approval for the release of money appropriated for the purchase of real estate or for "general projects." The Director of Budget and Management is permitted to approve the release of money appropriated for "specific projects." Within 60 days after the effective date of the act that makes the appropriations, the Director is required to (1) determine which appropriations are for general projects and which ones are for specific projects, and (2) submit to the Controlling Board a list (formerly referred to as a "plan" but, in fact, a spreadsheet) that includes a brief description of and the estimated expenditures for each specific

project. The release of money for specific higher education projects to be funded from general purpose appropriations from the Higher Education Improvements Fund that are not included on the list or that will exceed the estimated expenditures by more than 10% are also subject to Controlling Board approval.

Authorization to spend federal funds

(secs. 131.35 and 131.38; Section 208)

Currently the Governor is empowered to commit the state to participate in any federal program not authorized by existing state law, but not for longer than one program year. The commitment--which must be made by executive order--may entail both a pledge and the payment of a matching contribution from the state if it is available from existing appropriations and authorizations. All commitments of money (as distinguished from contributions in kind) are subject to the approval of the Controlling Board. According to the Office of Budget and Management, the number of requests for such executive orders ranges from 350 to 500 a year, and many of them result from item appropriations of federal money for several programs.

Also under existing law, the Controlling Board is authorized to create additional funds to receive revenue not anticipated in an appropriations act for the biennium in which the revenue is received and to authorize the expenditure of such additional funds.

The bill provides that an executive order is not needed for a state agency to spend federal funds when:

(1) The Controlling Board exercises its existing authority to create additional funds to receive revenue not anticipated and authorizes the expenditure of such funds;

(2) The General Assembly makes a specific appropriation identifying the federal program that is the source of funds;

(3) Within 60 days after the effective date of a section of any act containing appropriations of federal funds, the Director of Budget and Management transmits to the Speaker of the House, President of the Senate, and chairpersons of the House and Senate Finance committees a list, by state agency, that identifies specific federal programs for which federal funds have been appropriated in the act.

Reduction of state matching funds no longer required

(sec. 131.35)

Under existing law, if the federal funds received for a specific purpose are less than the amount that the General Assembly has appropriated for the purpose on that basis, the total appropriation of both federal and state funds for the purpose must be reduced in proportion to the reduction in federal funds. The bill eliminates this requirement, thereby lessening the overall reduction in spending for the program or allowing some of the money to be transferred to other programs that may be regarded as more important.

Ohio Public Employees Deferred Compensation Board

(sec. 145.73)
Existing law requires that the Ohio Public Employees Deferred Compensation Board initiate, plan, and administer a program for deferral of compensation. The bill provides that the members of the Board are the trustees of any deferred funds and must discharge their duties with respect to the funds solely in the interest of and for the exclusive benefit of participating employees, continuing members, and their beneficiaries**.**

The bill eliminates "regulated investment trusts" as one of the options for investment by the Board.

National Museum of Afro-American History and Culture Planning Committee

(sec. 149.303; Sections 61 and 209)

The "National Museum of Afro-American History and Culture Planning Committee" exists to advise the Ohio Historical Society in the performance of its duties regarding the National Museum of Afro-American History and Culture near Wilberforce, Ohio. The Committee consists of 16 voting members appointed by the Governor with the advice and consent of the Senate, plus a member of the House of Representatives designated by the Speaker of the House of Representatives and a member of the Senate designated by the President of the Senate who serve as nonvoting members. Each voting member is chosen from a list of three nominees submitted to the Governor by each of the following organizations: (1) the Association for the Study of Afro-American Life and History, (2) Central State University, (3) the Congressional Black Caucus, (4) the Greene County Historical Society, (5) the National Association for the Advancement of Colored People, (6) the National Association of Media Women, (7) the National Caucus of Black School Board Members, (8) the National Caucus of the Black Aged, (9) the National Council of Negro Women, (10) the National

Education Association Black Caucus, (11) the National Newspaper Publishers Association, (12) the National Urban League, (13) the Ohio Historical Society, (14) the Organization of American Historians, (15) the Society of American Archivists, and (16) Wilberforce University.

The bill removes from the Committee the members appointed from lists of nominees submitted by the National Association of Media Women, the National Caucus of Black School Board Members, the National Caucus of the Black Aged, and the National Education Association Black Caucus, and replaces them with four voting members from the public at large, appointed by the Governor with the advice and consent of the Senate. These changes take effect February 1, 1998, or the day the act becomes law, whichever is later.

The Governor must appoint the new members to their initial terms not later than January 15, 1998, to terms beginning on February 1, 1998. After staggered initial terms, members appointed from the public at large serve four-year terms. Any member serving on the Committee on February 1, 1998, whose appointment to the Committee was not abolished by the bill continues to serve on the Committee until the expiration of that member's term.

Ohio Veterans' Children's Home

(sec. 149.331; Sections 147, 174, and 192)

Records of the Home

Under current law, after the closing of the Ohio Veterans' Children's Home (OVCH), resident and administrative records of the OVCH and these records of the OVCH when it was known as the Soldiers' and Sailors' Orphans' Home, required to be maintained by approved records retention schedules, must be administered by the state Department of Education, and historical records of the OVCH must be transferred to an appropriate archival institution in Ohio prescribed by the State Record Administration Program. The bill requires that the Department of Administrative Services, rather than the Department of Education, administer the administrative records of OVCH that are required to be maintained by approved records retention schedules. The bill does not change the entities responsible for administering other OVCH records.

Assumption of business and financial duties relating to the Home

The bill requires the Department of Administrative Services to assume the business and financial functions of the Ohio Veterans' Children's Home at any time on or after the later of July 1, 1997, or the first day of the pay period commencing after the bill's effective date. The Department must complete any business commenced but not completed by the Home that relates to the closing and disposal of property of the Home and assume all responsibility related to the layoff of employees and the final disbursement of wages and salaries. Any reference to the Home in a contract or other document must be deemed to be a reference to the Department.

No action or proceeding pending on the bill's effective date and relating to the Home is affected by the transfer, and all such actions and proceedings must be prosecuted or defended in the Department's name. In all of these actions and proceedings, the Department must be substituted as a party upon application by the appropriate entity to the court or other appropriate tribunal. The bill authorizes the cancellation and reissuance of encumbrances and funds and other actions necessary to implement the bill's provisions described in this section of the analysis. Administrative records of, and the remaining property at, the Home must be transferred to the Department.

Upon completion of all business functions, but not later than 180 days after the bill's effective date, the Department must request the Auditor of State to conduct a final audit of the Home.

Disposition of items remaining at the Home

The bill requires that each of the following items of historic or symbolic significance at the Ohio Veterans' Children's Home be transferred to the Association of Ex-Pupils of the Ohio Veterans' Children's Home if the Home ceases to exist as a facility for children and families and if the grounds of the Home are renovated or refurbished so that any of the following occur to that item: (1) the signs, graystone main entrance, and cannons mounted thereon are removed, (2) the power plant whistle is dismantled so it cannot be heard throughout the city of Xenia, (3) buildings are razed, converted, or destroyed so that building names, plaques, and other memorial mountings are destroyed or removed from their present site, (4) the cornerstone of the Academic Building is opened, or (5) the top of the flag pole is removed.

The items described in the immediately preceding paragraph must be transferred to the Association of Ex-Pupils at no cost, for placement in its Museum. If the Association ceases to exist or operate the Museum, these items must be offered to the Greene County Historical Society. If the Society declines to accept any such item, the item must be offered to the Ohio Historical Society. If the Ohio Historical Society declines to accept any such item, the item must be offered to the Ohio Veterans' Home. If the Ohio Veterans' Home declines to accept any such item, the item must be disposed of as excess or surplus state property under existing law. All offerings of items to the Greene County Historical Society, Ohio Historical Society, or Ohio Veterans' Home must be accepted or rejected not later than 90 days after the date the item is

offered.

If the Home is sold or transferred, all remaining property, including movable and fixed assets, must be transferred in place on the date of transfer of the Home to the party that by law will take physical possession of the property. Prior to this transfer, only chattel property at the Home may be transferred to other state agencies or to the Division of State Surplus Property in the Department of Administrative Services.

Repeal of uncodified provisions relating to the Home

The bill repeals the provisions contained in Am. Sub. H.B. 117 of the 121st General Assembly that created the Task Force on the Closure of the Ohio Veterans' Children's Home, consolidated funds of the Home, authorized the lease of the Home's Chapel, Museum, and Cemetery to the Association of Ex-Pupils, and provided for disposition of items of personal property at the Home.

Joint Legislative Capital Finance Oversight Committee abolished

(secs. 164.08, 164.09, and 164.13)

The bill abolishes the Joint Legislative Capital Finance Oversight Committee, consisting of ten legislators (who are voting members) and the Director of Budget and Management and the Legislative Budget Officer (who are nonvoting members) and charged with annually recommending the amount of general obligation and revenue bonds that should be allocated for the year and issued in the ensuing years to finance capital improvements under the Public Works Commission Law. At the time of its creation, the Committee was also required to conduct a comprehensive study of the state's overall debt structure, and to report its findings to the General Assembly.

Unclaimed funds

(secs. 127.16, 169.02, 169.03, 169.05, and 169.08; Section 222)

Definition of "unclaimed funds"--securities, other intangible property, and routine or periodic payments

Currently, the definition of "unclaimed funds" includes, among several categories of funds: (1) certificates, securities, nonwithdrawable shares, other instruments evidencing ownership, or rights to them or funds paid toward the purchase of them, or any dividend, capital credit, profit, distribution, or other sum held by a holder, unclaimed for five years or, if the instrument represents an ownership interest, seven years, and (2) moneys, rights to moneys, or other intangible property, arising out of the business of the purchase or sale of securities or otherwise dealing in intangibles that are held or owed by a holder and unclaimed for five years.

The bill extends the definition of "unclaimed funds" to include all funds, unclaimed for a period of five years, constituting dividends, distributions, or other sums held or owed by a holder in connection with a security, other intangible property, or any other routine or periodic payment, provided (1) the security or intangible property represents an ownership interest in an investment company registered under the federal "Investment Company Act of 1940," and (2) all funds provide for the automatic reinvestment of the dividends, distributions, payments, or other sums that are unclaimed for five years. Under the bill, "security" has the same meaning as under the Securities Law.

The bill specifies that this five-year period commences from the date a second shareholder notification or communication mailing to the owner of the funds is returned to the holder as undeliverable by the United States Postal Service or other carrier. The bill also requires that the notification or communication mailing by the holder be no less frequent than quarterly.

Collection and remittance of unclaimed funds

Under current law, the Director of Commerce is permitted to examine or cause to be examined, by auditors of supervisory departments or divisions of the state, the records of any holder of unclaimed funds in order to determine compliance with the Unclaimed Funds Law (Chapter 169.). The bill permits the Director to enter into contracts, pursuant to procedures the Director prescribes, with persons for the sole purpose of examining the records of holders of unclaimed funds, determining compliance with the Unclaimed Funds Law, and collecting, taking possession of, and remitting to the Department's Division of Unclaimed Funds, in a timely manner, any amounts found and defined as unclaimed. The bill excepts contracts entered into with these persons from the requirements in current law that generally requires purchases by a state agency to be by competitive selection or else done with Controlling Board approval. The Director is required to keep an itemized accounting of unclaimed funds collected by those persons and the amounts paid to them for their services.

Fees and transfers

Under current law, holders of unclaimed funds who are required to file a report concerning those funds are required to pay to the Director of Commerce 10%, in most cases, of the unclaimed funds as documented by the report. The Director of Commerce is required to deposit those funds in the state treasury to the credit of the Unclaimed Funds Trust Fund. The bill permits the Director of Commerce to continue to deposit those funds to the credit of the Unclaimed Funds Trust Fund and gives the Director a new option to place the funds instead with a financial organization.

Also, under current law, remaining portions of unclaimed funds according to submitted reports, plus earnings may, at the option of the holder (the bill replaces the holder with the Director), be retained by the holder, placed by the holder with a financial organization (the bill eliminates this option entirely), or paid to the Director for deposit as agent for the mortgage funds with a financial organization as specified, or the holder may enter into an agreement with the Director that specifies United States obligations in which the funds are to be invested.

Under existing law, the Director of Commerce serves as agent for the Director of Development, for the Ohio Housing Finance Agency, the Minority Business Bonding Fund, the Mortgage Insurance Fund, the Housing Guarantee Fund, and the Housing Development Fund. When serving in those roles, the Director, under specified conditions, must transfer unclaimed funds for the respective agency or fund that were deposited by the Director with the Treasurer of State or in a financial institution. Under current law, when unclaimed funds deposited by the Director of Commerce are required to pay off a bond or mortgage guaranteed by those funds, the Director must provide for the withdrawal of needed funds either from financial institutions where those funds were placed by holders or continue to be directly in the possession of holders, in an amount that is substantially pro rata to the amount of funds held by each holder. The bill modifies the manner in which the Director must withdraw those funds by requiring that the Director withdraw the funds in an equitable manner as the Director prescribes, rather than on a substantially pro rata basis.

The Director also is required under current law to retain, as a fee for administering unclaimed funds, 5% of unclaimed funds payable to a claimant, and is permitted to withdraw funds that were deposited with the Treasurer of State or in a financial institution as the agent for such funds. When funds are otherwise inadequate, the Director is required to provide for a withdrawal of funds necessary to meet the requirements from financial institutions where they were placed by a holder or from holders having retained funds in an amount that is substantially pro rata to the dollar amount of the funds held by each holder. The bill modifies the manner of withdrawal, requiring the Director to withdraw funds in the necessary amount from financial institutions and holders in an equitable manner as prescribed by the Director.

The Ohio Housing Finance Agency

(sec. 175.041)

The Ohio Housing Finance Agency (OHFA) administers several state and federal housing programs under which multifamily housing is constructed. The bill requires that the Agency adopt rules to govern the funding of multifamily housing proposed to be constructed with the assistance of the Agency or pursuant to a program the Agency operates or administers. The rules must include all of the following.

Notice

(sec. 175.041(A))

OHFA may not approve the funding of any project unless the sponsor provides written notice of the project as specified in the bill. The notice must describe the project and be delivered by certified mail to public officials of the municipal corporation, township, or county in which the project is located, including the sanitary engineer, the superintendent of schools, the director of public safety, the planning commission or regional planning commission, the mayor and the members of the elected legislative body of any municipal corporation in which the project is located or that is within one-half mile of the project, the members of the board of township trustees of any township in which the project is located or that is within one-half mile of the project's boundaries, and the members of the board of county commissioners of any county in which the project is located or that is within one-half mile of the project's boundaries.

local approval

(sec. 175.041(B))

Funding of a project would be contingent upon receipt of written approval of the project by a majority of the elected members of the legislative body of the municipal corporation, township, or county that has jurisdiction over the area in which the project is located.

Response to objections

(sec. 175.041(C))

OHFA must respond in writing to any written objections it receives that are signed by a majority of the elected members of the legislative body of any municipal corporation, township, or county located within one-half mile of the project's boundaries.

Public hearing

(sec. 175.041(D))

A public hearing must be held in the county in which the project will be located. Local officials must receive notice of the hearing and notice must be published in a newspaper of general circulation in each county in which the project will be located.

The Low- and Moderate-Income Housing Trust Fund

(sec. 175.21)

The bill prohibits funds from the Low- and Moderate-Income Housing Trust Fund, created in the state treasury under existing law, from being used to pay for legal services other than the usual and customary legal services associated with the acquisition of housing.

Requirements for the filing of a financing statement to protect a security interest

(secs. 111.25, 1309.32, 1309.39, 1309.40, 1309.41, 1309.42, 1309.43, and 1310.37)

Existing law

Chapter 1309. of the Revised Code governs transactions in which a security interest is created in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper, or accounts; it also governs sales of accounts or chattel paper. Generally under existing law, a secured party must perfect a security interest by filing a financing statement in the appropriate county recorder's office or in the office of the Secretary of State. Existing law prescribes the content of a financing statement and sets forth a form that a secured party may use for a financing statement. It permits the use of a copy of the security agreement as a financing statement under certain conditions. It specifies contents and procedures for other types of filings, including amendments to a financing statement, a continuation statement, a termination statement, a statement of assignment, and a statement of release. It requires a filing officer, upon request, to provide a copy of any filed financing statement or statement of assignment for a uniform fee of $1. It also prescribes filing fees in the amount of $9 if a form prescribed by the Secretary of State or a form approved by the filing officer is used and $11 if another form is used. No fee is specified for a termination statement filed by the secured party.

Operation of the bill

The bill requires a secured party, when filing a financing statement, amendment to a financing statement, continuation statement, termination statement, statement of assignment, or statement of release, to use a form prescribed for that filing by the Secretary of State, and it requires the Secretary of State to prescribe the forms. It repeals the form for a financing statement set forth in statute and eliminates the authority to use a copy of the security agreement as a financing statement. It makes minor changes in the duties of filing officers, and it authorizes a filing officer to keep digitized copies of the statements as well as microfilm or other photographic copies authorized by existing law. It requires a filing officer, upon request, to furnish a copy of any filed financing statement or statement of assignment for a uniform fee of "actual cost per page" instead of "$1 per page." It specifies a $9 filing fee for each of the statements, except that, as in existing law, no fee is specified for a termination statement filed by a secured party.

Corporate filings and fees

License fees for foreign corporations; annual report

(secs. 111.16(B), 1703.03, 1703.05, 1703.07, 1703.08, 1703.12, 1703.22, 1703.26, and 1703.27; repealed secs. 1703.08, 1703.09, 1703.10, 1703.11, and 1703.14; Section 205)

Currently, a foreign corporation subject to the Foreign Corporations Law (Chapter 1703.) is prohibited from transacting business in Ohio unless it holds a license issued by the Secretary of State. To procure a license, a foreign corporation must file an application and pay a $100 filing fee. To maintain its license, the corporation must file an annual report from which the Secretary of State determines "the number of issued shares of the corporation represented by property owned or used and business transacted in this state." The corporation is required to pay, as the initial installment of its license fee, the same fee that a domestic corporation authorized to issue the same number of shares is required to pay on filing its original articles. If a subsequent annual report discloses a number of issued shares in excess of the number previously represented, the corporation must pay an additional installment of its license fee.

The bill eliminates the annual reporting requirement and, relatedly, the payment of a license fee in initial and additional installments based on the number of shares represented in Ohio. A foreign corporation is instead required to file a certificate of amendment with the Secretary of State if it modifies any of the information included in its application for a license to transact business in Ohio. The certificate of amendment must be accompanied by a $50 filing fee, whether or not the corporation is authorized to issue any shares of capital stock. If the corporation files an amendment increasing its number of authorized shares in Ohio, the Secretary of State must issue a supplemental license certificate setting forth the correct number of shares.

Foreign nonprofit corporations: statement amendments

Foreign nonprofit corporations are currently required to file a statement with the Secretary of State that sets forth specified corporate information, including the location of its principal office and the privileges it proposes to exercise in Ohio. The bill requires a foreign nonprofit corporation to file an amendment if there is a modification of any of the information required to be included in its statement. The Secretary of State must charge and collect a $50 fee for filing such an amendment.

Filing fees for domestic corporations

The bill imposes a cap of $100,000 on the fees that can be charged a domestic corporation authorized to issue shares of capital stock for filing and recording any of the following:

(1) Its articles of incorporation;

(2) A certificate of amendment to or amended articles of incorporation;

(3) A certificate of reorganization;

(4) A certificate of dissolution.

Board of review

Under existing law, a foreign corporation may appeal from any decision or action by the Secretary of State to a board of review consisting of the Auditor of State, the Treasurer of State, and the Attorney General. The bill limits this right of appeal to foreign corporations that are licensed before, and have authority to transact business on, the effective date of this portion of the bill.

Charge for affixing seal

The bill also requires the Secretary of State to charge $5 for creating and affixing the seal of the Office of the Secretary of State to any good standing or other certificate.

Administrative review with respect to control bids for securities

(sec. 1707.041)

Currently, the Division of Securities has three days to review specified information that is required to be filed with the Division by a person or company that makes, participates, or aids in a control bid for any securities of a subject company. The Division reviews the information to ensure that (1) all the information has been provided to the offerees, and (2) the information provides full disclosure to the offerees of any material information about the control bid. If the Division determines that the person or company has failed to comply with (1) or (2), the Division may suspend the continuation of a control bid, pending the outcome of a hearing that is required to be held within ten days of the date on which the suspension is imposed. Following the hearing, the Division must make a determination on the compliance with (1) or (2) within 3 days after the hearing, and no later than 16 days after the suspension has been imposed.

The bill allows the Division of Securities two extra days (from 3 to 5) to review the specified information filed by the person or company to determine whether the control bid should be suspended, and shortens by two days (from 16 to 14) the amount of time after the imposition of a suspension for the Division to determine whether the suspension of a control bid should be continued.

Licensure of salespersons under the Securities Law

(sec. 1707.44)

Currently, a number of acts are prohibited under the Securities Law, such as acting as a dealer of securities for others without being licensed as a dealer. A salesperson of securities in Ohio is currently required to be licensed by the Division of Securities and employed by a licensed dealer, but the bill expressly adds this requirement to the list of prohibited acts.

Specifically, the bill prohibits a salesperson from selling securities in Ohio without being licensed as a salesperson pursuant to the Securities Law. A violation of a prohibited act under the Securities Law is a fifth degree felony, and a court also may fine the violator not more than $2,500 (see sec. 1707.99). By expressly adding the salesperson licensure requirement to the list of prohibited acts, the bill makes a violation of this requirement a fifth degree felony and subject to the $2,500 fine.

Ohio Arts and Sports Facilities Commission

(secs. 3383.01 and 3383.08)

Definition of "Ohio arts facility" and "state historical facility"

The Ohio Arts and Sports Facilities Law defines "Ohio arts facility" as any of the following: (1) the three theaters located in the state office tower at 77 South High Street in Columbus, (2) any capital facility in Ohio that meets three specified criteria, one of which is being managed by the Ohio Arts and Sports Facilities Commission, and (3) a state historical facility. Current law specifies as an element of one of the three criteria mentioned in (2) above that the state's real property interests in the facility or in the portion of the facility financed from the proceeds of obligations or in the site of the facility must be for a period of no less than the greater of (a) the useful life of the portion of the facility financed from the proceeds of those obligations as determined by the Director of Budget and Management using certain guidelines for maximum maturities as provided in the Uniform Public Securities Law, (b) the period of time remaining to the date of payment or provision for payment of outstanding obligations issued by the Ohio Building Authority allocable to costs of that portion of the facility, as determined by the Director of Budget and Management, or (c) the final maturity of obligations issued by the Ohio Building Authority to finance the facility. The time periods described in (a) and (b) above must be certified to the Ohio Arts and Sports Facilities Commission and the Ohio Building Authority.

The bill eliminates the time period described in (c) in the preceding paragraph as a time period that may be used to determine whether a capital facility qualifies as an "Ohio arts facility."

The bill also expands the definition of "state historical facility." Currently, if a facility is owned by an arts organization (or situated on land owned by an arts organization), it must satisfy *both* of the following conditions to be considered a state historical facility: (1) the state has sufficient ownership interests in any part of the facility financed with state assistance, and (2) the facility must be contiguous to state-owned property in the care, custody, or control of the arts organization. The bill would permit state historical facilities to satisfy *either* of the two conditions. State historical facilities constructed by an arts organization are exempted from Chapters 123. and 153. (explained below) and from Chapter 4115., which governs prevailing wages for the construction of public buildings.

Exemptions for Ohio Arts and Sports Facilities Commission contracts

Under current law, the Ohio Arts and Sports Facilities Commission administers the Capital Donations Fund. The fund consists of gifts, grants, bequests, and other financial contributions made to the Commission for the construction or improvement of arts and sports facilities. The Commission must use the fund in accordance with the specific purposes for which the gifts, grants, bequests, or other contributions are made. The bill provides that the following requirements of state law do not apply to contracts paid from the fund:

(1) R.C. Chapter 123., Department of Administrative Services (DAS) Public Works. Gives DAS control of the construction of buildings by state agencies and requires the Director of DAS to maintain and repair the state's public works. Also includes requirements concerning minority business set-asides for state construction contracts.

(2) R.C. Chapter 125., DAS Office Services. Includes requirements concerning central purchasing and the acquisition and disposal of state property.

(3) R.C. Chapter 127., Controlling Board. Requires Controlling Board approval of purchases without competitive bidding, and appropriation transfers.

(4) R.C. Chapter 153., Public Improvements. Includes requirements concerning plans, bonds, bidding procedures, contracts, design services, and DAS approval for the construction of state buildings, structures, and other improvements.

(5) R.C. 3517.13. Includes restrictions on the awarding of public contracts to persons or businesses that make campaign contributions in excess of $1,000 to the officeholder ultimately responsible for letting the contract.

Leases of offices by boards of elections

(sec. 3501.10)

Current law authorizes a board of elections to lease and pay for offices and room it needs. The board of county

commissioners may void such a lease within 60 days after being notified in writing that the lease has been executed. Instead of letting the board of county commissioners void a lease already entered into, the bill permits the board to reject a proposed lease, as follows: 30 days before entering into a lease, the board of elections must provide the board of county commissioners written notice of its intent to do so. The board of county commissioners may then reject the proposed lease; if it does so, the board of elections may not enter into that lease but may enter into additional lease negotiations.

State responsibility for certain election expenses

(secs. 3501.11 and 3501.17)

Current law

The Elections Law prescribes which political entities are required to bear the costs of conducting an election. Where a special election is held on the day of a primary election for the purpose of submitting to the voters constitutional amendments proposed by the General Assembly, the state bears the entire cost of printing ballots and the advertising necessary to conduct the special election, and must reimburse the counties for all expenses incurred in opening precincts that are open for the sole purpose of conducting the special election. In precincts that are open for the conducting of any primary or other special election, the cost is borne locally as specified by law.

Where a special election is held on the day of a primary election for the purpose of submitting to the voters constitutional amendments proposed by the General Assembly and a subdivision conducts a special election on the same day, the entire cost of the special election is divided proportionally between the state and the subdivision based on a ratio determined by the number of issues placed on the ballot by each. This proportional division of cost is made only to the extent funds are available for that purpose from amounts appropriated by the General Assembly to the Secretary of State. If a primary election is also being conducted in the subdivision, the costs are apportioned locally.

The bill

The bill generally retains the provisions described in the immediately preceding paragraph but replaces the special-election provisions described in the paragraph before last with a requirement that when a precinct is open during a general, primary, or special election solely for the purpose of submitting to the voters a statewide ballot issue, the state must bear the entire cost of the election in that precinct and must reimburse the county for all expenses incurred in opening the precinct (sec. 3501.17(F)).

The bill also requires the state to bear the entire cost of advertising in newspapers statewide ballot issues, explanations of those issues, and arguments for or against those issues, as required by the Ohio Constitution and any other section of law, and must reimburse the counties for all expenses they incur for that advertising (sec. 3501.17(G)).

Section 1g of Article II of the Ohio Constitution requires that a true copy of any law or constitutional amendment proposed by initiative and submitted to the electors or any law on which a referendum is submitted to the electors, together with an argument or explanation, or both, for and against the proposed law or law to be referred must be prepared. The arguments and explanations cannot exceed a total of 300 words for and 300 words against each measure. The proposed law or constitutional amendment to be enacted or the law to be referred, and the arguments and explanations must be published once a week for three consecutive weeks preceding the election at which the measure is to be submitted to the voters, in at least one newspaper of general circulation in each county of the state, where a newspaper is published (Section 1g of Article II, Ohio Constitution). Constitutional amendments proposed by the General Assembly, and arguments for and against those amendments, must be published in the same manner (Section 1 of Article XVI, Ohio Constitution).

The bill defines "statewide ballot issue" to mean any ballot issue, whether proposed by the General Assembly or by initiative or referendum, that is submitted to the voters throughout the state.

Changes in pay for judges of an election

(sec. 3501.28)

Current law

Under current law, each judge of an election must be paid at the same hourly rate, which must not be less than the rate established by the federal Fair Labor Standards Act (the minimum wage), for the judge's services at each general, primary, or special election, provided that no judge may be paid more than $70 per diem. A judge who works less than the full election day is prohibited from being paid the maximum amount allowed under the statute or the maximum amount as set by the board of elections, whichever is less.

A board of elections must not increase the pay of an election official during a calendar year unless the board has given

written notice of the proposed increase to the board of county commissioners not later than October 1 of the preceding calendar year. The board of county commissioners may review and comment upon the proposed increase.

The bill

Under the bill, for any election held in 1997 on or after the bill's effective date, each judge of an election in a county must be paid for the judge's services at each general, primary, or special election at the same hourly rate, which is the minimum wage established by federal law.

Beginning with calendar year 1998, each judge of an election in a county must be paid for the judge's services at the same hourly rate, which must be not less than federal minimum wage and not more than $85 per diem. Also beginning with calendar year 1998, the Secretary of State is required to establish, by rule, the maximum amount of per diem compensation that may be paid to judges of an election each time the Fair Labor Standards Act is amended to increase the federal minimum wage. Upon learning of such an increase, the Secretary of State must determine by what percentage the minimum wage has been increased and establish a new maximum amount of per diem compensation that judges of an election may be paid that is increased by the same percentage that the federal minimum wage has been increased.

Beginning with calendar year 1998, a board of elections is prohibited from increasing the pay of a judge of an election during a calendar year by more than 9% over the compensation paid to a judge of an election in the county where the board is located during the previous calendar year, except that the board of county commissioners may enter into a written agreement with a board of elections to permit an increase in the compensation paid to judges of an election for their services during a calendar year that is greater than the 9%.

The bill specifies that any payment a judge of an election receives under the statute that allows a judge to be compensated for bringing election supplies to and from a polling place on the day of an election is in addition to the compensation the judge receives under the bill.

The bill retains current law that requires a board of elections to give prior notice to the board of county commissioners of a proposed pay increase for judges of election and allows the latter board to review and comment upon the proposed increase. The bill also retains the prohibition in current law against a judge of an election who works less than the full election day from being paid the maximum amount of wages for the day.

Compensation of State Lottery Commission members

(sec. 3770.01)
The bill replaces the current requirement that State Lottery Commission members be paid for each day they attend an official Commission meeting, in accordance with a pay plan established by the Director of Administrative Services, with a requirement that they receive a $5,000 annual salary, payable in monthly installments.

Lottery reports; problem gambling agreements

(sec. 3770.02)

Current law requires the Director of the State Lottery Commission to make available, at the Commission's request, all documents, files, and other records pertaining to the operation and administration of the state lottery. The Director is also required to prepare and make available to the Commission each month a complete and accurate accounting of lottery revenues, prize money disbursements and the cost of goods and services awarded as prizes, operating expenses, and "all other relevant financial information." The bill provides that "all other relevant financial information" includes an accounting of all transfers made from any lottery funds in the custody of the Treasurer of State to benefit education.

Current law allows the Director to enter into contracts for the operation or promotion of the lottery in accordance with the Department of Administrative Services Office Services Law and arrange for any person, or any banking institution, to perform such functions and services in connection with the lottery's operation as the Director may consider necessary. The bill permits the Director, in addition, to enter into agreements to assist organizations that deal with problem gambling.

Deposit of Ohio Athletic Commission money

(secs. 3773.43, 3773.56, and 4743.05)

Currently, fees charged by and receipts received by the Ohio Athletic Commission concerning the regulation of boxing and wrestling matches are paid to the Treasurer of State and deposited into the General Revenue Fund. The bill requires that the fees and receipts collected and received by the Commission rather be paid to and deposited by the Treasurer of State into the Occupational Licensing and Regulatory Fund.

Penalty revisions for violation of energy conservation rules

Current law prohibits a person from completing any building, structure, or dwelling in violation of applicable energy conservation rules. A violator is liable in civil damages and also may be required to pay reasonable attorney's fees and court costs to a person purchasing a newly constructed dwelling in violation of those rules. The bill replaces these penalties with a criminal penalty fine of not more than $1,000. (Sec. 3781.182.)

Thermal efficiency rules no longer required

The bill also repeals a provision of the Building Standards Law that requires the Board of Building Standards to adopt rules for thermal efficiency in existing dwellings, based upon certain standards promulgated by the United States Department of Housing and Urban Development. Implementation of those rules currently is delegated to local authorities that enforce the residential building code, and the bill also abolishes this statutorily expressed authority. (Sec. 3781.21.)

Group life, credit life, and credit accident and health insurance revisions

(secs. 3917.01, 3918.01, and 3918.02)

Under current law, group life insurance is defined to include life insurance issued to a creditor for purposes of insuring debtors of the creditor. The debtors eligible for such insurance are those whose indebtedness is repayable in installments over not more than 10 years or, if the indebtedness was incurred in the acquisition of a mobile home, 15 years. The bill extends eligibility for such group insurance to all debtors of the creditor, regardless of the duration of the credit transaction.

Under current law, the amount of such insurance on the life of any debtor cannot exceed the *lesser* of (1) the amount owed by the debtor that is repayable in installments to the creditor or (2) $50,000. The bill removes the $50,000 cap on such group life insurance, and instead permits the acquisition of coverage in an amount not exceeding the amount owed by the debtor that is repayable in installments.

Existing law also regulates, under Chapter 3918. of the Revised Code, all life insurance and accident and health insurance sold in connection with credit transactions of less than 10 years duration and, in the case of mobile home acquisitions, credit transactions of not more than 15 years duration. The bill extends the application of Chapter 3918. to all credit life and credit accident and health insurance issued or sold in connection with credit transactions "for personal, family, or household purposes," except for all of the following:

(1) Insurance written in connection with a credit transaction that is secured by a first mortgage or deed of trust and is made to finance the purchase of real property, or the construction of a dwelling on such property, or to refinance a prior credit transaction made for such a purpose;

(2) Insurance that is sold as an isolated transaction on the part of the insurer and is not related to an agreement or plan for insuring debtors of the creditor;

(3) Insurance for which no identifiable charge is made to the debtor;

(4) Insurance on accounts receivable.

Lastly, the bill defines "consumer credit insurance" for purposes of Chapter 3918. of the Revised Code.

Exemption of employees of the Senate and House of Representatives from the Ohio Minimum Wage Law

(sec. 4111.01)

Currently, the Ohio Minimum Wage Law includes within its coverage the state and its instrumentalities and any employee employed by the state or its instrumentalities who is not otherwise exempt from coverage under the Law. Employees of the Senate and House of Representatives currently are included in the Law's coverage.

The bill excludes employees of the Senate and the House of Representatives from coverage under the Minimum Wage Law. Consequently, the Executive Secretary of the House of Representatives and the Clerk of the Senate may adopt policies relating to the payment of overtime pay or the granting of compensatory time off for employees of the two bodies as they see fit subject to the requirement in current law that they adopt such policies.

Administration of workers' compensation claims of state agencies

(secs. 4121.466 and 4123.402)

Currently, each state agency is considered the employer for purposes of the Workers' Compensation Law. Thus, when an employee of a state agency is injured, the employee's agency is responsible for certifying or contesting the claim, while the Bureau of Workers' Compensation actually administers the claim. The bill specifies that the Department of Administrative

Services (DAS) acts as employer for workers' compensation claims arising under the Workers' Compensation Law for all state agencies, offices, institutions, boards, or commissions, except for public colleges and universities. DAS is required to review, process, certify or contest, and administer workers' compensation claims for each state agency, office, institution, board, and commission, except for a public college or university, unless otherwise agreed to between DAS and a state agency, office, institution, board, or commission.

The bill also requires the Department of Administrative Services to select one or more managed care organizations for each state office, agency, institution, board, or commission, except for a public college or university, unless otherwise agreed to between the Department and a state office, agency, institution, board, or commission.

The bill permits DAS to enter into a contract with one or more third party administrators for claims management of a state agency, office, institution, board, or commission, except for a public college or university, for workers' compensation claims and for claims covered by the state's occupational injury leave program, which provides special leave of absence procedures for employees of the Department of Rehabilitation and Correction, the Department of Mental Health, the Department of Mental Retardation and Developmental Disabilities, the Ohio Veteran's Home, Schools for the Deaf and Blind, and the Department of Youth Services.

Sale of unneeded real estate by the Bureau of Employment Services

(sec. 4141.131)

The bill permits the Administrator of the Bureau of Employment Services to enter into contracts for the sale of real property no longer needed by the Bureau of Employment Services for the Bureau's operations. Any costs attributable to the Bureau that are associated with that sale of real property are to be paid out of the Unemployment Compensation Special Administrative Fund. The Administrator is required to deposit sufficient money received from the sale of real property into the Unemployment Compensation Special Administrative Fund to reimburse the Fund for all costs associated with the sale of that real property.

Earnest money from the proposed sale of real property is to be deposited into the Bureau of Employment Services Building Consolidation Fund in the custody of the Treasurer of State. The balance of the purchase price is to be deposited into the Bureau of Employment Services Building Enhancement Fund, which the bill creates in the state treasury. The Building Enhancement Fund retains its own interest. Upon completion of the sale and the request of the Administrator, the Treasurer of State transfers the earnest money in the Building Consolidation Fund into the Building Enhancement Fund.

The Administrator is permitted to use the interest earned on the money in the Building Enhancement Fund only in the manner in which other money in the Fund is used. The Bureau may use the money in the Building Enhancement Fund from the sale of real property, less the costs of the sale, in accordance with certain provisions and requirements of the Social Security Act and the instructions of the United States Department of Labor, to improve buildings owned by or under the control of the Bureau. If the Administrator determines that there are no buildings for which money in the Fund may be used, the money must be returned to the United States Department of Labor.

The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real property being sold upon notice from the Administrator that a contract for the sale of the property has been executed. The deed must state the consideration and any conditions placed upon the sale and is to be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the great seal of the state, presented in the office of the Auditor of State for recording, and delivered to the buyer upon payment of the balance of the purchase price.

The buyer must present the deed for recording in the county recorder's office of the county in which the real property is located.

Uses of the Liquor Control Fund

(sec. 4301.12)

Present law generally requires that all money collected under the Liquor Control Law (such as the money the Department of Liquor Control collects from spirituous liquor sales) be paid by the Department to the credit of the Liquor Control Fund. The additional $3.38 the Department collects for each gallon of spirituous liquor it sells and amounts received from liquor permit fees must be paid into other funds. The bill allows amounts in the Liquor Control Fund to be used to pay the operating expenses of the Liquor Control Commission. The Commission is a three-member board that adopts rules implementing the Liquor Control Law and hears appeals relating to the issuance, renewal, transfer, suspension, and revocation of liquor permits.

Sale of tasting samples by D-5 liquor permit holders who operate agency stores

(sec. 4301.17)

The bill provides that an agency that sells spirituous liquor (intoxicating liquor containing more than 21% of alcohol by volume) on behalf of the Department of Liquor Control and that has been issued a D-5 liquor permit may offer for sale tasting samples of beer, wine, and mixed beverages, but not spirituous liquor. The D-5 liquor permit is issued to nightclubs and authorizes the sale of beer and intoxicating liquor for on-premises consumption and beer, wine, and mixed beverages for off-premises consumption.

Sale of spirituous liquor through gift certificates and on credit

(sec. 4301.19)

Current law prohibits the Department of Liquor Control (which becomes the Division of Liquor Control on July 1, 1997) from selling spirituous liquor through gift certificates or on credit. The bill eliminates this prohibition and allows a person appointed by the Division of Liquor Control to serve as an agent for the sale of spirituous liquor to provide and accept gift certificates and to accept credit cards and debit cards for the retail purchase of spirituous liquor.

Financial interest in a liquor permit holder

(sec. 4301.24)

Current law

The Liquor Control Law prohibits a manufacturer from having any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion in the business of any wholesale distributor. It also prohibits a retail permit holder from having any interest, directly or indirectly, in the operation of, or any ownership in, the business of any wholesale distributor or manufacturer (sec. 4301.24). That law also prohibits any manufacturer or wholesale distributor, except as otherwise authorized by law, from having any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of the business of any retail dealer or any interest in the premises on which the business of any other person engaged in the business of trafficking in beer or intoxicating liquor is conducted.

"Manufacturer" is defined as any person engaged in the business of manufacturing beer or intoxicating liquor, and "wholesale distributor" is defined as a person engaged in the business of selling to retail dealers for purposes of resale (sec. 4301.01).

The bill

Under the bill, the prohibitions described above under "***Current law***" do not prevent a manufacturer from securing and holding any financial interest, directly or indirectly, by stock ownership or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or promotion of the business or premises of the holder of any C permit (one that authorizes the sale of beer, wine, and mixed beverages for off-premises consumption) or D permit (one that authorizes the sale of beer, wine, and mixed beverages for both on- and off-premises consumption and the sale of spirituous liquor for on-premises consumption), provided that the following conditions are met:

(1) Either the manufacturer or one of its parent companies is listed on a national securities exchange.

(2) All purchases of alcoholic beverages by the C or D permit holder are made from wholesale distributors in Ohio or agency stores licensed by the Division of Liquor Control.

(3) If the C or D permit holder sells brands of alcoholic beverages that are produced or distributed by the manufacturer that holds the financial interest, the C or D permit holder also sells other competing brands of alcoholic beverages produced by other manufacturers, no preference is given to the products of the manufacturer, and there is no exclusion, in whole or in part, of products sold or offered for sale by other manufacturers, suppliers, or importers of alcoholic beverages that constitutes a substantial impairment of commerce.

(4) The primary purpose of the C or D permit premises is a purpose other than to sell alcoholic beverages, and the sale of other goods and services exceeds 50% of the total gross receipts of the C or D permit holder at its premises. (Sec. 4301.24.)

Proof of financial responsibility

(sec. 4509.101)

Existing law

Requirement to show proof of financial responsibility. Existing law prohibits a person from operating, or permitting the

operation of, a motor vehicle in Ohio unless proof of financial responsibility is maintained continuously throughout the registration period with respect to that vehicle or, in the case of a driver who is not the owner, with respect to the driver's operation of the vehicle. A person who violates the prohibition is subject to civil penalties as follows: (1) suspension of the person's operating privileges and impoundment of the person's license until the person (a) pays a financial responsibility reinstatement fee, (b) pays a financial responsibility nonvoluntary compliance fee, if applicable, and (c) files and continuously maintains proof of financial responsibility as required by the Motor Vehicle Law, and (2) suspension of the right of the owner to register the motor vehicle and the impoundment of the owner's certificate of registration and registration plates until the owner complies with (a), (b), and (c), above.

A person who has been issued an Ohio certificate of registration for a motor vehicle or an Ohio operator's license or who is determined to have operated or permitted the operation of a motor vehicle is required to verify the existence of proof of financial responsibility covering the operation of the motor vehicle under any of the following circumstances: (1) whenever the person, or a third person operating the person's motor vehicle with the person's permission, is required to appear in court on a charge of a traffic offense specified in Traffic Rule 13(B), (2) the person or a motor vehicle owned by the person is involved in a traffic accident that requires the filing of an accident report, (3) the person receives a traffic ticket indicating that proof of the maintenance of financial responsibility was not produced upon the request of a peace officer or State Highway Patrol trooper, and (4) whenever, in accordance with rules adopted by the Registrar of Motor Vehicles, the person is randomly selected by the Registrar and requested to provide verification of financial responsibility. (Sec. 4509.101(A).)

Proof of financial responsibility by a defendant who must appear in court. Existing law requires a defendant who must appear in court on a charge of a traffic offense to verify the existence of proof of financial responsibility covering the operation of the vehicle at the time of the offense. The proof must be demonstrated in a specified manner and a copy of the evidentiary document included in the court record of the case. The court may order the defendant to identify the owner of the motor vehicle and, if the defendant is the owner, to present its certificate of registration. The court may cause notice to be given to a defendant at a time and in a manner that the court determines to be necessary or appropriate and may allow a reasonable continuance to permit the defendant to obtain evidence of proof of financial responsibility. If the evidence presented by the defendant satisfies the court that the operation of the motor vehicle was covered by proof of financial responsibility, the court may note that the defendant verified proof of financial responsibility.

If a defendant pleads guilty or is found guilty, the court as part of the sentencing must require the defendant to prove that the operation of the motor vehicle was covered by proof of financial responsibility. If such a defendant fails to verify existence of proof of financial responsibility, the court is required to do all of the following: (1) if the defendant owns the motor vehicle, order the suspension of the right to register the vehicle and impoundment of the registration and plates, (2) order the suspension and impoundment of the license of the defendant, (3) impose court costs in an amount not to exceed $15, and (4) if a referee's report finds that the defendant has failed to verify proof of financial responsibility, sign a judgment entry imposing the suspensions required at any time after the filing of the report with the clerk. Within five days after the court issues an order of impoundment, the defendant is required to surrender to the court the certificate of registration, registration plates, or license.

The clerk of courts is required to notify the Registrar of the court's order, identify a defendant who is not in compliance with an order, identify a defendant who has not been found guilty of a charge, unless the defendant presented proof of financial responsibility satisfactory to the court, or who has forfeited bond or failed to appear on the charge, identify an owner who is not the defendant but whose motor vehicle was being driven by the defendant at the time of the offense, and send to the Registrar any certificates of registration, registration plates, and licenses the clerk has received. The Registrar is required to record the information in the notice as a part of the person's permanent record and to use the information in monitoring compliance with the orders of suspension or impoundment. (Sec. 4509.101(B).)

Duties of the Registrar. In the case of an owner or defendant who has been identified in a court's notice to the Registrar, the Registrar is required to notify the person that the person must present the Registrar with proof of financial responsibility, surrender the certificate of registration, registration plates, and license, or submit a statement that the person did not operate or permit the operation of the motor vehicle at the time of the offense and has not failed to appear in court on the charge of the traffic offense. The person must comply with the Registrar's notification within 15 days. If the person does not comply or does not submit proof of financial responsibility to the Registrar's satisfaction, the Registrar must order the immediate suspension of the person's license and the impoundment of the person's certificate of registration and registration plates. (Sec. 4509.101(B)(3).)

Operation of Am. Sub. H.B. 438 of the 121st General Assembly

Am. Sub. H.B. 438 of the 121st General Assembly becomes effective July 1, 1997. It addresses many subjects, including the Financial Responsibility Law. Regarding that area, that act continues to prohibit a person from operating, or permitting the operation of, a motor vehicle without proof of financial responsibility and continues to subject a person who violates the prohibition to the civil penalties that apply under existing law. It eliminates all authority for a court to order

suspensions and impoundments based on a traffic defendant's failure to present satisfactory proof of financial responsibility to the court. It repeals all of the law described in "***Proof of financial responsibility by a defendant who must appear in court***," above. As a result, the Registrar imposes all suspensions for failure to present proof of financial responsibility. (Sec. 4509.101(A) and (B).)

Am. Sub. H.B. 438 specifies that if a person who has failed to produce proof of the maintenance of financial responsibility appears in court for a ticketed violation, the court may permit the defendant to present evidence of proof of financial responsibility to the court at the time and in the manner that the court determines necessary and appropriate. The clerk of courts must provide the Registrar with the identity of any person who fails to submit proof of the maintenance of financial responsibility. With respect to a person who pays a fine and costs for a ticketed violation to a traffic violations bureau but who fails to produce proof of the maintenance of financial responsibility to the bureau, that act requires the traffic violations bureau to notify the Registrar of the identity of that person. It also eliminates the requirement from section 4509.101(A)(3)(a) that a person provide proof of financial responsibility whenever the person, or a third person operating the person's motor vehicle with permission, is required to appear in court on a charge of a traffic offense specified in Traffic Rule 13(B); however, it continues to require the court in such a case to require the person to verify proof of financial responsibility, continues to require a peace officer to inform every person who receives a traffic ticket and who did not present proof of financial responsibility to the officer that the person must submit proof of financial responsibility to the court if the person is to appear in court for the violation, and to require a State Highway Patrol trooper to inform every person who receives a traffic ticket issued pursuant to a motor vehicle inspection and who did not present proof of financial responsibility to the trooper that the person must submit proof of financial responsibility to the court if the person is to appear in court for the violation. (Secs. 4507.99(H), 4509.101(D)(3) and (4), and 4513.022(B) and (C)(2).)

Under Am. Sub. H.B. 438, upon receiving notice from a clerk of courts or from a traffic violations bureau that a person did not present satisfactory proof of financial responsibility, the Registrar must give the notifications to that person described in "***Duties of the Registrar***," above, including notice that the person must present the Registrar with proof of financial responsibility, surrender to the Registrar the person's certificate of registration, registration plates, and license, or submit, subject to prosecution under the falsification statute, a statement that the person did not operate or permit the operation of the motor vehicle at the time of the offense and did not fail to appear in court as required. The person must respond to the notice within 15 days, and the Registrar must investigate to determine whether there is a reasonable basis for believing that the person operated or permitted the operation of the motor vehicle at the time of the traffic offense without financial responsibility. If the Registrar determines that is the case, the Registrar must give the person an opportunity for a hearing after notice of the time and place for the hearing. The Registrar must order the immediate suspension of the person's license and the impoundment of the person's certificate of registration and registration plates if the Registrar does not receive proof of financial responsibility, the license, certificate, and plates are not surrendered, or the Registrar determines that the person violated the financial responsibility law and did not demonstrate proof of financial responsibility or if the person timely presents documents to show proof of financial responsibility but fails to demonstrate such proof to the satisfaction of the Registrar.

Any person adversely affected by the Registrar's impoundment order, within ten days of the order, may request an administrative hearing before the Registrar. The request does not suspend the Registrar's order, and the hearing is limited to determining whether the person demonstrated proof of financial responsibility. The Registrar must hold the hearing and issue an order within 30 days after the request is received. If requested in writing, the Registrar may designate as the place of the hearing the county seat of the person's county of residence or a place within 50 miles of the person's residence. The person must pay the cost of the hearing. (Sec. 4509.101(D)(5).)

Operation of the bill

The bill modifies and eliminates some of the language of Am. Sub. H.B. 438. It provides that upon receiving notice from a clerk of courts or from a traffic violations bureau that a person did not present satisfactory proof of financial responsibility, the Registrar must order the suspension of the person's driver's or commercial driver's license and the impoundment of the person's certificate of registration and license plates, effective 30 days after the date of the mailing. The Registrar still must give the person the notifications specified in the second preceding paragraph, except the Registrar no longer is required to notify the person that the statement the person must submit to the Registrar must contain a statement that, if a court appearance was required, the person did not fail to appear in court on the charge of the traffic offense. (Sec. 4509.101(D)(5)(a).)

The bill repeals the requirement that the Registrar investigate to determine, upon the basis of the statement and information submitted by the person and other evidence that the Registrar may require from the person or discover in the course of the investigation, whether there is a reasonable basis for believing that the person operated or permitted the operation of a motor vehicle at the time of the traffic offense without the operation being covered by proof of financial responsibility. It also eliminates the provision that requires the Registrar, if the Registrar determines that a reasonable basis exists, to afford the person an opportunity for hearing, after due notice of the time and place for hearing. (Sec.

4509.101(D)(5)(a).)

The bill also repeals a provision that requires the Registrar, upon determining, after hearing, that the person operated or permitted the operation in this state of a motor vehicle and has failed to demonstrate proof of financial responsibility, to order the suspension of the person's driver's or commercial driver's license and the impoundment of the person's certificate of registration and license plates. As a result, if the Registrar does not receive proof or the person does not surrender his certificate of registration, license plates, and license, the Registrar must permit the order for the suspension of the person's license and the impoundment of the person's certificate of registration and license plates to take effect. (Sec. 4509.101(D)(5)(a).)

The bill modifies the provision of Am. Sub. H.B. 438 that requires the Registrar, in the case of a person who presents, within the 15-day period, documents to show proof of financial responsibility but fails to demonstrate proof of financial responsibility to the satisfaction of the Registrar, to order the immediate suspension of the person's license and the impoundment of the person's certificate of registration and license plates. The bill provides that in the case of a person who presents, within the 15-day period, documents to show proof of financial responsibility, the Registrar must terminate the order of suspension and the impoundment of the registration and license plates. The bill also eliminates a requirement of Am. Sub. H.B. 438 that the person, within ten days after the date of the mailing of the notification, surrender to the Registrar any certificate of registration and registration plates under an order of impoundment, or any license under an order of suspension. (Sec. 4509.101(D)(5)(b).)

The bill also changes several references to "registration plates" to read "license plates" (secs. 4509.101(D)(5)(a) and (b)).

Examination fees for architects

(sec. 4703.16; Section 235)

Current law requires the State Board of Examiners of Architects to establish application fees for applicants to be certified as architects in Ohio. Those fees must be sufficient to cover the costs of providing the examination or reexamination and determining examination results. The law also provides for an application fee for architects who are registered in other states who apply for certification in Ohio. Some of the current provisions about how the fees are determined and what costs the fees cover are confusing. The bill replaces these provisions with a simple requirement that the State Board of Examiners of Architects establish a fee for all of these types of applications. The bill also removes references to fees charged for administering examinations on behalf of other jurisdictions.

Deposit of fines received by the State Board of Cosmetology

(sec. 4713.19)

Under current law, receipts of the State Board of Cosmetology from fines imposed under the Ohio Cosmetology Law for violation of specified provisions of that law must be deposited into the state treasury to the credit of the Cosmetology Adjudication Fund. Those funds are to be used exclusively for the cost of holding adjudicatory hearings and for licensee educational programs designed to reduce violations. Any other receipts of the Board are to be credited to the Occupational Licensing and Regulatory Fund. The bill eliminates the Cosmetology Adjudication Fund and requires that all receipts of the State Board of Cosmetology be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund.

Embalmers, funeral directors, and funeral home licensing fees

(secs. 4717.06, 4717.07, and 4717.18)

The bill increases the amount the Board of Embalmers and Funeral Directors may charge for an application, registration, examination for, and the issuance of either an embalmer's or a funeral director's certificate and license from an amount not to exceed $60 to an amount not to exceed $75, and for the renewal of an embalmer's or funeral director's license, from an amount not to exceed $30 to an amount not to exceed $50. The bill also increases the penalty an embalmer or funeral director must pay, in addition to the standard renewal fee, in order to renew the embalmer or funeral director's license if the person fails to renew the license by the December 31 deadline for renewal from $50 to $60.50.

The bill increases the fee the Board of Embalmers and Funeral Directors must charge an applicant for obtaining a funeral home license by application from $100 to $125.

Location for administering professional licensing examinations

(sec. 4743.04; Section 205)

Title 47 of the Revised Code contains most of the regulations for the various professions and occupations licensed by the

state, such as architects, engineers, all types of health care providers, accountants, cosmetologists and numerous other occupations. Current law requires that all examinations given prior to the issuance of a professional license under Title 47 be given to applicants at the state fairgrounds in Columbus, unless approval is obtained from the Office of Budget and Management to conduct examinations elsewhere. The bill eliminates this requirement.

Transfers from the Occupational Licensing and Regulatory Fund

(sec. 4743.05)

Under current law, the Director of Budget and Management can transfer from the Occupational Licensing and Regulatory Fund to the General Revenue Fund, any money the Director determines to be in excess of what is needed to administer the related licensing law. The amendment eliminates this provision.

Business hours of the PUCO

(sec. 4901.10)

Existing law requires that the Columbus office of the Public Utilities Commission (PUCO) be open daily between 8:30 a.m. and 5:30 p.m., Sundays and legal holidays excepted. The bill adds an exception for Saturdays.

PUCO rehearings

(secs. 4903.10 and 4903.11)

Existing law requires the PUCO to provide, to all parties to the proceeding, a notice of any rehearing it grants of an order it has issued. Additionally, existing law requires that the PUCO serve, upon all parties to the proceeding, an order denying an application for a rehearing or an order made after a rehearing. Any such notice or order must be sent by registered mail. The bill requires the notice or order to be sent by regular mail.

PUCO and PSB copy fees

(sec. 4903.23)

The bill changes the fees chargeable by the PUCO and the Power Siting Board (PSB) for copies of any paper, record, testimony, or writing made, taken, or filed under the Public Utilities Law (specifically, Chapters 4901. to 4909., 4921., and 4923.).

Under existing law, the PUCO and PSB are required to charge fees for such copies, and the fees must be the same as those charged by the Secretary of State. Under a separate statute, fees chargeable by the Secretary of State are set at $1/page for copying any certificate or other paper filed with the Secretary of State and $5 for certifying a document (with no charge to state officials) (sec. 111.16(K), unchanged by the bill).

Under the bill, the PUCO and PSB are permitted to charge fees for the copies described above. The bill specifies that those fees must not exceed cost, except that the fee that may be charged by the PUCO and PSB for certifying a document must not exceed the fee so charged by the Secretary of State.

Financing PUCO and the Office of Consumers' Counsel

(secs. 4905.10, 4911.18, and 4923.12)

The bill creates the Public Utilities Fund and the Consumers' Counsel Operating Fund and requires that the sums assessed against railroads and public utilities to pay for administering the Public Utilities Commission of Ohio, and the sums assessed against public utilities to pay for administering the Office of the Consumers' Counsel, be deposited into the new funds rather than into the General Revenue Fund as at present.

Currently, the first sums received each fiscal year from the annual tax paid by motor transportation companies and from common carriers by motor vehicle that operate in Ohio are credited to the General Revenue Fund. This continues until the Treasurer of State has received an amount equal to the appropriation made by the General Assembly for defraying all expenses incident to maintaining the "Motor Transportation Department" of the Public Utilities Commission of Ohio. (The Motor Transportation Department does not actually exist; instead, the Commission has a Transportation Department which includes several divisions, among them a Motor Carrier Registration Division.) The bill requires the Treasurer of State to continue crediting these annual tax receipts to the GRF each fiscal year until the amount of the tax receipts, and the fees imposed when a for-hire interstate motor carrier operating under an exemption from the U.S. Interstate Commerce Commission files a liability insurance certificate, policy, or bond, equals the appropriation made by the General Assembly from the new Public Utilities Fund for defraying all expenses incident to maintaining the "nonrailroad transportation activities" of PUCO.

The bill requires the Director of Budget and Management, during the first five days of each fiscal year, to transfer from the General Revenue Fund to the Public Utilities Fund and the Consumers' Counsel Operating Fund amounts sufficient to finance the operations of the Office of the Consumers' Counsel and the public utilities and railroad activities of PUCO during the first four months of the fiscal year. Not later than December 31 of the fiscal year, the money advanced from the General Revenue Fund must be repaid to it from the Public Utilities Fund and the Consumers' Counsel Operating Fund.

Utility abandonments

(sec. 4905.21)

Existing law authorizes the PUCO to grant, under specified conditions, the permanent abandonment of service of a main track, main pipe line, gas line (except a field line), telegraph line, telephone toll line, electric light line, water line, sewer line, steam pipe line, pumping station, generating plant, power station, sewage treatment plant, or service station. Newspaper notice of such abandonment must be published by the PUCO in the affected area once a week for four consecutive weeks before a required hearing on the abandonment. The bill requires such notice once a week for two consecutive weeks before the hearing.

Notice of utility complaint hearings

(sec. 4905.26)

Existing law authorizes the filing of a complaint with the PUCO against a public utility regarding its rates or service. The PUCO must publish advance notice of a required hearing on the complaint, in a newspaper of general circulation in each county in which the complaint has arisen. The bill removes this notification requirement.

Under existing law, the PUCO also must serve notice of the hearing on the complainants and utility. This notice must be provided not less than 15 nor more than 30 days before hearing. The bill removes the requirement that the notice be provided not more than 30 days before hearing, but leaves unchanged the requirement that it be provided not less than 15 days beforehand.

Additionally, existing law authorizes the filing of a complaint with the PUCO regarding the rates or service of a telephone company. The PUCO must publish advance notice of a required hearing on the complaint, for not less than three consecutive weeks, in a newspaper of general circulation in the affected county. The bill requires the notice to be published for not less than two consecutive weeks.

PUCO regulation of fuel purchasing and costs for electric generation

(secs. 4905.66(A), (B), and (F) and 4905.69)

Existing law specifies certain data, information, and evaluations that the PUCO must require an electric light company to provide in order for the PUCO to review the company's fuel procurement practices. Generally, the information concerns specified terms and conditions of fuel contracts, levels of fuel consumption, fuel costs, and cost reduction efforts. Under the bill, this information continues to be required, unless the PUCO orders otherwise pursuant to an application by any party or the PUCO's own motion and for good cause shown.

Under existing law, some of the requisite information must be provided on a monthly basis, and the PUCO must conduct a monthly review of that information. The bill eliminates the duty of the PUCO to conduct the monthly review. Information that is required and reviewed on a monthly basis under existing law (and under the bill at the PUCO's discretion, as noted above) generally includes information on the invoice price and delivery costs of fuel, the quantity of fuel consumed, the cost of each million BTUs (British thermal units) consumed for generation, the amount of net kilowatt hours of generation, and the amount of the fuel component chargeable for a specified recent period.

The bill leaves unchanged a requirement that the PUCO conduct an audit of a company's fuel related policies and practices in the course of PUCO deliberation of a standard rate case filing by the company, but it removes the requirement that the PUCO submit to the General Assembly a report of the audit findings, along with any orders the PUCO has issued in the prior year relating to the fuel purchase activities of companies and the results of the actual performance of each company as compared to the PUCO's fuel component rule.

The bill also removes a requirement that the PUCO annually submit to the Legislative Clerk of the House of Representatives, the Clerk of the Senate, and the chairpersons of the House Finance and Appropriations Committee and the Senate Finance Committee a plan for the implementation of its statutory fuel component and fuel procurement review duties, including a description of the PUCO's commitment of budgetary resources for monitoring fuel reports, conducting audits and hearings, and developing on-going expert analysis and investigation of electric light company fuel costs.

Additionally, the bill removes a requirement that the PUCO publish an annual report showing the results of the actual performance of each electric light company relative to the PUCO's fuel procurement and utilization rule, which is described at the beginning of this portion of the analysis.

Regulation of hazardous materials transportation

(secs. 4905.80 and 4905.81)

PUCO rulemaking and state advisory panel

The bill extends by two years a date affecting the PUCO's rule-making authority regarding hazardous materials transportation and similarly extends the life of the Hazardous Materials Advisory Panel.

Under existing law, the PUCO may adopt rules regarding the uniform registration and permitting of persons engaged in the highway transportation of hazardous materials in Ohio. The existing law reflects Ohio's status as one of a few pilot states involved in a project to establish a nationwide registration and permitting system: until November 17, 1998, the rules adopted by the PUCO must be consistent with a report compiled by a working group specified in a federal act. The bill extends the life of this authority by two years--until November 17, 2000. Under existing law, unchanged by the bill, after the expiration of this temporary authority, the rules adopted by the PUCO must be consistent with the federal act and federal regulations adopted under the act and must be adopted in accordance with the Administrative Procedure Act.

Existing law additionally authorizes the PUCO to adopt rules applicable to the highway routing of hazardous materials in Ohio and, among other things, requires that the adoption or amendment of those rules, on or after November 17, 1998, be in accordance with the Administrative Procedure Act. The bill changes the November 17, 1998, date to November 17, 2000.

The bill also extends to November 17, 2000, the life of the Hazardous Materials Advisory Panel, which the PUCO must consult before issuing proposed rules on hazardous materials transportation and highway routing. The bill additionally extends to November 17, 2000, the duty of the PUCO and the Panel to present an annual report at a public hearing and to specified members of the General Assembly.

Per-truck fee

The bill makes changes affecting the calculation of the per-truck fee that is a component of the apportioned per-truck registration fee paid by a carrier of hazardous materials.

Existing law provides that a carrier of hazardous materials pays the following fees for uniform registration and a uniform permit: a processing fee of $50 and an "apportioned per-truck registration fee," which is subject to a total revenue cap equal to the appropriation to the Hazardous Materials Registration Fund (HMRF). Regarding these two fees, the bill changes only the formula used to calculate one of the three components of the apportioned per-truck registration fee: that is, the "per-truck fee," which is determined by order of the PUCO following public notice and comment.

Under existing law and the bill, the per-truck fee is determined by (1) calculating the difference between the HMRF appropriation for the current fiscal year and certain specified money, and (2) dividing that calculated amount by the total number of apportioned trucks of all registrants in the previous registration year. Under existing law, the specified money in (1) consists of the total amount of processing fees collected in the previous registration year. Under the bill, the specified money in (1) consists of the net total of all of the following:

(a) Processing fees collected in the previous registration year;

(b) Fees collected under existing authority to impose a background investigation fee for a uniform permit as a carrier of hazardous wastes, and fees related to investigations and proceedings for the denial, suspension, or revocation of a uniform permit as a carrier of hazardous materials;

(c) Refunds to carriers from overpayments of fees authorized by the statute;

(d) Fees paid to other states pursuant to agreements the PUCO enters under existing authority to collect fees on their behalf.

The bill also provides that, if the calculated amount used in (2) above is zero or less, the per-truck fee must be zero. No such provision appears in existing law.

Background investigation fees for permits for carriers

The bill makes a change affecting the calculation of the background investigation fee for a permit as a carrier of hazardous wastes, eliminates the Hazardous Wastes Background Investigation Fund (HWBIF) and provides that background

investigation fees be credited instead to the HMRF, and extends by two years a date affecting the crediting of forfeitures as between the General Revenue Fund and the Hazardous Materials Transportation Fund (HMTF), which is used to fund hazardous materials emergency response planning and training, as explained below.

The bill requires that the fee for a background investigation for a uniform permit as a carrier of hazardous wastes must include any fees payable to obtain necessary information. Existing law requires that the fee include any governmental agency fees payable for that purpose.

Additionally, under existing law, all fees collected for such background investigations must be credited to the HWBIF and be used to conduct any such background investigation. Under the bill, all such fees must be credited to the HMRF, which is used by the PUCO to administer and enforce the Hazardous Materials Transportation Law (secs. 4905.80 to 4905.83).

Crediting and distribution of forfeitures

Existing law authorizes forfeitures to be imposed for certain violations of the Hazardous Materials Transportation Law (sec. 4905.83). It specifies the levels at which any such forfeitures collected in each fiscal year until November 17, 1998, and collected on and after that date, must be apportioned as between the General Revenue Fund and the HMTF. (Money credited to the HMTF must be used for the purposes of emergency response planning and training of safety, enforcement, and emergency services personnel in proper techniques for the management of hazardous materials releases.) The bill changes the November 17, 1998, date to November 17, 2000.

Existing law further specifies how money in the HMTF must be distributed in each fiscal year until November 17, 1998, for the emergency response planning and training purposes described above. The bill changes the November 17, 1998, date to November 17, 2000 (but otherwise leaves unchanged the existing scheme of distribution to fund recipients).

Tourist-oriented directional signs (TODS)

(sec. 4511.102)

Current law authorizes the Director of Transportation to carry out a program for the placement of tourist-oriented directional signs and trailblazer markers. The program is limited to tourist-oriented activities and signs may be placed only within the rights-of-way of portions of rural highways that are not on the interstate system. "Tourist-oriented activity" is defined by current law to include "any lawful cultural, historical, recreational, educational, or commercial activity a major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the activity and attendance at which is no less than two thousand visitors in any consecutive twelve-month period." Current law limits "commercial activity" to a farm market, a winery, or a bed and breakfast.

The bill expands the definition of an eligible commercial activity to additionally include an antique shop, craft store, or gift store. The limitation concerning a major portion of income or visitors being derived from motorists not residing in the immediate area and attendance of at least 2,000 visitors in any 12-month period remains applicable.

Use of certain petroleum contaminated sands, gravel, and soils in highway construction projects

(sec. 5501.38)

The bill states that the Director of Transportation has determined that it is feasible to use in the construction of highways sands, gravel, and soils that contain varying amounts of petroleum products resulting from the upgrading of underground storage tanks. In order to maximize the beneficial reuse of these petroleum contaminated sands, gravel, and soils, the bill requires the Director to establish a program to promote the reuse of these materials as highway construction materials.

Not later than 180 days after the effective date of these provisions, the Director of Transportation, in consultation with the Chief of the Bureau of Underground Storage Tanks and the Director of Environmental Protection, is required to issue highway construction specifications that facilitate the reuse of petroleum contaminated sands, gravel, and soils that are removed during the repair, removal, or closure of underground storage tanks that are under the jurisdiction of the Chief of the Bureau of Underground Storage Tanks. Following issuance of the specifications, the Director of Transportation must prepare and distribute to any interested party information describing the Department's program to facilitate the reuse of such petroleum contaminated sands, gravel, and soils in the construction of highways.

In order to accumulate a sufficient and ready supply of petroleum contaminated sands, gravel, and soils that meet the specifications, the Director of Transportation is authorized to construct and operate temporary covered structures in locations that are in close proximity to highway projects and accumulate bulk quantities of these sands, gravel, and soils for reuse. These materials must be made available to the Department of Transportation and its contractors for reuse on highway construction projects.

As used in these provisions, "petroleum" has the same meaning as in current law that governs underground storage tanks,

except that it does not include used oil.

Civil service status of employees of the Governor's Office of Veterans Affairs

(sec. 5902.01)

The amendment places administrative assistants, technical personnel, and the clerical staff of the Governor's Office of Veterans Affairs in the classified civil service and requires that the technical personnel be honorably discharged or honorably separated veterans of the United States armed forces. The Office is established within the office of the Governor; under current law, employees of the Governor's office are in the unclassified civil service. The Civil Service Law requires that classified employees be hired and promoted through competitive and noncompetitive examinations, grants them appeal rights when they are suspended, demoted, removed, reduced in pay or position, or laid off, and limits their participation in partisan political activities. These provisions do not apply to unclassified employees.

Travel and tourism funding study

(Section 44.17)
The bill requires the Legislative Service Commission to conduct a study to identify possible sources of funding to be used by the Division of Travel and Tourism in the Department of Development to encourage persons who reside in other states to travel to Ohio. The Commission must report its findings not later than September 1, 1998, to the Chairperson and Vice-Chairperson of the Legislative Service Commission, to the Chairpersons of the Finance committees in the Senate and the House of Representatives, and to the Director of Development.

Random financial responsibility checks

(Section 165)

Uncodified law enacted in Am. Sub. S.B. 20 of the 120th General Assembly required the Director of Public Safety and the Registrar of Motor Vehicles to adopt rules in accordance with the Administrative Procedure Act requiring a person to verify the existence of proof of financial responsibility whenever the person is randomly selected according to a method developed by the Director and the Registrar. In adopting the rules, the Director and the Registrar could consider the relevant findings and recommendations of the Task Force on the Enforcement of the Financial Responsibility Laws in Ohio. The rules were to be adopted not later than October 20, 1996, 2 years after the effective date of Am. Sub. S.B. 20.

The bill revises the authority concerning the random checks. Under the bill, the Registrar is required to adopt rules not later than January 1, 1998 establishing a pilot program requiring persons randomly selected according to a method developed by the Registrar to verify the existence of financial responsibility. Not later than January 1, 2000, the Registrar must adopt rules establishing a permanent program requiring persons randomly selected according to a method developed by the Registrar to verify the existence of financial responsibility. All rules must be adopted in accordance with the Administrative Procedure Act, and the Registrar may consider the relevant findings and recommendations of the Task Force on the Enforcement of the Financial Responsibility Laws in Ohio in adopting the rules.

Effective dates for the bill's provisions

(Sections 203 to 219)

Section 1d of Article II of the Ohio Constitution states that "laws providing for *** appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." The Ohio Supreme Court has held that the presence in an act of an appropriation for current expenses does not necessarily put the entire act into immediate effect. *State, ex rel. Ohio AFL-CIO, v. Voinovich* (1994), 69 Ohio St. 3d 225. In response to this case, the General Assembly enacted R.C. 1.471, which provides that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly shall determine which sections go into immediate effect.

The bill includes a default provision stating that except as specifically provided in the bill, the codified and uncodified sections of law in it are not subject to the referendum and go into immediate effect. The bill also includes numerous specific exceptions to the default provision, that in general provide that specified codified or uncodified provisions are subject to the referendum and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

Existence of the Stabilization Reserve Fund

(Sections ____ and _____)

The bill states that the Stabilization Reserve Fund, created under the Medical Malpractice Insurance Law, must remain in existence until all moneys in the Fund are distributed as set forth in current law.

Professional Services Contract Review Committee

(Section _____)

The bill creates the Professional Services Contract Review Committee and requires it to (1) review all contracts for professional services entered into by the Departments of Rehabilitation and Correction, Mental Health, Mental Retardation and Developmental Disabilities, and Youth Services for fiscal years 1996 and 1997, (2) conduct a cost-benefit analysis of the contracts, (3) make certain recommendations, and (4) report by June 30, 1998, to the Governor, House Speaker, Senate President, House Minority Leader, Senate Minority Leader, and chairpersons of the finance committees in the House and Senate. The Committee consists of ten members, with one each appointed by the Directors of Administrative Services, Rehabilitation and Correction, Mental Health, Mental Retardation and Developmental Disabilities, Youth Services, and Budget and Management, and with two House members appointed by the House Speaker and two Senate members appointed by the Senate President.

Agriculture, energy, environment, and natural resources

- Repeals provisions of current law authorizing the Director of Agriculture to provide financial assistance for premium awards and advertising costs in connection with a livestock show and sale held anywhere in Ohio that is jointly sponsored by a livestock breed association and the Department of Agriculture.
- Authorizes the Director of Agriculture to provide rental cost assistance for certain public livestock exhibitions held at the Ohio Expositions Center and to provide financial assistance for premium awards given at certain national livestock exhibitions held there.
- Authorizes not more than $100,000, consisting of money deposited into the General Revenue Fund from the sale of standing timber taken from state forest lands, to be transferred annually from the General Revenue Fund to the Wildfire Suppression Fund.
- Revises the method of distribution of moneys received from the sale of certain state forest products to require that the distribution be based on the products' gross, rather than net, value and to include school districts as local recipients of the moneys in addition to counties and townships.
- Creates the Lake Erie Resources Fund and requires money awarded to the state from the Great Lakes Protection Fund, which is a regional trust fund, to be a revenue source of the new fund.
- Removes the Department of Natural Resources as the administrator of the Lake Erie Protection Fund and as lead agency for the implementation of the purposes of the Great Lakes Protection Fund; requires the Ohio Lake Erie Commission to designate one of its members annually as administrator of the state fund; designates the department managed by that member as the lead agency for the implementation of the regional fund's purposes; and removes the requirement that the chairperson and secretary of the Commission rotate annually among the members.
- Requires expenses and compensation of the Council on Unreclaimed Strip Mined Lands to be paid from the Unreclaimed Lands Fund rather than the Coal Mining Administration and Reclamation Reserve Fund.
- Allows soil and water conservation district employees to donate and receive accrued but unused sick leave under specified circumstances.
- Changes the purposes for which money in the Natural Areas and Preserves Fund may be

used and makes clear the money is not to be used to pay salaries of permanent employees, administrative costs, or for routine maintenance.

- Authorizes each of the Commissioners of the Sinking Fund to designate an employee or officer to attend meetings pertaining to coal research and development bonds when the Commissioner is absent for any reason.
- Requires the Director of Natural Resources to allocate to each county, for projects of local governments within the county, a portion of 20% of the proceeds in excess of the first $200 million principal amount of obligations issued under the NatureWorks program, and establishes a distribution formula for that purpose.
- Eliminates the provision under which the treatment and disposal fees for out-of-state hazardous waste must be an amount equal to the fee applicable to the waste if it were treated or disposed of in its state of generation; requires the Director of Environmental Protection to establish a multidisciplinary committee to make recommendations regarding funding for and program activities conducted by the Divisions of Hazardous Waste Management and Emergency and Remedial Response; and extends from three to thirteen years the time during which the Director must repay money borrowed from the Hazardous Waste Facility Management Fund to pay start-up costs for the voluntary action program.
- Continues through June 30, 1999 the 75¢ per ton fee on the disposal of solid wastes to fund the Environmental Protection Agency's solid and infectious wastes and construction and demolition debris management regulatory programs.
- Limits the transfer of money from the Scrap Tire Management Fund in the Environmental Protection Agency (EPA) to the Facilities Establishment Fund in the Department of Development for certain energy recovery or recycling projects to fiscal years 1998, 1999, and 2000; limits expenditures from the former fund for scrap tire removal operations to those fiscal years and increases the ceiling for those expenditures during each fiscal year to $3 million; and requires the Director of Environmental Protection to transfer from the fund up to 12% of each fiscal year's appropriation to it to the EPA's Central Support Indirect Fund.
- Requires interest earned on money credited to the Underground Storage Tank Administration Fund also to be credited to that Fund.
- Retains at their current levels through June 30, 2000, the wastewater discharge and plan approval, public water system license and plan approval, and other miscellaneous fees established primarily to fund the water pollution control and safe drinking water programs in the Environmental Protection Agency, slightly revises the calculation of the wastewater discharge fees, and decreases two of the fees for laboratory evaluation.
- Extends (1) the sunset date of the Quality Improvement Council from June 30, 1997 to June 30, 1999, and (2) the date by which the EPA must report to the Governor and the General Assembly from not later than September 1996 to not later than September 1998.
- Authorizes the member from the House of Representatives and the member from the Senate that serve on the Environmental Education Board of Trustees to appoint a designee to serve on the Board.
- Increases various existing licensing and examination fees imposed in connection with the regulation of veterinary medicine and imposes several new fees to cover certain situations.
- Redirects funds received by the State Veterinary Medical Licensing Board from the General Revenue Fund to the Occupational Licensing and Regulatory Fund and requires all

vouchers of the Board to be approved by the Board president, executive secretary or both.

- Changes the funding mechanism for the member state agencies of the Utility Radiological Safety Board (URSB) (except the PUCO and the Department of Commerce, which will not be so specially funded for any URSB activities), by providing for funding through direct grants negotiated between each member agency and the nuclear electric utilities or, if a member agency disagrees with a grant amount, through assessments imposed by the URSB, subject to caps on assessment amounts and, under certain conditions, Controlling Board approval of assessments.
- Authorizes the Director of Agriculture to acquire conservation easements and to acquire or acquire the use of buildings, structures, or stationary equipment located on lands subject to conservation easements held by the Director that is necessary or appropriate to agricultural production on those lands.
- Clarifies the agricultural land uses that may be subject to conservation easements and authorizes governmental entities permitted to hold conservation easements to engage in agricultural production on lands they hold for purposes of retaining agricultural uses or to lease or rent the land to persons or governmental entities for those uses.
- Authorizes certain charitable organizations exempt from federal income taxation to acquire and hold conservation easements for the purpose of preserving agricultural land uses.
- Requires the Legislative Service Commission to study the amount of motor fuel used for recreational boating and general and business aviation, to determine whether the percentage of fuel tax allocated to the Waterways Safety Fund accurately reflects the boating usage, and to report the study's findings by September 1, 1998.

Content and Operation

Financial assistance for livestock exhibitions at the Ohio Expositions Center

(secs. 901.41 and 901.42)

The bill repeals provisions of current law authorizing the Director of Agriculture to provide to a state livestock breed association financial assistance for premium awards and advertising costs in connection with a livestock show and sale held anywhere in Ohio that is jointly sponsored by the association and the Department of Agriculture. In place of those provisions, the bill authorizes the Director to provide financial assistance to nonprofit livestock associations for up to 50% of the rental costs of the Ohio Expositions Center in connection with public livestock exhibitions of dairy cattle, beef cattle, swine, or sheep (livestock) held at the Center. Costs eligible for the assistance are those associated with rental of all or a portion of the facilities at the Center, including grounds, buildings, pens, animal feeding or watering equipment, and tieouts and, also, the labor costs associated with set-up, tear-down, and security. The bill requires that the Director pay such rental cost assistance to the Ohio Expositions Commission on behalf of the sponsoring nonprofit livestock association by means of intrastate transfer voucher. Also, it stipulates that no such nonprofit association can receive more than 34% of the funds available to the Director in a fiscal year for assisting livestock exhibitions held at the Center and designated for the purpose of defraying such rental costs.

The bill further authorizes the Director to allocate up to $50,000 of the financial assistance money available in a fiscal year to defray the costs of premium awards for a national multispecies livestock exhibition held at the Center involving livestock from 15 or more states or nations. Awards for which the assistance can be used include money, ribbons, banners, medals, achievement pins, trophies, or merchandise.

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act to carry out these financial assistance provisions and specifically requires that the rules establish procedures for the allocation and distribution of the money available for providing the assistance. Nonprofit livestock associations seeking financial assistance under the bill must apply to the Director on a form prescribed by the Director and in the manner prescribed in those rules.

Under the bill, the Director can use up to 4% of the funds available in a fiscal year for assisting livestock exhibitions at the Center to defray the costs of administering these assistance provisions or assisting in recruiting livestock exhibitions to be

held at the Center.

Wildfire Suppression Fund transfers

(sec. 1503.141)

Current law creates the Wildfire Suppression Fund, the purpose of which is to reimburse firefighting agencies and private fire companies for their costs incurred in the suppression of wildfires. The Wildfire Suppression Fund consists of such revenues as the General Assembly provides, along with donations, gifts, bequests, federal money, and other money received for the Fund's purpose.

Under the bill, the Wildfire Suppression Fund no longer consists of such funds as the General Assembly provides. Instead, the Chief of the Division of Forestry annually may request that the Director of Budget and Management transfer, and, if so requested, the Director is required to transfer, not more than $100,000 to the Wildfire Suppression Fund from the General Revenue Fund. The amount transferred must consist only of money deposited into the General Revenue Fund from the sale of standing timber taken from state forest lands.

Distribution of moneys from the sale of state forest products

(sec. 1503.05)

Under current law, the Division of Forestry in the Department of Natural Resources retains 50% of the net value of forest products sold, other than standing timber, and minerals taken from state forest lands. The remaining 50% is paid to the county in which the lands are located, and the county in turn must transfer one-half of those revenues, or 25% of the net value, to any township in which the lands are located.

The bill instead provides that the distribution of moneys from the sale of forest products and mineral rights must be based on their gross, rather than net, value. It then requires the Chief of the Division of Forestry to provide for payment to the county treasurer of 80% of the gross value of the products sold or royalties received from lands located in that county. The county auditor must retain one-fourth of those moneys for the county and pay one-fourth to any township in which the lands are located and the remaining one-half to any school district in which they are located. The district's board of education must notify the county auditor concerning which fund or funds of the district are to receive the moneys.

Lake Erie Protection Fund and Ohio Lake Erie Commission

(secs. 1506.21, 1506.22, 1506.23, and 1506.24; Section 69)

Current law designates the Department of Natural Resources (DNR) as the lead agency in Ohio for the implementation of the purposes of the Great Lakes Protection Fund, which is a regional trust fund established by the Great Lakes states to advance the principles, goals, and objectives of the Great Lakes Toxic Substances Control Agreement and the Great Lakes Water Quality Agreement. It also creates the Lake Erie Protection Fund, which receives revenue from (1) money awarded to the state from the Great Lakes Protection Fund, (2) donations, gifts, bequests, and other money received for a variety of purposes designed to benefit Lake Erie, and (3) money deposited into the fund from the issuance of Lake Erie license plates. The bill provides that the fund no longer is to receive money awarded from the Great Lakes Protection Fund. That money instead is to be deposited into a new fund in the state treasury to be named the Lake Erie Resources Fund. The new fund is to be used for the same purposes as the Lake Erie Protection Fund.

Existing law requires DNR to administer the Lake Erie Protection Fund and to expend money from it with the approval of the Ohio Lake Erie Commission. The Commission is composed of the Directors of Environmental Protection, Natural Resources, Health, Agriculture, and Transportation. The members designate a chairperson and secretary annually, and those offices rotate among the members.

The bill (1) requires the Commission annually by June 1 (except in 1997, when the date is to be July 31), to designate one of its members to administer the Lake Erie Protection Fund and, with the Commission's approval, to expend money from it, (2) requires the Commission to do the same with respect to the new Lake Erie Resources Fund, (3) removes DNR as the lead agency for implementation of the purposes of the Lake Erie Protection Fund and instead designates as lead agency the state agency whose director has been designated to administer that fund, and (4) removes the requirement that the offices of chairperson and secretary of the Commission rotate annually among the members.

Council on Unreclaimed Strip Mined Lands

(secs. 1513.29 and 1513.30)

Current law stipulates that the members, other than the Chief of the Division of Mines and Reclamation in the Department of Natural Resources, of the Council on Unreclaimed Strip Mined Lands are to be compensated on a per diem basis for

their work as members of the Council and also are to receive their expenses. The Council, which is charged with studying and making recommendations on various matters relating to eroded lands within the state, is authorized to hire staff and consultants necessary to enable it to perform its duties.

Expenses incurred by the Council and the compensation of its members are presently to be paid from the Coal Mining Administration and Reclamation Reserve Fund, which consists primarily of civil penalties levied by the Division of Reclamation for violations of the Coal Surface Mining Law. The bill requires instead that the compensation and expenses of the Council be paid from the Unreclaimed Lands Fund. This Fund consists primarily of money arising from the sale of unreclaimed lands as well as from loan repayments and lien foreclosures related to such lands.

Sick leave donation program for soil and water conservation district employees

(secs. 1515.09 and 1515.091)

Existing law entitles employees of soil and water conservation districts to receive sick leave and vacation leave, and authorizes the supervisors of a soil and water conservation district to provide for the payment of the reasonable compensation of employees. The Supreme Court of Ohio has held that fringe benefits are to be considered a part of an employee's compensation, and the power of a governmental entity to fix the compensation of its employees necessarily includes the power to grant fringe benefits, provided that there is no statutory provision that would constrict the authority. *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31 (1980). Accordingly, supervisors currently have implied authority to establish a sick leave donation program. The bill restricts that authority by establishing the qualifications and procedures that must be followed in granting this form of benefit to employees of a soil and water conservation district.

Under the bill, an employee is eligible to become a "receiving employee" (see "***Definitions***," below) if the employee is a full-time, regular employee who has completed the prescribed probationary period, has used up all accrued paid leave, and has been placed on an approved, unpaid, medical-related leave of absence for a period of at least 30 working days because of the serious illness of the employee or a member of the employee's immediate family. The bill does not define "immediate family."

The bill requires an employee desiring to become a receiving employee to submit to the board of supervisors of the district a written request for donated sick leave and a satisfactory physician's certification. The board is required to determine whether the employee is eligible and, if so, to approve the request.

If the board approves a request it must forward the approved application to a committee that the Ohio Association of Soil and Water Conservation District Employees is required to appoint to act as a clearinghouse for the donation of sick leave. The committee is required to post notice for not less than ten days informing all employees of soil and water conservation districts throughout the state that it has received an approved application to become a receiving employee.

An employee desiring to become a donating employee is required to complete and submit a sick leave donation form to the employee's immediate supervisor within 20 days after the date of the initial posting of the notice described above. If the board of supervisors of the employing district of an employee desiring to become a donating employee approves the sick leave donation, the board must forward to the committee, together with a check equal to the total value of the sick leave donation, a copy of the sick leave donation form, and must notify the receiving employee regarding the donation.

The committee is required to deposit the check into an account that it is required to establish to be used to dispense funds to the employing district of a receiving employee. The committee must notify the board of supervisors of the employing district of a receiving employee of the amount of sick leave donated. The board of supervisors must bill the committee during each pay period for the receiving employee's gross hourly wages in an amount that does not exceed the amount donated to the receiving employee. The board of supervisors, with the approval of the county auditor, is required to provide for the deposit into its appropriate payroll account of any payments it receives for the benefit of a receiving employee.

The bill subjects the donation and receipt of sick leave to all of the following: (1) all donations of sick leave must be voluntary, (2) a donating employee is eligible to donate not less than eight hours and not more than 80 hours of sick leave during the same calendar year, (3) the value of an hour of sick leave donated is the value of the donating employee's gross hourly wage, (4) the number of hours received by a receiving employee from a donating employee must be a number that, when multiplied by the receiving employee's gross hourly wage, equals the amount resulting when the donating employee's gross hourly wage is multiplied by the number of hours of sick leave donated, and (5) no paid leave may accrue to a receiving employee for any compensation received through donated sick leave, and the receipt of donated sick leave does not affect the date on which a receiving employee first qualifies for continuation of health insurance coverage.

If a receiving employee does not use all donated sick leave during the period of the employee's leave of absence, the unused balance must be returned, within three months after the end of the leave of absence and on a prorated basis, to

each donating employee who donated sick leave to the receiving employee.

Definitions

The bill defines "receiving employee" as an employee of a soil and water conservation district who receives donated sick leave as authorized by the bill, "donating employee" as an employee of a soil and water conservation district who donates sick leave as authorized by the bill, and "paid leave" as sick leave, personal leave, vacation leave, or compensatory time.

Effect of the Collective Bargaining Law

Under the Collective Bargaining Law (Chapter 4117.), a provision of a collective bargaining agreement may govern the payment of donated sick leave. If a soil and water conservation district has employees covered by such an agreement, the Collective Bargaining Law specifies that the provision in the agreement takes precedence over any conflicting statute or employer policy.

Natural Areas and Preserves Fund

(sec. 1517.11)

Current law reserves money in the Natural Areas and Preserves Fund for the identification, protection, conservation, and management of endangered plants and for the identification, acquisition, and management of natural areas, wild, scenic, and recreational river areas, and endangered special habitats. The bill changes these uses to the acquisition of new or expanded natural areas, nature preserves, and wild, scenic, and recreational river areas; facility development in such areas; and special projects such as research grants, biological inventories, and the production of interpretative material related to natural areas, nature preserves, and wild, scenic, and recreational river areas. In addition, the bill makes clear that money in the fund is not to be used to pay salaries of permanent employees, administrative costs, or for routine maintenance.

Commissioners of the Sinking Fund designees regarding coal bonds

(sec. 1555.09)

Current law authorizes the Commissioners of the Sinking Fund to issue coal research and development bonds, the proceeds of which must be used to make loans, loan guarantees, or grants to businesses and educational or scientific institutions for coal research and development projects. (The Commissioners of the Sinking Fund is a board established in Section 8 of Article VIII of the Ohio Constitution, and consists of the Governor, Treasurer of State, Auditor of State, Secretary of State, and Attorney General.)

The bill authorizes each Commissioner to designate an employee or officer of that Commissioner's office to attend meetings pertaining to coal research and development bonds when the Commissioner is absent for any reason. The Commissioner has to make the designation in writing, and must file it with the Secretary of the Board of Commissioners. The Commissioner can change the designation by executing and filing another written designation. The designee must be counted in determining whether a quorum is present at a meeting, and can vote and participate in all proceedings and actions of the Commissioners pertaining to the bonds. However, the designee is prohibited from executing or causing a facsimile of the designee's signature to be placed on a bond, and from executing a trust agreement or indenture of the Commissioners.

NatureWorks grants to local governments

(sec. 1557.06)

A constitutional amendment approved in 1993 and enabling legislation enacted the following year authorize the issuance of bonds to finance or assist in financing the costs of capital improvements for specified types of projects related to natural resources. Under the program, called NatureWorks, a portion of the money from the bond sales must be used for grants to local governments for the same types of natural resources projects. Current law establishes a formula for distribution to each county of a portion of the first $200 million principal amount in obligations issued. The money is to be used for projects of local governments within the county.

The bill requires the Director of Natural Resources to allocate to each county a portion of 20% of the proceeds in excess of the first $200 million principal amount in obligations issued, for projects of local governments within each county. The Director must determine each county's allocation by calculating both of the following and combining the amounts calculated for each county: (1) one-third of 20% of the proceeds to be divided equally among all of the counties, and (2) two-thirds of 20% of the proceeds to be distributed on a per capital basis to each county. Any money so granted and not obligated within a county after two funding cycles, at the Director's discretion, must be reallocated to projects either in the county to which they originally were allocated or in other counties demonstrating a need for the funds.

Hazardous waste treatment and disposal fees; repayment of start-up money for voluntary action program

(sec. 3734.18; Section 54)

Existing law specifies that the fees levied on hazardous waste generated outside of Ohio that is treated or disposed of at a facility in this state must be an amount that is equal to the fee applicable to the waste if it were treated or disposed of in the state where it was generated. The bill repeals this provision. (Sec. 3734.18(C), existing.)

The bill requires the Director of Environmental Protection to establish a multidisciplinary committee composed of employees of the Environmental Protection Agency (EPA) and representatives of industry and environmental advocacy organizations to make recommendations regarding funding for and program activities conducted by the Divisions of Hazardous Waste Management and Emergency and Remedial Response in the EPA. The Director must report those recommendations to the Speaker of the House of Representatives and the President of the Senate not later than October 1, 1998. (Section 50.)

For the purpose of paying specified costs of municipal corporations and counties with regard to hazardous waste facilities within their boundaries, current law levies additional treatment and disposal fees at the rate of 10% of the applicable fees levied for treatment or disposal and collected by the state. The owner or operator must pay the fees each year on the anniversary of the date the hazardous waste facility installation and operation permit was issued for the facility under the statute providing for renewal permits. The bill corrects a long-standing drafting error by instead requiring the owner or operator to pay the fees each year on the anniversary of the date of issuance of the permit during the term of that permit and any renewal permit. (Sec. 3734.18(C).)

Money from treatment and disposal fees, other than money from the surcharge for municipal corporations and counties, is deposited in the Hazardous Waste Facility Management Fund. In 1994, the 120th General Assembly enacted Am. Sub. S.B. 221, which created the voluntary action program for the clean-up of certain contaminated property. The act authorized the Director of Environmental Protection to use money in the fund to pay the start-up costs of administering that program. The Director could use the money for two years after the act's effective date and, not later than three years after using the money, had to reimburse the fund. The bill instead requires the Director to reimburse the fund not later than 13 years after using the money, ending on June 30, 2008. It also specifies that beginning in fiscal year 1999, the amount that is reimbursed in each fiscal year cannot exceed $280,328. (Sec. 3734.18(E).)

Continuation of the Environmental Protection Agency's solid waste disposal fees

(sec. 3734.57)

Current law levies fees on the disposal of solid wastes to fund the Ohio Environmental Protection Agency's solid and infectious waste and construction and demolition debris management programs. The fee is 75¢ per ton and is due to expire on June 30, 1997. The bill continues the 75¢ fee through June 30, 1999.

Scrap Tire Management Fund

(sec. 3734.82)

Existing law creates the Scrap Tire Management Fund and states that it is to consist of all federal money received by the Environmental Protection Agency (EPA) for the scrap tire management program; all grants, gifts, and contributions made to the Director of Environmental Protection for that program; and all other money provided by law for that program. The Director is required to use money in the fund for specified purposes in accordance with certain requirements. The bill revises certain of those requirements and adds another use of money in the fund.

Currently, the Director is required annually to request the Office of Budget and Management to, and the Office must, transfer money to the Facilities Establishment Fund in the Department of Development for loans and grants for eligible projects that recover or recycle energy from scrap tires. Current law establishes a schedule of transfers, beginning with fiscal year 1994 and ending with a transfer of $1 million during fiscal year 1997 and each subsequent fiscal year. The bill requires the Director to request the Director of Budget and Management, not the Office, to make the transfer, eliminates the existing schedule of transfers, most of which has passed, and limits the request for a transfer to fiscal years 1998, 1999, and 2000 rather than each fiscal year after fiscal year 1997. (Sec. 3734.82(G)(3).)

Similarly, the Director of Environmental Protection must expend money for scrap tire removal operations in accordance with a schedule of expenditures. After an expenditure of not more than $2.6 million during fiscal year 1996, the Director is required to spend not more than $1.6 million during fiscal year 1997 and any subsequent fiscal year. The bill eliminates the existing schedule of expenditures, most of which has passed, limits the expenditures to fiscal years 1998, 1999, and 2000 rather than each fiscal year after fiscal year 1997, and increases the ceiling for expenditures during each of those years to $3 million. (Sec. 3734.82(G)(4).)

Under existing law, if more than $3.5 million is credited to the fund during fiscal year 1997 or a subsequent fiscal year, the Director, at the conclusion of the fiscal year, must request the Office of Budget and Management to, and the Office must, transfer half of the excess money to the Facilities Establishment Fund for the purposes discussed above. The Director must spend the remaining half to conduct removal operations during the next fiscal year. The bill generally retains these provisions, but limits them to fiscal years 1998, 1999, and 2000. Regarding the transfer of half of the excess money, it also requires the Director to request the Director of Budget and Management to transfer the money. (Sec. 3734.82(H).)

The bill requires the Director of Environmental Protection to transfer annually to the existing Central Support Indirect Fund in the EPA an amount equal to not more than 12% of each fiscal year's appropriation to the fund (sec. 3734.82(G)(5)).

Underground Storage Tank Administration Fund

(sec. 3737.02(B))

The bill requires interest earned on money credited to the Underground Storage Tank Administration Fund also to be credited to that Fund. This Fund is comprised of fees collected for operation of certificate programs relative to underground storage tanks, certain recovered money related to enforcement actions, and specified fines and penalties.

Environmental Protection Agency wastewater discharge and plan approval fees, water system license and plan approval fees, and other miscellaneous fees

(secs. 3745.11 and 6109.21)

The Water Pollution Control Law requires that a person or governmental entity proposing to install or modify a wastewater treatment works obtain approval of plans and specifications for the project from the Director of Environmental Protection prior to beginning construction. Currently, an applicant for such a plan approval must pay a fee of $100 plus 0.65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application before July 1, 1998, and a fee of $100 plus 0.2 of 1% of the estimated project cost, up to a maximum of $5,000, when submitting an application on or after July 1, 1998. Under the bill, the first tier fee is extended through June 30, 2000, and the second tier applies to applications submitted on or after July 1, 2000. (Sec. 3745.11(L)(2).)

Existing law establishes two schedules of annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily wastewater discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public discharges and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. The fees were due by January 30, 1996, and January 30, 1997. The bill continues the fees and requires that they be paid by January 30, 1998, and January 30, 1999. (Sec. 3745.11(L)(4)(a)(i), (b), and (c).)

It also specifies that the billing year for the fee consists of a 12-month period beginning on January 1 of the year preceding the date when the fee is due. If an existing source permanently ceases to discharge during a billing year, the Director must reduce the fee, including the existing surcharge that is applicable to certain industrial facilities, by one-twelfth for each full month during the billing year that the source was not discharging, but only if the permit holder notifies the Director in writing, not later than October 1 of the billing year, of the circumstances causing the cessation of discharge. (Sec. 3745.11(L)(4)(a)(ii).)

Current law provides that the average daily discharge flow in gallons per day must be calculated using May 1 through October 31 flow data for the period two years prior to the date on which the fee is due. In the case of permits for new sources, the fee for the first two years of operation must be calculated using the average daily design flow of the facility. The bill modifies these provisions by stating instead that the annual discharge fee, except the existing surcharge that is applicable to certain industrial facilities, must be based on the average daily discharge flow in gallons per day calculated as described above. With regard to new sources, the fee must be calculated using the average daily design flow of the facility until actual average daily discharge flow values are available for the May 1 through October 31 period. The fee may be prorated for a new source as described above. (Sec. 3745.11(L)(4)(a)(iii).)

Current law allows a public discharger that owns or operates two or more publicly owned treatment works serving the same political subdivision and that serve exclusively political subdivisions having a population of fewer than 100,000 to pay an annual discharge fee that is based on the combined average daily discharge flow of the treatment works rather than on the average daily discharge flow of individual facilities comprising the treatment works. The bill removes the reference to the average daily discharge flow of individual facilities comprising the treatment works. (Sec. 3745.11(L)(4)(b).)

Existing law imposes a surcharge on the annual discharge fees applicable to major industrial dischargers as classified by the United States Environmental Protection Agency in conjunction with the Director. Those dischargers were required to pay an annual $6,750 surcharge by January 30, 1996, and January 30, 1997. The bill continues the surcharge and requires it to be paid by January 30, 1998, and January 30, 1999. It specifies that the surcharge applies to an industrial discharger

classified as a major discharger during all or part of the annual discharge fee billing year as described above. The bill also provides that the annual discharge fee need not be paid by certain coal mining operators. (Sec. 3745.11(L)(4)(c).)

Under current law, one category of public discharger and eight categories of industrial dischargers are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of $180. The fee was due January 30, 1996, and January 30, 1997. The bill continues this fee also and requires it to be paid by January 30, 1998, and January 30, 1999. (Sec. 3745.11(L)(4)(d).)

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director. Applications for initial licenses and license renewals must be accompanied by a fee, which is calculated using one of the schedules established for the three basic categories of public water systems identified in current law. Currently, the fee is required only through June 30, 1998. The bill extends the fee requirement through June 30, 2000. (Secs. 3745.11(M) and 6109.21.)

That law also requires anyone who intends to construct, install, or modify a public water system to obtain approval of the plans from the Director. Currently, a fee of $100 plus 0.2 of one per cent of the estimated project cost, up to a maximum of $15,000, must accompany the application for plan approval through June 30, 1998, and a flat fee of $5,000 must accompany applications submitted after that date. The bill instead applies the first tier fee to applications submitted through June 30, 2000, and applies the second tier fee to applications submitted after that date. (Sec. 3745.11(N).)

Current law establishes the following two schedules of fees that the Environmental Protection Agency must charge for evaluating laboratories for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law:

Through June 30, 1998

microbiological $1,650

organic chemical 4,500

inorganic chemical 3,500

standard chemistry 1,800

limited chemistry 1,500

On and after July 1, 1998

microbiological $250

chemical/radiological 250

nitrate/turbidity (only) 150

The bill continues the higher fee schedule through June 30, 2000, and applies the lower schedule to evaluations conducted after that date. In the higher fee schedule, it reduces the fee for organic chemical to $3,500, and the fee for limited chemistry to $1,000. It also continues through June 30, 2000, the current provision that an individual laboratory cannot be assessed a fee more than once during a three-year period. (Sec. 3745.11(N).)

Under current law, the application fee to take the examination for certification as an operator of a water supply system or wastewater system is $25 through June 30, 1998, and $10 on and after July 1, 1998. If the Director approves the applicant as eligible to take the examination, the applicant must pay a fee, through June 30, 1998, of $45 if applying to be a Class I operator; the fees for Class II, III, and IV operators are set at $55, $65, and $75, respectively, through that date. Effective July 1, 1998, the fees are to drop by $20 for each class. The bill continues all of the fees, including the application fee, at the higher levels through June 30, 2000; on July 1 of that year, all of the fees will drop to the specified lower levels. (Sec. 3745.11(O).)

Under the Water Pollution Control Law, industrial wastewater dischargers may obtain certain personal property, corporate franchise, and sales and use tax incentives for installing water pollution control equipment. The procedures for obtaining them include the submission of an application to the Director for an industrial water pollution control certificate. Through June 30, 1998, an application must be accompanied by a $500 fee. The bill continues the application fee through June 30, 2000. (Sec. 3745.11(P).)

Current law establishes a $100 application fee through June 30, 1998, for any permit, variance, or plan approval required under the Safe Drinking Water or Water Pollution Control Law for which existing law otherwise does not specify an application fee. On and after July 1, 1998, the fee drops to $15. The bill continues the $100 fee through June 30, 2000,

after which date the fee will drop to $15. (Sec. 3745.11(S).)

Extension of the existence of the Quality Improvement Council

(sec. 3745.25; Sections 167 and 168)

There is within the Environmental Protection Agency (EPA) the Quality Improvement Council, consisting of the following 13 persons: the Director of Environmental Protection, one member of the House of Representatives appointed by the Speaker of the House of Representatives, one member of the Senate appointed by the President of the Senate, four persons who represent the interests of industry, four persons who represent the interests of political subdivisions, and two persons who represent the interests of environmental advocacy.

The Quality Improvement Council has a number of duties, including measuring the achievement of the EPA in specified areas, including the efficient implementation of federal and state mandates, improving the timeliness of review and issuance of certain permits, including permits relating to industries that are sources of air pollutants and solid and hazardous wastes, and improving the consistency of the issuance of such permits to avoid overregulation. The Council was required to report to the Governor and the General Assembly, prior to September 1996, on the level of achievement by the EPA in the above areas, and a recommendation on the need to continue the Council beyond June 30, 1997. The Revised Code provision that creates the Quality Improvement Council will be repealed effective June 30, 1997.

The bill requires the Council, by not later than September 1998, to report to the Governor and the General Assembly on the level of achievement by the EPA in the areas listed in the preceding paragraph, and a recommendation on the need to continue the Council beyond June 30, 1999. The bill also delays the repeal of this provision until June 30, 1999.

Membership of the Environmental Education Board of Trustees

(sec. 3745.21)

Current law establishes the Environmental Education Fund and the Environmental Education Board of Trustees to advise and assist the Director of Environmental Protection in the administration of the fund and to review and comment on expenditures from the fund. One of the members of the board is a member of the House of Representatives appointed by the Speaker of the House of Representatives, and one is a member of the Senate appointed by the President of the Senate. The amendment permits a designee of the member from the House of Representatives and a designee of the member from the Senate to serve on the board.

Increases in veterinary medical licensing and examination fees

(sec. 4741.17)

The bill increases the fees for obtaining a veterinary medical license through qualification in the following different ways:

(1) For a license based on examination, from $250 at any time, to $375 in an even-numbered year, and $250 in an odd-numbered year;

(2) For a license by reciprocity, from $200 to $425 for a license issued in an even-numbered year, and $300 for a license issued in an odd-numbered year;

(3) For a temporary permit, from $75 to $100;

(4) For a duplicate license, from $25 to $35.

The bill imposes a fee of $75 for the reinstatement of a suspended license to practice veterinary medicine and adds a provision requiring an applicant to pay a fee for taking an examination, to be established by the State Veterinary Medical Licensing Board, in an amount adequate to cover the expenses of procuring, administering, and scoring the examination.

State Veterinary Medical Licensing Board income

(sec. 4741.25)

The bill redirects all receipts of the State Veterinary Medical Licensing Board, including fines for violations of the Veterinary Medicine Licensing Law, from the General Revenue Fund to the Occupational Licensing and Regulatory Fund.

Utility Radiological Safety Board funding

(secs. 4937.02 and 4937.05; Section 127)
The bill changes the funding mechanism for nuclear safety programs of the member agencies of the Utility Radiological Safety Board (URSB). Under existing law, unchanged by the bill, the URSB generally is responsible for developing a

comprehensive state policy regarding nuclear power safety, pursuant to stated objectives. The URSB is composed of the following member agencies: the Public Utilities Commission (PUCO), the Environmental Protection Agency, the Department of Health, the Department of Agriculture, the Emergency Management Agency of the Department of Public Safety, and the Department of Commerce.

The URSB currently obtains funding pursuant to its statutory authority to impose annual assessments against each nuclear electric utility in the state. The basis for the assessment, unchanged by the bill, is the utility's intrastate gross receipts, excluding receipts from sales for resale. Assessments collected by the URSB must be deposited into the Utility Radiological Safety Fund, to be distributed among the member agencies in amounts prescribed by legislative biennial appropriation.

The bill eliminates that fund and the associated method of distributing moneys in the fund to URSB member agencies, restricts the URSB's assessment authority by establishing assessment caps, and in effect terminates URSB funding for any URSB activities of the PUCO and the Department of Commerce, although they remain URSB members. The bill establishes a system of funding for the other URSB member agencies through direct grants negotiated between each such member agency and the nuclear electric utilities or, if a member agency disagrees with a grant amount, through assessments imposed by the URSB under its existing assessment authority, subject to certain limitations. The funding provided through such grants or assessments must be for the purposes of enabling the member agency to fulfill its authority and duties under statutes related to nuclear safety or the URSB or under agreements with the Nuclear Regulatory Commission.

Regarding grant funding, the bill imposes a requirement on a member agency and the utilities to negotiate grant amounts in good faith. It provides that a grant must cover all costs related to the above-described purposes of the funding regarding fulfillment of statutory requirements and agreements, but must not be required to cover any costs of activities not directly related to those statutory requirements or agreements.

Regarding assessment funding, the bill provides that an eligible URSB member agency must make a written directive to the URSB for an assessment against the nuclear electric utilities if a member agency disagrees, before September 1 of the first year of a fiscal biennium, with the nuclear electric utilities on a grant amount and the agency is requesting a specified amount not exceeding 75% of the maximum specified in the applicable main operating appropriations act. (As further explained in the LBO fiscal comparison document, temporary law in the bill specifies a maximum for fiscal years 1998 and 1999 for a specified nuclear safety fund of each grant-eligible URSB member agency.) Under the bill, the member agency also must notify the Controlling Board, the Director of Budget and Management, and the nuclear electric utilities in writing of that directive. Upon receipt of the directive, the URSB must assess the specified amount requested by the agency against the nuclear electric utilities, provided that the amount assessed does not exceed the applicable maximum.

However, if the member agency so disagrees with a grant amount, but is requesting a specified amount that exceeds 75% of the applicable maximum for that agency, the agency may request that the Controlling Board approve an assessment against the utilities in the specified amount. The Controlling Board is prohibited from approving an assessment so requested if it exceeds that maximum or will not be used for the bill's stated funding purposes. If the Controlling Board approves the request, the URSB shall impose an assessment in the approved amount against the nuclear electric utilities.

The bill also prohibits the URSB from assessing against nuclear electric utilities in any fiscal biennium for which each member agency and the nuclear electric utilities agree on grant amounts.

It additionally provides that revenues received pursuant to grants or assessments under the bill must be deposited into the requesting agency's nuclear safety fund, as such fund is specified in the applicable main operating appropriations act.

As to nuclear safety programs of the URSB member agencies (including the PUCO and the Department of Commerce), the bill requires the agencies to implement any recommendations made by a nuclear electric utility to render the programs more cost effective or to provide to the utility a written statement explaining why the recommendation will not be implemented or will be implemented with substantial modification.

Additionally, the bill relocates URSB offices from the offices of the PUCO to the offices of the Emergency Management Agency.

Conservation easements

(secs. 901.21, 5301.67, 5301.68, and 5301.69)

Clarification of definition of conservation easement

The bill alters the definition of a conservation easement to include retaining the use of land predominantly in agriculture rather than in agricultural production as one of the public purposes for which such easements may be held by the Department of Natural Resources and specified political subdivisions. Because the applicable statutory definition of

"agriculture" is broader than "agricultural production," any of the activities included in that definition can be conducted on land subject to a conservation easement under the bill. The bill retains the current agriculture-related purposes of retaining land in horticultural, silvicultural, or other farming or forest use within the authorized purposes of conservation easements.

Acquisition of conservation easements by the Director of Agriculture; further clarification of purposes for which specified entities currently authorized to acquire such easements may acquire them

The bill adds the Director of Agriculture to the list of officers, boards, and legislative authorities to whom landowners may grant conservation easements. It specifically authorizes the Director to acquire conservation easements in the name of the state by gift, devise, bequest, grant, purchase, or lease. In addition to the agricultural purposes discussed above, the Director may acquire such easements for the other existing statutory purposes. Also, the bill stipulates that the Director of Natural Resources and governing boards or legislative authorities of political subdivisions authorized to acquire conservation easements under current law may do so for any of the authorized purposes for which conservation easements may be held under current law and the bill.

Further, the bill authorizes the Director of Agriculture, by any of the above methods, to acquire or acquire the use of buildings, structures, or stationary equipment located on land for which the Director holds a conservation easement that is necessary or appropriate for the use of the land in agriculture or in horticultural, silvicultural, or other farming or forest use.

Additional authority to hold and use land to retain its agriculture-related use

The bill authorizes the Directors of Agriculture and Natural Resources and the boards and legislative authorities of political subdivisions permitted by current law to hold conservation easements, in addition to their other powers, to hold land or interests in land, including conservation easements, for the purpose of retaining the use of the land in agriculture or in horticultural, silvicultural, or other farming or forest production. Under the bill, those Directors, boards, and legislative authorities may do anything necessary or appropriate to achieve that purpose, including performing any of the activities included in the statutory definition of agriculture. Those Directors, boards, and legislative authorities are further authorized to enter into contracts to lease or rent the land or interests in land so held to persons or governmental entities who will use the land in agriculture or in horticultural, silvicultural, or other farming or forest production.

Acquisition of conservation easements to preserve agricultural use by charitable organizations

Under current law, charitable organizations exempt from federal income taxation are authorized to acquire and hold conservation easements for the preservation of land areas for public outdoor recreation or education, the preservation of historically important land areas or structures, or the protection of natural environmental systems. The bill additionally authorizes those charitable organizations to acquire and hold conservation easements for the preservation of the use of land areas in agriculture or in horticultural, silvicultural, or other farming or forest production.

Study of consumption of motor fuel in Ohio

(Section 149)

The bill requires the Legislative Service Commission to undertake a study of the funding of the Waterways Safety Fund to determine whether the amount of motor fuel tax revenues currently being allocated to the Fund reflects the amount of motor fuel being used for recreational boating purposes. The study shall also determine the amount of motor fuel actually consumed for general and business aviation, other than federally regulated commercial aviation, in the state. The study is to utilize existing data as well as any new relevant data, and its findings are to be reported on or before September 1, 1998, to the Speaker of the House of Representatives, the President of the Senate, the minority leader of each House, and the chairpersons of the House Agriculture and Natural Resources Committee and the Senate Energy, Environment, and Natural Resources Committee, and to the Director of Natural Resources.

Existence of the Stabilization Reserve Fund

(Sections ____ and _____)

The bill states that the Stabilization Reserve Fund, created under the Medical Malpractice Insurance Law, must remain in existence until all moneys in the Fund are distributed as set forth in current law.

Professional Services Contract Review Committee

(Section _____)

The bill creates the Professional Services Contract Review Committee and requires it to (1) review all contracts for professional services entered into by the Departments of Rehabilitation and Correction, Mental Health, Mental Retardation

and Developmental Disabilities, and Youth Services for fiscal years 1996 and 1997, (2) conduct a cost-benefit analysis of the contracts, (3) make certain recommendations, and (4) report by June 30, 1998, to the Governor, House Speaker, Senate President, House Minority Leader, Senate Minority Leader, and chairpersons of the finance committees in the House and Senate. The Committee consists of ten members, with one each appointed by the Directors of Administrative Services, Rehabilitation and Correction, Mental Health, Mental Retardation and Developmental Disabilities, Youth Services, and Budget and Management, and with two House members appointed by the House Speaker and two Senate members appointed by the Senate President.

courts and corrections

- Revises the provisions governing contracts for the private operation of correctional facilities.
- Renames the "Public Defender Reimbursement Fund" as the "Client Payment Fund."
- Clarifies that money due the state for paying for counsel appointed to represent certain indigent defendants must be collected by the State Public Defender and deposited into the Client Payment Fund.
- Authorizes the State Public Defender to use the money in the Client Payment Fund to provide assistance to counties in the operation of county indigent defense systems.
- Requires the State Public Defender to conduct a study to find new sources of funds for the Legal Aid Fund as a replacement for funds from IOTA accounts and, not later than December 31, 1997, to submit a report that recommends new sources of funds.
- Creates the Organized Crime Commission Fund in the state treasury, consisting of money paid pursuant to a court judgment to reimburse expenses incurred by the Organized Crime Investigations Commission or an organized crime task force in investigating the criminal activity upon which the prosecution leading to the judgment was based.
- Requires the Division of Business Administration in the Department of Rehabilitation and Correction (DRC) to administer within Ohio federal criminal justice acts that the Governor requires DRC to administer, to apply for specified grants to improve Ohio's criminal justice system, to engage in certain grant-related audits, and to enter into certain types of contracts necessary for DRC to carry out its duties.
- Except for a fee that the Attorney General may charge for functions and duties the Attorney General performs in implementing the Act and that may not exceed the lesser of the actual cost of their performance rounded off to the nearest quarter dollar or $13, prohibits the charging of any fee or tax in relation to the implementation of the federal Brady Handgun Violence Protection Act, and generally prohibits the public expenditure of any public funds or private funds under the control of a government entity to create, maintain, or expand any record pertaining to a firearm purchaser or transferee from information obtained through a background check performed under that federal Act.
- Eliminates certain duties of the Clerk of the Supreme Court regarding money the Clerk receives.
- Provides that the lodges and members of a fraternal benefit society may commence civil actions against the society to enforce contract provisions or to resolve disputes concerning the interpretation of the society's laws.
- Repeals a provision in current law prohibiting court recognition of any application or petition for injunction against a fraternal benefit society that is not brought by the Attorney General upon the request of the Superintendent of Insurance.
- Authorizes the Department of Youth Services to transfer its excess or surplus supplies to

a community corrections facility.

• Exempts from county competitive bidding requirements purchases of certain programs or services administered by the Department of Youth Services.

• Modifies the definition of "public safety beds" that applies to the Felony Delinquent Care and Custody (FDCC) Program that the Department of Youth Services (DYS) operates to exclude certain felony delinquents who have been diverted from care and custody in a DYS institution and placed in a community corrections facility, to exclude certain felony delinquents who are adjudicated to be delinquent children for committing misdemeanors in a DYS institution, and to cover certain felony delinquents who are serving disciplinary time.

• Prohibits a juvenile court that imposes a specified type of order of disposition in a delinquent child adjudication from placing that child in a community corrections facility, if the child would be covered by the revised definition of "public safety beds" if the juvenile court had chosen to exercise its discretion to commit the child to DYS' legal custody for institutionalization or institutionalization in a secure facility.

• Modifies the State Subsidies Program (SSP) and the Felony Delinquent Care and Custody (FDCC) Program in the DYS Law to establish a combined "annual grant and application for funding" procedure; to specify that SSP grant money as well as FDCC Program monthly allocations must be deposited into a county's FDCC Fund; to prescribe distinct permissible uses of the SSP and FDCC Program money in a county's FDCC Fund; to place conditions upon DYS' obligation to pay SSP grants or FDCC Program money to a county or juvenile court when certain annual or monthly report requirements or fiscal monitoring program requirements have not been satisfied; to modify the deadlines governing juvenile court annual reports to DYS and DYS' related annual report to the Joint Legislative Committee on Juvenile Corrections Overcrowding (JLCJCO), the time-periods covered by the respective reports, and the scope of the JLCJCO report; to require a county to repay in accordance with a specified procedure impermissible expenditures from the county's FDCC Fund; to permit DYS to deduct the amount of the impermissible expenditures from certain SSP grant moneys or FDCC Program allocations under specified circumstances; and to repeal or modify other provisions of the SSP and FDCC Program provisions of the DYS Law.

• Authorizes the Department of Youth Services (DYS) to compensate a child committed to DYS for participating in activities to correct the child's socially harmful tendencies by transferring the child's wages for those activities to the youth benefit fund for the child's institution or region.

• Authorizes the managing officer of a DYS institution to establish a youth benefit fund to receive and disburse monetary compensation and other benefits for youths, and a cafeteria fund to receive money from the sale of meals and to pay the costs of providing meals, but eliminates the authority of a managing officer to establish a commissary fund.

CONTENT AND OPERATION

Contracts for private operation of correctional facilities

(secs. 9.06, 5120.03, 5120.16, and 5120.38; Section 238)

Current law permits counties, municipal corporations, and the Ohio Department of Rehabilitation and Correction to contract for the private operation and management of correctional facilities. The law contains many provisions that must be included in, or be in existence before the parties enter into, such a contract. The bill revises those provisions as follows:

(1) In addition to being accredited by the American Correctional Association, as currently required, the private contractor must be operating and managing one or more facilities accredited by that Association at the time of the application to operate and manage a facility.

(2) The private contractor must demonstrate that it can operate the facility with the inmate capacity required by the county, municipal corporation, or Department.

(3) Rather than being required to seek, obtain, and maintain accreditation for a facility from the American Correctional Association as under current law, the contractor must begin the process of accrediting the facility no later than 60 days after the facility receives its first inmate, receive accreditation within 12 months after applying for it, and maintain the accreditation, once it is received, throughout the contract term. A violation of these requirements puts the contractor in violation of the contract, for which the public entity may revoke the contract at its discretion.

(4) The written report the contractor currently must provide to the Department regarding each unusual incident at a state facility is required by the bill to be delivered to the Department within time limits specified in the contract.

(5) The contractor must allow the contract monitor appointed by the public entity unrestricted access to all parts of the facility and all records of the facility except the contractor's financial records.

(6) If the contract is with the Department, designated Department staff members must be allowed access to the facility in accordance with rules promulgated by the Department.

(7) The contractor's staffing pattern at the institution must be approved by the public entity.

(8) Instead of stating that all documents and records the contractor maintains regarding the facility are public records, except for financial records and personnel records, as under current law, the contract must provide that all such documents and records of the contractor must be maintained "in the same manner required for, and subject to the same laws, rules, and regulations as apply to, the records of the public entity."

(9) If the facility is operated under a contract with the Department, the contract must include authorization for the Department to establish one or more prison industries at the facility. Regardless of which public entity the contract is with, the public contractor must pay any inmate workers at the facility at the rate approved by the public entity. Inmate workers must not be considered employees of the contractor.

The bill prohibits a contract from delegating to the private contractor authority to contract for local or long distance telephone services for inmates or to receive commissions from such services at a facility owned or operated under a contract with the Department.

The bill also adds language to clarify that inmates at facilities operated for the Department under a contract remain inmates in the care and custody of the Department.

Public Defender Reimbursement Fund

(secs. 120.04(B)(5), 120.33(A)(4), and 2941.51; Section 175)

Current law requires the State Public Defender to collect all money due the state for reimbursement for legal services under the State Public Defender Law and to deposit all the money collected into the state treasury to the credit of the Public Defender Reimbursement Fund. The bill renames the "Public Defender Reimbursement Fund" the "Client Payment Fund" and clarifies that money due the state for paying for counsel appointed to represent certain indigent defendants must be collected by the State Public Defender and deposited into the Client Payment Fund. The bill also specifies that the Client Payment Fund is a continuation of the Public Defender Reimbursement Fund.

Under current law, all money credited to the Fund must be used by the State Public Defender to appoint assistant state public defenders and to provide other personnel, equipment, and facilities necessary for the operation of the state public defender office, or to reimburse counties for the operation of county public defender offices, joint county public defender offices, and county appointed counsel systems. Under the bill, the State Public Defender also may use the money in the Fund to provide assistance to counties in the operation of county indigent defense systems.

State Public Defender study of new funds for the Legal Aid Fund

(Section ___)

Under existing law, the State Public Defender administers the Legal Aid Fund and pays moneys out of the fund to local legal aid societies. The Fund receives funds paid as court costs, funds from IOLTA accounts established by attorneys, and funds from IOTA accounts established by title insurance agents or title insurance companies.

The amendment requires the State Public Defender to conduct a study to find new sources of funds for the Legal Aid Fund as a replacement for the funds from IOTA accounts and to recommend new sources of funds in a report to be submitted to the President of the Senate, Speaker of the House of Representatives, Director of Budget and Management, and Director of the Legislative Budget Office of the Legislative Service Commission not later than December 31, 1997.

Creation of Organized Crime Commission Fund

(sec. 177.011)

The Organized Crime Investigations Commission in the office of the Attorney General is required to coordinate investigations of organized criminal activity in the state and to cooperate with departments and officers of the federal government in the suppression of organized criminal activity. The Commission is authorized to establish organized crime task forces to investigate organized criminal activity in a county or in two or more adjacent counties. Members of the investigatory staff of a task force include local law enforcement officers. (Secs. 177.01 and 177.02(C).)

In codified law, the bill creates in the state treasury the Organized Crime Commission Fund consisting of money paid to the Treasurer of State pursuant to the judgment of a court in a criminal case as reimbursement of expenses that the Commission or an organized crime task force incurred in the investigation of the criminal activity upon which the prosecution was based. All investment earnings on money in the Fund are to be credited to the Fund. The Commission must use the money to reimburse political subdivisions for the expenses the political subdivisions incur when their law enforcement officers participate in an organized crime task force. The Fund already exists, having been created by the Controlling Board in 1994.

Administration of certain federal criminal justice acts

(secs. 181.52 and 5120.09)

The Office of Criminal Justice Services (OCJS) generally is required to perform specified functions, including (1) serving as the state criminal justice services agency and performing criminal and juvenile justice system planning in Ohio, (2) administering in Ohio "any federal criminal justice acts or juvenile justice acts that the governor requires it to administer," (3) auditing grant activities of agencies, offices, organizations, and persons that are financed in whole or in part by funds granted through OCJS, (4) monitoring or evaluating the performance of criminal and juvenile justice systems projects and programs in Ohio that are financed in whole or in part by funds granted through OCJS, (5) applying for, allocating, disbursing, and accounting for grants that are made available pursuant to federal criminal justice acts or juvenile justice acts, or made available from other federal, state, or private sources, to improve the criminal and juvenile justice systems in Ohio, and (6) contracting with federal, state, and local agencies, foundations, corporations, businesses, and persons when necessary to carry out OCJS' duties. Existing law (not in the bill) defines the following terms that relate to the listed OCJS functions:

(1) "Federal criminal justice acts" means any federal law that authorizes financial assistance and other forms of assistance to be given by the federal government to the states to be used for the improvement of the criminal and juvenile justice systems of the states (sec. 181.51(A)).

(2) "Criminal justice system" includes all of the functions of the following: (a) the State Highway Patrol, county sheriff offices, municipal and township police departments, and all other law enforcement agencies, (b) the courts of appeals, courts of common pleas, municipal courts, county courts, and mayor's courts, when dealing with criminal cases, (c) the prosecuting attorneys, city directors of law, village solicitors, and other prosecuting authorities when prosecuting or otherwise handling criminal cases and the county and joint county public defenders and other public defender agencies or offices, (d) the Department of Rehabilitation and Correction, probation departments, county and municipal jails and workhouses, and any other department, agency, or facility that is concerned with the rehabilitation or correction of criminal offenders, (e) any public or private agency whose purposes include the prevention of crime or the diversion, adjudication, detention, or rehabilitation of criminal offenders, and (f) any public or private agency the purposes of which include assistance to crime victims or witnesses (sec. 181.51(B)).

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, and association (sec. 1.59(C)).

The OCJS' listed functions do not affect the status of the Attorney General (AG) as a criminal justice services agency or the AG's discretion or authority with respect to crime victim assistance and criminal justice programs (sec. 181.52(C) and (D)). Although not specified in existing law, the Department of Rehabilitation and Correction (DRC) apparently also is required by the Governor to administer in Ohio certain federal criminal justice acts that OCJS is not required to administer.

In the law pertaining to DRC's Division of Business Administration (DBA), the bill requires the DBA to perform the following additional responsibilities that are generally similar to functions that OCJS is required to perform under existing law (sec. 5120.09(D), (E), and (F)):

(1) To administer within Ohio federal criminal justice acts that the Governor requires DRC to administer. In order to improve Ohio's criminal justice system, the DBA must apply for, allocate, disburse, and account for grants that are made available pursuant to those federal criminal justice acts and grants that are made available from other federal government sources, state government sources, or private sources. "Criminal justice system" and "federal criminal justice acts" have the same meanings as in the OCJS Law.

(2) To audit the activities of governmental entities, "persons" (as defined in existing law), and other types of nongovernmental entities that are financed in whole or in part by funds that DRC allocates or disburses and that are derived from the grants described in (1) above;

(3) To enter into contracts, including contracts with federal, state, or local governmental entities, "persons" (as defined in existing law), foundations, and other types of nongovernmental entities, that are necessary for DRC to carry out its duties and that neither the DRC Director nor a Revised Code section authorizes another DRC division to enter.

The bill does not affect OCJS' functions under existing law that relate to federal criminal justice acts that the Governor requires it to administer. The bill "technically" amends the OCJS Law, however, to reflect the proposed additional functions of the DBA relative to federal criminal justice acts that the Governor requires DRC to administer (sec. 181.52(B)).

Prohibitions regarding implementation of federal Brady Handgun Violence Protection Act

(sec. 2921.431)

In relevant part, the federal Brady Handgun Violence Protection Act (hereafter, the "Brady Act") generally prohibits the transfer of a handgun unless any of a series of alternative conditions precedent are satisfied prior to the transfer. One of the alternative conditions precedent generally requires the prospective transferor of a handgun (hereafter, "the transferor") to obtain certain information from the prospective transferee (hereafter, "the transferee"), requires the transferor to provide the information to the "chief law enforcement officer" of the transferee's place of residence, and specifies that the transferor cannot complete the transfer unless either: (1) five business days have elapsed from the date the transferor furnished the information to the chief law enforcement officer and the transferor has not received information from the officer that the transferee's receipt or possession of the handgun would violate federal, state, or local law, or (2) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that the transferee's receipt or possession of the handgun would violate federal, state, or local law. Ohio law contains no similar provisions.

The bill imposes two prohibitions relative to the implementation in Ohio of the Brady Act:

(1) First, it generally prohibits any "public servant" (see below) from charging any fee or tax in connection with any action taken to implement the Brady Act. However, it specifies that, if the office of the Attorney General performs any functions or duties in the implementation of the Brady Act, the Attorney General may charge a fee for the performance of those functions and duties that does not exceed the actual cost of performing those functions and duties rounded off to the nearest quarter dollar or $13, whichever is less.

(2) Second, it prohibits any public servant from expending any of the following moneys for the purpose of creating, maintaining, or expanding any record pertaining to the purchaser or transferee of a firearm from information that is obtained as a result of any background check performed pursuant to the Brady Act, unless the creation, maintenance, or expansion of the record is explicitly required by federal law: (a) any money appropriated to or on behalf of the agency, department, bureau, board, commission, or other entity of state or local government served by the public servant, (b) any money appropriated to any agency, department, bureau, board, commission, or other entity of state or local government, other than one described in clause (2)(a), that otherwise is under the control of the public servant, or (c) any money from a private source that is under control of the agency, department, bureau, board, commission, or other entity of state or local government served by the public servant or that otherwise is under control of the public servant.

The bill does not provide a penalty for the violation of either of the above-described prohibitions.

Existing law defines the term "public servant" for purposes of the Revised Code chapter in which the above-described prohibitions are located (sec. 2921.01, not in the bill). Under that definition, a public servant is: (1) any elected or appointed officer, employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, including, but not limited to, any legislator, judge, or law enforcement officer, (2) any person performing *ad hoc* a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, or (3) a person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate.

Duties of the Clerk of the Supreme Court

(repealed secs. 2503.14, 2503.15, 2503.16, and 2503.18)

Current law requires the Clerk of the Supreme Court, in addition to the Clerk's other duties and responsibilities, to do all of the following:

(1) Prepare a certified annual list of certain unclaimed money;

(2) Keep a record of money the Clerk pays into the state treasury;

(3) Provide for the payment of amounts due persons entitled to money paid into the state treasury;

(4) Keep a cashbook in which to enter certain fees received by the Clerk, issue a quarterly report to the Supreme Court of such fees received during the preceding quarter, and pay those fees into the state treasury.

The bill eliminates the Clerk's duties described in (1) through (4) above.

Fraternal Benefit Society Law

(sec. 3921.30; repealed sec. 3921.32)

The bill amends a section of the Fraternal Benefit Society Law, pertaining to the Superintendent of Insurance's investigation of violations of the Law by fraternal benefit societies, by specifying that nothing in the section is to be construed as preventing the lodges and members of a fraternal benefit society from commencing a civil action against the society for the enforcement of a contract provision or for the resolution of a dispute concerning an interpretation of the society's laws, if the action is not based on the Superintendent's exercise of investigatory authority under this section. The bill also bars a fraternal benefit society from prohibiting its lodges and members from commencing these types of civil actions.

The bill also repeals a section of the Fraternal Benefit Society Law that prohibits court recognition of any application or petition for injunction against a fraternal benefit society that is not brought by the Attorney General upon the request of the Superintendent of Insurance. A similar provision in the Law, which is, however, applicable only to actions taken against domestic fraternal benefit societies that fail to correct deficiencies noted by the Superintendent, is unaffected by the bill.

Transfer of excess or surplus supplies from the Department of Youth Services to a community corrections facility

(secs. 125.13 and 5139.03)

Under existing law, whenever a state agency determines that it has excess or surplus supplies, it must notify the Director of Administrative Services, who may dispose of the supplies by sale, lease, or transfer (sec. 125.13). The bill provides that notwithstanding this requirement, the Department of Youth Services may transfer any of its excess or surplus supplies to a community corrections facility. These supplies remain the Department's property for five years from the date of the transfer. After the five-year period, the supplies become the property of the facility. (Sec. 5139.03.)

Exemptions from county competitive bidding requirements

(sec. 307.86)

The bill exempts from county competitive bidding requirements purchases of certain programs or services administered by the Department of Youth Services that provide case management, treatment, or prevention services to any felony or misdemeanant delinquent, unruly youth, or status offender under the supervision of the juvenile court.

Department of Youth Services functions

"Public safety beds" definition changes and associated changes within the Felony Delinquent Care & Custody Program Law

(secs. 5139.01(A)(13) and (19), 5139.04(E), 5139.42(F)(4), and 5139.43(B)(2)(a))

Background. For purposes of the Felony Delinquent Care and Custody (FDCC) Program of the Department of Youth Services (DYS), existing law defines "public safety beds." DYS is prohibited from including felony delinquents who are covered by that definition in the number of adjudicated delinquent children that must be used in making specified percentage reductions from the monthly allocations to which each county generally is entitled under the FDCC Program Law. DYS instead is statutorily required to bear the care and custody costs associated with public safety beds. (Secs. 5139.01(A)(13) and 5139.43(B)(2)(a).)

Existing law also defines several terms that relate to the definition of "public safety beds" and other aspects of the DYS Law. An "institution" generally means a state facility that is created by the General Assembly and that is under the management and control of DYS or a private entity with which DYS has contracted for the institutional care and custody of felony delinquents. A "community corrections facility" generally means a county or multicounty rehabilitation center for felony delinquents who have been committed to DYS and diverted from care and custody in an institution and placed in the rehabilitation center with the consent of the committing juvenile court and the rehabilitation center. A "Category One Offense" means aggravated murder, murder, attempted aggravated murder, and attempted murder. A "Category Two Offense" means voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, and involuntary manslaughter when it is a felony of the first degree. (Sec. 5139.01(A)(4), (15), and (18).)

Operation of the bill. The bill amends the definition of "public safety beds" and associated provisions of the FDCC Law.

The definition of "public safety beds" as revised by the bill is as follows (secs. 5139.01(A)(13) and (19), 5139.04(E), 5139.42(F)(4), and 5139.43(B)(2)):

(1) Existing law includes felony delinquents who have been committed to DYS for the commission of an act (other than aggravated robbery or aggravated burglary) that is a Category One Offense or Category Two Offense and who are in the care and custody of an institution or who have been diverted from care and custody in an institution and placed in a community corrections facility. The bill eliminates from this provision felony delinquents who have been so diverted to a community corrections facility.

(2) Existing law includes felony delinquents who, while committed to DYS and in the care and custody of an institution or a community corrections facility, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a felony or a misdemeanor. The bill eliminates from this provision (a) felony delinquents who, while in the care and custody of a *community corrections facility*, are adjudicated delinquent children for committing *any* offense and (b) felony delinquents who, while in the care and custody of a DYS institution, are adjudicated delinquent children for committing *misdemeanors*.

(3) Existing law includes children (a) who are at least 12 but less than 18 years of age, (b) who are adjudicated delinquent children for having committed acts that if committed by an adult would be a felony, (c) who are committed to DYS by the juvenile court of a county that has had 1/10th of 1% or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years, and (d) who are in the care and custody of an institution or a community corrections facility. The bill excludes from this provision children who satisfy the criteria of (a) to (c) above and who are in the care and custody of a community corrections facility. It also repeals existing law's associated provision that, when DYS is developing its formula governing county allocations under the FDCC Program, DYS must calculate for each year of a biennium the number of children who satisfy the criteria of (a) to (c) above and who are in the care and custody of a community corrections facility.

(4) Existing law includes felony delinquents who, while committed to DYS and in the care and custody of an institution, commit in that institution an act that if committed by an adult would be a felony, who are serving "administrative time" (as defined by DYS rule) for having committed that act, and who have been institutionalized or institutionalized in a secure facility for the statutorily prescribed minimum period of time. The bill generally retains the listed criteria for the felony delinquents covered by this provision but substitutes the term "disciplinary time" for existing law's "administrative time." Unlike existing law, the bill does not require DYS to define "disciplinary time" by rule but instead specifically defines that term to mean additional time that DYS requires a felony delinquent to serve in an institution, that delays the felony delinquent's planned release, and that DYS imposes upon the felony delinquent following the conduct of an internal due process hearing for having committed any of the following acts while committed to DYS and in the care and custody of an institution: (1) an act that if committed by an adult would be a felony, (2) an act that if committed by an adult would be a misdemeanor, or (3) an act that is not described in (1) or (2) above and that violates a DYS institutional rule of conduct; this definition's inclusion of misdemeanor acts does not cause a felony delinquent who commits a misdemeanor act in an institution to become a "public safety bed" for purposes of the FDCC Program Law. The bill correspondingly removes existing law's requirement that DYS define "administrative time" by rule.

(5) Existing law (continued by the bill) includes felony delinquents who are subject to and serving a three-year period of commitment imposed by a juvenile court for specified types of "firearm conduct" associated with an act (other than aggravated burglary) that would be a Category One Offense or a Category Two Offense if committed by an adult.

"Public safety beds" and juvenile court commitments to community correctional facilities

(secs. 2151.355(A)(12) and 5139.36(B)(1)(a))

Background. The Juvenile Code contains a list of permissible, "discretionary" orders of disposition that a juvenile court

may impose upon a child who has been adjudicated a delinquent child for committing an act that would be a felony or a misdemeanor if committed by an adult. These orders may include (among others) (a) an order committing the child to the temporary custody of specified types of schools, camps, institutions, or other facilities operated for the care of delinquent children, (b) an order committing the child to the legal custody of DYS for institutionalization or for institutionalization in a secure facility for specified periods of time for having committed specified types of felonious or other acts or for specified types of "firearm conduct" associated with specified acts, and (c) a *catchall type of order* that imposes "any further disposition that the court finds proper." Existing law prohibits a juvenile court that imposes a catchall order of disposition from placing a child in a state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held. It appears that a juvenile court currently may impose a catchall order of disposition that commits an adjudicated delinquent child to a *community corrections facility* without the juvenile court first having to commit the child to the legal custody of DYS and then having to consent (along with the facility) to DYS' placement of the child in the community corrections facility in accordance with the Community Corrections Facilities Grant Law. (Secs. 2151.355(A)(12) and 5139.36(B)(1)(a).)

Operation of the bill. The bill prohibits a juvenile court that imposes a catchall order of disposition from placing an adjudicated delinquent child in a community corrections facility, if the child would be covered by the bill's revised definition of "public safety beds" for purposes of the FDCC Program Law if the juvenile court had chosen to exercise its discretion to commit the child to DYS' legal custody for institutionalization or institutionalization in a secure facility for specified periods of time for having committed specified types of felonious or other acts. The bill correspondingly amends the Community Corrections Facilities Grant Law to specify that the plan that is required to be included in a grant application must provide, in a manner that is *consistent with* the proposed limitation on juvenile court "public safety bed" commitments to a community corrections facility, for the reduction of the number of felony delinquents committed to DYS from the county or counties associated with a community corrections facility. (Secs. 2151.355(A)(12) and 5139.36(B)(1)(a).)

Changes "within" the State Subsidies Program Law

(secs. 5139.04(E), 5139.34, and 5139.43(C)(2) and (3))

State subsidies--permissible uses. Section 5139.34 currently governs the State Subsidies Program (SSP) that the Department of Youth Services (DYS) is required to operate. Existing law specifies that funds may be appropriated to DYS for the purpose of granting state subsidies to counties to aid in the support of (1) diagnostic programs that are provided in a secure setting and in which no child is detained for more than two weeks, (2) diagnostic programs that are provided in a nonsecure setting, (3) prevention, diversion, counseling, treatment, and rehabilitation programs that are provided in a nonsecure setting, and (4) nonsecure foster care facilities for alleged or adjudicated unruly and delinquent children or children at risk of becoming unruly or delinquent children. DYS currently is prohibited from granting state subsidies for the provision of care and services for children in a foster care facility unless the facility has been certified, licensed, or approved by the appropriate state agency; for purposes of the SSP, foster care facilities currently do not include a state institution, "county or district detention homes," or a county or district children's home. Existing law also specifies that no more than 30% of a state subsidy grant to any county that has a population of more than 85,000 and no more than 50% of a state subsidy grant to any county that has a population of 85,000 or less may be used for the operation of, or placement of children in, residential facilities that have more than 20 beds in any one site and that no more than 15% of a state subsidy grant to any county may be used for capital improvements. (Sec. 5139.34(A).)

The bill modifies these provisions of the SSP Law as follows (secs. 5139.04(E), 5139.34(A), and 5139.43(C)(2)(a)(i)):

(1) It repeals existing law's general description of the permissible programs and facilities for which state subsidies may be used and instead specifies that a county or its juvenile court must use state subsidies granted pursuant to the SSP Law only in accordance with specified provisions in the Felony Delinquent Care and Custody (FDCC) Program Law (see "***Combined aspects of the SSP and the FDCC Program***") and DYS' rules pertaining to state subsidy funds.

(2) It continues existing law's prohibition against DYS' grants of state subsidies in connection with uncertified, unlicensed, or unapproved foster care facilities and includes "county or district detention homes" within the types of foster care facilities covered by that prohibition.

(3) It additionally prohibits DYS from granting state subsidies for the provision of care and services to children, including, but not limited to, care and services in a detention facility, in another facility, or in out-of-home placement, unless the minimum standards applicable to the care and services that DYS prescribes by rule have been satisfied.

(4) It relocates existing law's provision that places a 15% cap on the use of state subsidies for capital improvements and repeals existing law's 30% and 50% caps on the use of state subsidies for residential facilities with 20 or more beds at a given site.

Grant formula. The bill continues to require DYS to apply the following formula to determine the amount of the annual

grant that each county generally is to receive under the SSP: (1) each county must receive a basic annual grant of $50,000, (2) the sum of those basic annual grants must be subtracted from the total amount of the General Assembly's appropriation for the SSP to determine the remaining portion of the funds appropriated, and (3) that remaining portion must be distributed on a per capita basis to each county that has a population of more than 25,000 for that portion of the population of the county that exceeds that number (sec. 5139.34(B)).

Repealed provisions. The bill repeals the provisions of the existing SSP Law (1) that require each juvenile court and the associated board of county commissioners to jointly establish and maintain a Youth Services Advisory Board to assist the court and the board in the formulation of an annual comprehensive plan and to advise the court and the board as to youth services needs and recommended programs, (2) that relate to the membership and conduct of business by each Youth Services Advisory Board, (3) that specify the content of a county's annual comprehensive plan, (4) that require each county, through its juvenile court and the board of county commissioners, to submit to DYS its application for financial assistance under the SSP and its annual comprehensive plan as approved by the court and the board, (5) that specify that an annual comprehensive plan is subject to review and approval by DYS, (6) that permit a juvenile court to submit a written request to the board of county commissioners for the appropriation of moneys to assist in the funding of the programs contained in the county's annual comprehensive plan and that relate to subsequent board action, and (7) that require DYS, upon request, to provide consultation and technical assistance to the counties to aid them in developing their annual comprehensive plans (sec. 5139.34(D) to (F)).

New application procedure. The bill replaces the existing state subsidies application and annual comprehensive plan procedure with a new "annual grant agreement and application for funding" (hereafter, agreement-application) procedure. Specifically, prior to a county's receipt of an annual grant under the SSP, the juvenile court that serves the county must prepare, submit, and file in a specified manner (see "***Combined aspects of the SSP and the FDCC Program***") an agreement-application that is for the combined purposes of, and that satisfies the requirements of, the SSP Law and the FDCC Program Law. In addition to the subject matters described in the FDCC Program Law or in DYS' implementing rules, the agreement-application must address fiscal accountability and performance matters pertaining to the programs, care, and services that are specified in the agreement-application and for which state subsidy funds granted pursuant to the SSP will be used (sec. 5139.34(C)(1)).

New county treasurer functions in connection with SSP grants. The bill requires the county treasurer of each county that receives an annual grant pursuant to the SSP to deposit the state subsidy funds so received into the county's FDCC Fund (see "***Combined aspects of the SSP and the FDCC Program***"). Subject to exceptions prescribed in the FDCC Program Law that may apply to the disbursement, DYS generally must disburse the state subsidy funds to which each county is entitled in *a lump sum payment* that must be made in July of each calendar year. However, in the case of state subsidy funds to which a county is entitled for fiscal year 1998, DYS instead generally must disburse those funds to each county in two distinct payments as follows: (1) in July, 1997--75% of those funds and (2) in October, 1997--the remainder of those funds *but only after* DYS reviews and reconciles the applicable reports that the juvenile court of each county is required to prepare and submit to DYS under the FDCC Program Law. (Sec. 5139.34(C)(2).)

Under the bill, upon an order of the juvenile court that serves a county and subject to appropriation by the board of county commissioners of that county, a county treasurer must disburse from the county's FDCC Fund the state subsidy funds granted to the county pursuant to the SSP Law for use only in accordance with the SSP Law, the applicable provisions of the FDCC Program Law, and the county's approved agreement-application. The bill specifies that the money in a county's FDCC Fund that represent state subsidy funds granted pursuant to the SSP Law (1) is subject to appropriation by that county's board of county commissioners, must be disbursed by the treasurer of that county, and must be used in the manners mentioned above, (2) does not revert to the county general fund at the end of any fiscal year, (3) must carry over in the FDCC Fund from the end of any fiscal year to the next fiscal year, (4) is in addition to, and cannot be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs, care, or services for alleged or adjudicated delinquent children, unruly children, or juvenile traffic offenders or for children who are at risk of becoming delinquent children, unruly children, or juvenile traffic offenders, and (5) cannot be used to pay for the care and custody of felony delinquents who are in the care and custody of a DYS institution pursuant to a commitment, recommitment, or revocation of a release on parole by the juvenile court of that county or who are in the care and custody of a community corrections facility pursuant to a placement by DYS with the consent of the juvenile court. (Sec. 5139.34(C)(3) and (4).)

Conditions on continued receipt of state subsidies. The bill specifies that, as a condition of the continued receipt of state subsidy funds pursuant to the SSP, each county and its juvenile court must comply with certain annual report requirements, monthly statistical report requirements, and fiscal monitoring or other monitoring program requirements of the FDCC Program Law (see "***Combined aspects of the SSP and the FDCC Program***").

Conditions on receipt of monthly allocations under the FDCC Program Law

(sec. 5139.43(B)(3)(a) and (b)(ii))

Existing law. Under existing law, DYS annually must allocate to each county a portion of a specified remainder of the General Assembly's appropriation to DYS for the care and custody of felony delinquents. DYS must determine the portion to be allocated to each county "annually" in a specified manner, and DYS then must divide that annual amount by 12 to determine a county's "monthly" allocation under the FDCC Program Law. After those calculations are made for each county, DYS generally must reduce a county's monthly allocation by (a) 75% of the amount determined by multiplying the per diem cost for the care and custody of felony delinquents by the number of felony delinquents who have been adjudicated delinquent children and (subject to "public safety beds" and certain other exceptions) who are in the care and custody of a DYS institution pursuant to a commitment, recommitment, or revocation of a release on parole *by the juvenile court of that county* and (b) 50% of the amount determined by multiplying the per diem cost for the care and custody of felony delinquents by the number of felony delinquents who have been adjudicated delinquent children and (subject to the same exceptions) who are in the care and custody of a community corrections facility pursuant to a placement by DYS with the consent of the juvenile court of that county. (Sec. 5139.43(B)(1) and (2)(a).)

As a general rule, DYS must disburse "on or before the 15th day of the following month" to the juvenile court of each county the remainder of the county's monthly allocation under the FDCC Program as determined in the manner described above. However, existing law specifies three exceptions to this mandatory disbursement requirement: (1) if DYS is required to bear the remainder of a county's amounts for the care and custody of felony delinquents described in (a) and (b) above, because the county has exhausted its current and future monthly allocations for the current fiscal year under the FDCC Program, (2) if certain provisions pertaining to monthly allocations for the month of June apply, and (3) if a juvenile court fails to participate in a fiscal monitoring or other program that DYS conducts to ensure that the court and its county are complying with specified provisions of the FDCC Program Law, fails to fully comply with associated audit performance guidelines that DYS adopts, or fails to comply with associated DYS requests for information necessary to reconcile fiscal accounting (see "***Combined aspects of the SSP and the FDCC Program***") and as a result DYS is not able to reconcile fiscal accounting. Under the last circumstance, DYS is not required to make a monthly disbursement to a county under the FDCC Program Law until its juvenile court complies with the fiscal monitoring or other program requirements. (Sec. 5139.43(B)(2)(b), (3), and (4).)

Operation of the bill. The bill adds a fourth exception to the requirement that DYS generally must disburse "on or before the 15th day of the following month" a county's monthly allocation under the FDCC Program Law or "in July of each new fiscal year" a county's adjusted monthly allocation under the FDCC Program Law for the month of June of the prior fiscal year. A county's monthly allocation must be so disbursed only if the juvenile court of that county complies, within the timelines that DYS establishes, with existing law's requirement that certain monthly statistical reports related to the calculation of the FDCC Program's formula be prepared and submitted to DYS and only if the juvenile court of that county files with DYS by August 31 of each year a specified *annual* statistical and informational report required by existing law. (Secs. 5139.43(B)(3)(a) and (b)(ii) and 5139.43(C)(3)(b) and (c).)

Combined aspects of the SSP and the FDCC Program

(secs. 5139.01(A)(19), 5139.04(E), 5139.42, and 5139.43(C) and (D))

Money in a county's FDCC Fund. Under existing law, each juvenile court must use the money that DYS disburses to it under the FDCC Program in a specified manner (see "***Permissible uses of FDCC Fund moneys***" below) and must transmit the money to the county treasurer for deposit in the county's FDCC Fund. The money in the FDCC Fund cannot be commingled with any other county funds, cannot be used for any capital construction projects, must be disbursed upon an order of the juvenile court and subject to appropriation by the board of county commissioners for the juvenile court's use in accordance with the FDCC Program Law, does not revert to the county general fund at the end of any fiscal year, and carries over in the FDCC Fund from any fiscal year to the next fiscal year. The FDCC Program money is in addition to, and cannot be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders. (Sec. 5139.43(C)(1).)

The bill requires a county treasurer to additionally deposit in the county's FDCC Fund the state subsidy funds granted to the county under the SSP Law and permits the county treasurer to commingle those state subsidy funds with the money the county receives from DYS under the FDCC Program Law. The bill does not substantively modify the other provisions of existing law pertaining to the FDCC Fund and the FDCC Program money deposited into it. (Sec. 5139.43(C)(1).)

Permissible uses of FDCC Fund money. Because of the proposed "joint deposit" of state subsidy funds that a county receives under the SSP Law and of money that its juvenile court receives under the FDCC Program Law in a county's FDCC Fund, the bill modifies the provisions of the FDCC Program Law that pertain to the permissible uses of the money in a county's FDCC Fund. Under the bill, a county and its juvenile court must use the money in its FDCC Fund in accordance with the rules that DYS adopts and as follows (secs. 5139.04(E) and 5139.43(C)(2)(a)):

(1) Subject to (3) below, the money in the FDCC Fund that represents state subsidy funds must be used to aid in the support of prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children or delinquent children or for children who are at risk of becoming unruly children or delinquent children. The county is prohibited from using for "capital improvements" more than 15% of the money in the FDCC Fund that represents an applicable annual grant of those state subsidy funds ("relocated" existing law).

(2) Similar to existing law, the money in the FDCC Fund that was disbursed to the juvenile court pursuant to the FDCC Program Law must be used to provide programs and services for the training, treatment, or rehabilitation of felony delinquents that are alternatives to their commitment to DYS (e.g., community residential programs, day treatment centers, services within the home, and electronic monitoring) and must be used in connection with training, treatment, rehabilitation, early intervention, or other programs or services for any delinquent child, unruly child, or juvenile traffic offender who is under the jurisdiction of the juvenile court. Unlike existing law, subject to (3) below, if during the previous state fiscal year a county did not exceed in any month its monthly allocation in connection with felony delinquents (see "***Conditions on receipt of monthly allocations under the FDCC Program Law***"), the money in the FDCC Fund that was disbursed to the juvenile court pursuant to the FDCC Program Law also may be used for prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or for children who are at risk of becoming unruly children, delinquent children, or juvenile traffic offenders. In connection with the use of that money in connection with those types of programs, the bill repeats existing law's prohibition against a county's or juvenile court's use of money in a FDCC Fund *that was disbursed to the juvenile court pursuant to the FDCC Program Law* for "capital construction projects."

(3) A county and its juvenile court is prohibited from using any money in the FDCC Fund for the provision of care and services for children, including, but not limited to, care and services in a detention facility, in another facility, or in out-of-home placement, unless the minimum standards that apply to the care and services and that DYS adopts by rule have been satisfied.

The annual grant agreement and application for funding. As previously discussed, existing law contains a distinct "application-county annual comprehensive plan approval" procedure relative to state subsidy grants under the SSP Law (sec. 5139.34). With respect to annual allocations under the FDCC Program Law, a juvenile court must file with DYS in accordance with its rules a plan pertaining to the use of the money in the county's FDCC Fund for specified programs and services authorized by the FDCC Program Law (sec. 5139.43(C)(3)(a)).

The bill establishes a new type of *combined* SSP Law and FDCC Program Law "application and planned use of FDCC Fund moneys" procedure. Specifically, in accordance with DYS' rules, each juvenile court (1) must prepare an "annual grant agreement and application for funding" (hereafter, agreement-application) that satisfies the requirements of the SSP Law and the FDCC Program Law and that pertains to the use, upon an order of the juvenile court and subject to appropriation by the board of county commissioners, of the money in its FDCC Fund for specified programs, care, and services authorized by the FDCC Program Law, (2) must submit the agreement-application to the county family and children first council, the regional family and children first council, or the local intersystem services to children cluster (whichever is applicable), and (3) must file the agreement-application with DYS for its approval. An agreement-application must include a method of ensuring equal access for minority youth to the programs, care, and services specified in it.

DYS is permitted to approve an agreement-application only if the juvenile court involved has complied with the latter preparation, submission, and filing requirements. If the juvenile court complies with those requirements and DYS approves the agreement-application, the juvenile court and its county may expend the state subsidy funds granted to the county pursuant to the SSP Law only in accordance with the "permissible uses" set forth in the FDCC Program Law (see above), the rules pertaining to state subsidy funds that DYS adopts, and the approved agreement-application. (Secs. 5139.04(E) and 5139.43(C)(3)(a).)

Juvenile court reports

Annual reports. Existing law requires each juvenile court to file, by "January 31" of each year and in accordance with DYS' rules, an annual report that contains all of the statistical and other information for each month of the prior "calendar" year that will permit DYS to prepare for the Joint Legislative Committee on Juvenile Corrections Overcrowding (JLCJCO) a specified annual report pertaining to the operation of the FDCC Program Law during the immediately preceding "calendar" year. DYS must submit that report to the JLCJCO on or prior to the first day of "April" of each year, and the report must include (among other topics) a description of the "programs and services" that were financed under the FDCC Program Law in each county and the number of felony delinquents, other delinquent children, unruly children, and juvenile traffic offenders served by those programs and services. Existing law also requires DYS to use the juvenile court annual reports to prepare an annual report of state juvenile court statistics and information that must be made available, upon request, to the Governor and members of the General Assembly. (Secs. 5139.04(H) and 5139.43(C)(3)(b) and (D).)

The bill modifies the deadlines governing the juvenile court annual reports and DYS' annual report to the JLCJCO, the time-periods covered by the respective reports, and the scope of the JLCJCO report. The juvenile court annual reports must be submitted by "August 31" of each year and must contain statistical and other information for each month of the prior "state fiscal" year. DYS' report to the JLCJCO must be submitted on or prior to "December 1" of each year, must cover the operation of the SSP Law as well as the operation of the FDCC Program Law during the immediately preceding "state fiscal" year, must describe "care" financed under both laws, and must specify the number of felony delinquents, other delinquent children, unruly children, and juvenile traffic offenders served by that "care" in each county. (Sec. 5139.43(C)(3)(b) and (D).)

In the provisions pertaining to the juvenile court annual reports, the bill specifically states that, if a juvenile court fails to file an annual report by August 31 of any year, DYS is prohibited from disbursing any payment of funds under the SSP Law to which the county involved otherwise is entitled, and DYS is prohibited from disbursing the remainder of the applicable monthly allocation of the county involved to which it is entitled under the FDCC Program Law, *until the juvenile court files the requisite annual report with DYS* (sec. 5139.43(C)(3)(b)).

Monthly reports. Under existing law, if DYS requires a juvenile court to prepare monthly statistical reports for use in connection with the determination of the FDCC Program's formula and to submit those reports on forms that DYS provides, the juvenile court must file those reports on those forms. The bill does not change this requirement. However, under the bill, if a juvenile court fails to submit the monthly statistical reports within DYS' timelines, DYS is prohibited from disbursing to the county involved (1) the remainder of its monthly allocation under the FDCC Program Law and (2) any payment of state subsidy funds to which that county otherwise is entitled under the SSP Law until that court fully complies with the requirement. (Sec. 5139.43(B)(3)(a) and (C)(3)(c).)

Juvenile court and county participation in monitoring programs

Under existing law, if DYS requires a juvenile court to participate in a "fiscal monitoring or other program" that DYS conducts to ensure that the juvenile court and its county are complying with the FDCC Program Law's provisions pertaining to the deposit and permissible use of FDCC Program money, the juvenile court and the county must participate in the program and must fully comply with any guidelines for the performance of audits adopted by DYS pursuant to that program and all requests made by DYS pursuant to that program for information necessary to reconcile fiscal accounting. The bill modifies this requirement as follows (secs. 5139.42 and 5139.43(C)(3)(d)):

(1) It describes the programs as "a fiscal monitoring program" (similar to existing law) or another *monitoring* program.

(2) It permits DYS to require "county" participation as well as juvenile court participation in either type of program.

(3) It specifies that, if an audit that is performed pursuant to either type of monitoring program determines that a juvenile court or its county used money in the county's FDCC Fund for expenses that are not authorized under the FDCC Program Law's "permissible uses" provisions, the following procedure applies:

(a) Within 45 days after DYS notifies the county of the unauthorized expenditures, the county either (i) must repay the amount of the unauthorized expenditures to the state's General Revenue Fund or (ii) file a written appeal with DYS. If a county files a timely appeal, the DYS Director must render a decision on the appeal and notify the county or its juvenile court of that decision within 45 days after the date the county filed the appeal. If the DYS Director denies the appeal, the county's fiscal agent must repay the amount of the unauthorized expenditures to the state's General Revenue Fund within 30 days after receiving the DYS Director's notification of the appeal decision.

(b) If a county fails to make a repayment of unauthorized expenditures within the latter 30-day period and *if those expenditures pertain to moneys allocated to the county under the FDCC Program Law*, DYS must deduct the amount of the unauthorized expenditures (i) from the next monthly allocation of those moneys to the county in accordance with the FDCC Program Law or (ii) from the allocations that otherwise would be made under the FDCC Program Law to the county during the next state fiscal year. DYS then must return the deducted amount to the state's General Revenue Fund.

(c) If a county fails to make a repayment of unauthorized expenditures within the latter 30-day period and *if those expenditures pertain to moneys granted to the county pursuant to the SSP Law*, DYS must deduct the amount of the unauthorized expenditures from the next annual grant to the county pursuant to the SSP Law and then return the deducted amount to the state's General Revenue Fund.

Youth compensation for participation in certain activities

(secs. 5139.07 and 5139.86)

Under existing law, as a means of correcting the socially harmful tendencies of a child committed to the Department of Youth Services (DYS), the Department may require participation by the child in vocational, physical, educational, and corrective training and activities, and the conduct and modes of life that seem best adapted to rehabilitate the child and fit

the child for return to full liberty without danger to the public welfare. The bill authorizes DYS to monetarily compensate the child for those activities by transferring the child's wages for the activities to the appropriate local youth benefit fund that the bill authorizes the managing officer of the child's institution or region to establish (discussed below).

DYS institution funds

(sec. 5139.86)

Existing law authorizes the managing officer of a Department of Youth Services institution or regional office, subject to the approval of the Director of Youth Services, to establish and maintain certain funds outside the state treasury for the benefit of confined children or children placed in the region. Rules established by the managing officer for the operation of these funds are also subject to the Director's approval.

Two types of funds can presently be established under this authority: (1) commissary funds, to receive money from the sale of commissary items, and (2) industrial and entertainment funds, into which commissary profits are eventually transferred, but which also receive money from vocational education programs, vending machine leases, yearbook sales, unclaimed youth benefit funds, telephone commissions, and small amounts of unclaimed property of former inmates.

The bill eliminates the authority of managing officers to establish commissary funds (commissary profits are to continue to be deposited in the industrial and entertainment funds), and adds donations from outside sources designated for the benefit of confined youth or those placed in the region to the types of receipts that are deposited into the industrial and entertainment funds.

The bill permits managing officers of DYS institutions to establish and maintain two new types of institution funds (outside the state treasury): (1) a youth benefit fund, created and maintained for the benefit of confined children or children placed in the region, to receive and disburse benefits that are due the child, including social security benefits, railroad retirement payments, Veterans Administration payments, allowances, and any monetary compensation of the child for participating in vocational, physical, educational, and corrective training and activities (discussed above under "***Youth compensation for participating in certain activities***"), and (2) a cafeteria fund, for the benefit of the institution, to receive money from the sale of meals and to pay the costs of providing employee meals. As with the current commissary, and industrial and entertainment funds, the new funds are not part of the state treasury, and their establishment and the rules for their operation are subject to the approval of the Director of Youth Services.

The bill also codifies the Employee Food Service Fund, an existing fund of the state treasury created by the Controlling Board, that is used to support institutional cafeterias (through the purchase of food, supplies, and cafeteria equipment) and that, under the bill, is to be reimbursed periodically with money from the cafeteria funds, in such amounts and at such times as directed by the Director of Budget and Management. In addition to reimbursements from the cafeteria funds, the Employee Food Service Fund also receives money from the sale of surplus property.

education

PRIMARY AND SECONDARY EDUCATION PROVISIONS

- Increases the basic formula amount in the state aid formula from $3,500 per pupil to $3,685 in FY 1998.
- Continues for the next 13 fiscal years the annual increases, begun in FY 1996 and FY 1997, in the variance in the 88 county cost-of-doing-business factors used in the basic aid formula.
- Continues for the next 13 fiscal years the annual adjustments, begun in FY 1996 and FY 1997, in school districts' property valuation used in the basic aid formula to account for relative income wealth for districts with a median income less than or equal to the state median.
- Freezes the adjustment in a school district's property valuation to account for relative income wealth at the FY 1997 level for districts with a median income greater than the state median.
- Requires certain urban school districts to increase the number of kindergarten students counted in the basic aid, DPIA, and school district tuition formulas.

- Permits any school district with an average daily membership less than 100 to continue receiving its guaranteed FY 1991 or FY 1992 basic aid amount, even if its per-pupil property valuation exceeds the $200,000 level that triggers reductions in guarantee funds.
- Increases DPIA grants 4% in FY 1998 and another 5% in FY 1999 for all school districts with at least 5% of children receiving Aid to Dependent Children.
- Requires a recomputation of basic aid for school districts that have to refund a significant amount of property taxes.
- Requires the students' "home" school districts and the state to pay for the educational programs provided to youths residing in private residential treatment facilities.
- Increases, from $32 to $34 in FY 1999, the state per-pupil subsidy for educational service centers and delays the required merger of certain educational service centers.
- Provides a third option for the selection of members of a governing board of an educational service center formed by the merging of two or more centers between July 1, 1995 and July 1, 2000.
- Permits the state Superintendent of Public Instruction to loan money to school districts that were subject to a judgment or settlement agreement, the amount of which was at least 90% of the district's operating expenditures for the fiscal year in which the judgment or settlement was issued.
- Permits the Department of Education to issue awards of equal amounts up to $15,000 to up to 50 public schools that are determined by the Department to have implemented innovative and exemplary parental involvement programs that have enhanced parental involvement in such schools.
- Prohibits a school district from being required to repay the Department of Education certain amounts paid to the district in calendar year 1991 to cover desegregation costs for fiscal year 1990.
- Requires the State Superintendent to deduct amounts from a school district's state aid payments if the district misspends money appropriated to it to purchase textbooks or other instructional materials.
- Permits a school board to lease-purchase a motor vehicle, thereby permitting it to enter into installment contracts to purchase motor vehicles.
- Permits the State Board of Education to submit any proposed midyear revision of the yearly school funding distribution plan to the Controlling Board at any time in January instead of at the Board's first January meeting.
- Permits a school district to report to the State Board of Education by June 30 of each year, instead of May 31, the number of students who have not taken one or more of the state proficiency tests.
- Creates the Teacher Professional Development Task Force to issue a report outlining a comprehensive structure for the delivery of continuing professional development for teachers in the state's primary, secondary, vocational, and special educational schools.
- Creates the Ohio Schools Technology Implementation Task Force to develop recommendations for a comprehensive framework for coordinating the planning and implementation of technology in Ohio schools.
- Requires the Department of Education, no later than January 1, 1998, to make recommendations to the General Assembly on implementing performance-based incentives for school districts.

- Permits the Department of Education to contract through a competitive selection process with an independent for-profit or nonprofit entity to provide information on Ohio government to school libraries through the Ohio Education Computer Network.
- Requires boards of education to adopt rules for participation in interscholastic extracurricular activities by high school and junior high school students that include at least a requirement to maintain a minimum grade point average.
- Requires the Office of Information, Learning, and Technology Services to establish by December 1, 1997, a clearinghouse that can be accessed by classroom teachers and that contains lesson plans and materials and other practical resources for use in classroom teaching.
- Permits ninth and tenth grade students to participate in the Post-Secondary Enrollment Options Program beginning July 1, 1998.
- Requires the Department of Education to adopt rules under which a student in the first through eighth grade may be permitted to participate in the Post-Secondary Enrollment Options Program.
- Requires school districts to award high school credit toward graduation and subject area requirements to students who successfully complete a course outside of school hours at an accredited post-secondary institution provided the course is free of charge or paid by the student's parent, guardian, or custodian.
- Increases from 10 to 15 years the allowable length of an installment contract to purchase energy conservation measures, requires under the terms of such a contract that 1/15 (instead of 1/10) of the costs of the contract be repaid in the first two years, and requires a school district to find energy savings that exceed the costs of the energy conservation measures for the ensuing 15 years (instead of 10) before the Commission can approve the contract.
- Requires that the Ohio School Facilities Commission evaluate the practicability of meeting a school district's classroom facility needs through such means as split sessions, year-round classes, and the joint use of school facilities with one or more other school districts, as well as the potential effects that such means would have on the education of the affected students.
- Requires the initial round of on-site visits by the Ohio School Facilities Commission for evaluation of school district facility needs to include the lowest 25% of districts in terms of district wealth (instead of just the lowest 5% of districts).
- Permits school districts ranked in the lowest 25% of districts in terms of district wealth (instead of just districts in the lowest 5%) to qualify for classroom facilities assistance under an expedited process.
- Requires the Ohio School Facilities Commission to first consider for approval and funding, any classroom facilities project proposed by school districts in the lowest 25% of districts in terms of district wealth that meet certain other conditions.
- Permits the Department of Education to develop uniform computer software to provide to school districts at no cost for use in reporting data to EMIS.
- Codifies the Distance Learning Fund and requires that interest earned by the Fund accrue to the Fund.
- Requires the Superintendent of Public Instruction in FY 1998 and FY 1999 to award under the pilot project scholarship program 650 initial scholarships and an equal number of

tuition assistance grants and permits initial scholarships to be awarded to fourth graders (FY 1998) and fifth graders (FY 1999), as well as those in grades kindergarten through third.

- Requires the pilot project scholarship program to be established in any school district in the state that is or ever was under a federal court order requiring state management and control of the district (rather than only in districts under such an order in March of 1995).
- Prohibits awarding any pilot project scholarships in fiscal years 1998 and 1999, except to students who received scholarships in fiscal year 1997.
- Establishes statewide authority for any school district board to convert all or part of any public school to a community school.
- Exempts community schools from laws and rules applicable to schools and school districts, except those specified in the bill and in contracts, between community schools and their sponsors.
- Requires the Department of Education to pay a per pupil amount for each student enrolled in a community school and deduct that amount, from the state aid payments made to the student's home school district.
- Authorizes community school employees to collectively bargain with the community school and permits employees of public schools that are converted to community schools to retain certain bargaining rights.
- Continues the requirement for proposed changes to the minimum standards for elementary and secondary schools to be approved by concurrent resolution of the General Assembly and to be directly related to student academic or vocational performance if the changes relate to performance-based standards.
- Creates the Information, Learning, and Technology Authority consisting of seven voting members and four nonvoting members and transfers oversight of the Office of Information, Learning, and Technology and the Distance Learning Fund from the Department of Education to the Authority.
- Requires the Department of Education to make reports on any school districts that fail to meet any reporting deadlines or that report data that is in poor condition to EMIS, and requires the Department to take corrective action against such school districts.
- Permits the State Board of Education to suspend or revoke the educator license or teacher's certificate of a school district employee who willfully reports erroneous, inaccurate, or incomplete data to EMIS.
- Permits a school district to retain fourth, sixth, and eighth grade students for an additional year if they fail three out of five of the proficiency tests in those grades and fail to attend summer school, provided the district offers summer school to the students.
- Exempts the Office of Information, Learning, and Technology Services, the Department of Education, or the Ohio Education Computer Network from the regular procedures for state agency purchases of services and supplies when acting as an agent for school districts in purchasing software services and supplies.
- Authorizes a board of education within limits to invest its "interim money" in commercial paper notes and other debt securities issued by any of several kinds of business entities (including trusts, partnerships, and limited liability companies).
- Expands the additional investment authority in commercial paper notes that a board of education in specified circumstances may grant to its treasurer.

• Permits certain "fiscal watch" school districts with large operating deficits to restructure and refinance certain loans, subject to the approval of the Superintendent of Public Instruction.

• Requires "fiscal watch" school districts to submit updated financial plans to the Superintendent of Public Instruction each year.

• Requires the Auditor of State to declare a school district to be in a state of "fiscal watch" if a school district has outstanding securities that were issued to restructure its debt while the district was in a state of "fiscal emergency" and its Financial Planning and Supervision Commission, which supervised the issuance of the new debt, has been terminated.

• Increases from $400 to $500 the amount a school district may spend per public school (that is evaluated for accreditation in the school district) for purposes of paying annual membership dues and service fees to one or more accrediting associations.

• Permits the State Board of Education to issue through the year 2001, temporary, one-year educator licenses in speech-language pathology, renewable in the case of individuals who are enrolled in or qualified for a master's degree program leading to licensure by the Board of Speech-Language Pathology and Audiology.

• Permits school districts and educational service centers to contract with speech-language pathologists and audiologists who do not possess educator licenses but are licensed by the Board of Speech-Language Pathology and Audiology.

• Requires the Legislative Office of Education Oversight and the Board of Regents to conduct studies concerning the shortage of school speech-language pathologists and audiologists.

POST-SECONDARY EDUCATION

• Changes the registration fee increase calculation for proprietary schools to one based on actual and estimated *expenditures* of the State Board of Proprietary School Registration rather than *appropriations* to the Board by the General Assembly.

• Requires the Board of Regents, when applying its Performance Challenge standards to two-year, co-located colleges, to judge them both as a whole entity and as separate institutions, and award them Performance Challenge funds based on whichever produces the higher amount.

• Increases the Ohio Instructional Grants (OIG grants) by approximately 14.5% in FY 1998 and by about 2% to 3% in FY 1999, creates a supplemental merit grant for recipients who pass the 12th grade proficiency tests, specifies that part-time students will receive OIG grants on an equal basis with full-time students beginning July 1, 1999, and prohibits prison inmates from receiving OIG or student choice grants.

• Generally permits the Ohio War Orphans Scholarship Board to reduce the percentage of a scholarship from 100% of the amount of instructional and general fees of an Ohio public institution (or an average of such amounts in the case of recipients who attend nonpublic institutions) to a lesser percentage of the amount (or average amount) of such fees if insufficient funds are appropriated to fund all scholarships at 100%.

• Permits state colleges and universities to use college or university funds, lands, facilities, equipment, and personnel for economic development activities.

• Creates a Commission on Public Legal Education to report its recommendations about the "Action Plan for Public Legal Education in Ohio" adopted by the Ohio Board of

Regents and about requirements and standards imposed on law schools in this state and delays implementation of the Plan until the General Assembly acts upon the report.

- Establishes certain spending prohibitions, reporting requirements, and requirements as to the maintenance of certain university funds for state universities that declare themselves to be in a state of fiscal exigency, and requires Central State University to remain in a state of fiscal exigency, as declared by its Board of Trustees, for fiscal years 1998 and 1999.
- Requires the Central State Board of Trustees, not later than June 30, 1998, to submit to the Board of Regents a plan to phase-out all academic programs that cannot reasonably be contained within the purview of either the University's College of Business, College of Education, or College of Arts and Sciences.
- Requires the Director of Budget and Management to maintain a financial supervisor at Central State University to monitor adherence to the University's Fiscal Recovery Plan and to advise the Director of the financial status of the University.
- Requires the Director of Budget and Management to report on a variety of financial information concerning Central State University and to assume responsibilities as chief financial officer for the University if it is not meeting acceptable fiscal standards.
- Requires the Central State University Board of Trustees to maintain its declaration of financial exigency for the University and to take other specified budgetary actions, that may include reducing the number of faculty and staff.
- Modifies the Ohio Tuition Trust Authority prepaid tuition program to qualify the program for favorable federal tax treatment.
- Allows state universities, freestanding state medical colleges, and state community colleges to administer somewhat more costly construction projects without the supervision of the Department of Administrative Services, effective July 1, 1998.
- Within one year, requires the Board of Regents to issue to the chairpersons and ranking minority members of the House and Senate Finance Committees a report on how to phase in a reduction of instructional subsidies for foreign, subsidy eligible full-time equivalent students at all state-assisted universities.

CONTENT AND OPERATION

PRIMARY AND SECONDARY EDUCATION

School Finance--Operating Assistance

Special note concerning fiscal year 1999 appropriations

Although the bill makes changes in funding provisions for FY 1999, the bill does not appropriate any money for any General Revenue Fund line-item under the Department of Education for that year (other than for reimbursement of school districts for revenue lost as a result of various tax rollbacks). However, a lump sum appropriation of $4,421,673,092 from the General Revenue Fund is appropriated in FY 1999 for "Primary and Secondary Education Funding." Uncodified law specifies that the amount (presumably in conjunction with lottery proceeds, which are appropriated for FY 1999) "is sufficient" to fund basic aid, transportation, special education, vocational education, gifted education, DPIA, and the equity formula to the extent specified in the statutes and appropriations language in the bill. The uncodified language also states that "a new, improved school finance formula and education reform plan" is anticipated before FY 1999, but "payment of FY 1999 earmarks in the Department of Education's budget is subject to the passage" of the new finance formula and reform plan.

Background--state basic aid formula

The Ohio basic aid formula essentially "equalizes" 23 mills One mill produces $1 of tax revenue for every $1,000 of taxable property valuation. of property tax by providing sufficient money to each school district to ensure that, if all

districts in the state levied exactly 23 mills, they all would have the same per-pupil amount of money to spend (adjusted partially for the cost of doing business in the county in which the district is located). To accomplish this equalization, the basic aid formula uses five variables to compute the amount of state basic aid each district receives:

(1) The stipulated per-pupil amount (formally called the "formula amount") established by the General Assembly. The formula amount represents a minimum of combined state and local funding that is roughly guaranteed for each pupil. For FY 1996, the formula amount was $3,315; for 1997 it is $3,500.

(2) An adjustment to the formula amount known as the "cost-of-doing-business factor." This variable is a cost factor intended to reflect differences in the cost of doing business in the 88 counties. Each county is assigned a factor by statute ranging from 1.00 (assigned to Gallia County in FY 1997) to 1.089 (assigned to Hamilton County in FY 1997). The formula amount is multiplied by the cost-of-doing-business factor for the appropriate county to obtain the specific formula amount for each school district. Accordingly, the FY 1997 per-pupil formula amount in Hamilton County is $3,787, an increase of 8.9% over the $3,500 basic formula amount. Districts located in Gallia County, with the lowest cost-of-doing-business factor, are guaranteed the base $3,500 amount.

(3) A number called the "average daily membership" (ADM), which roughly reflects the district's student enrollment.

(4) The total taxable dollar value of real and personal property subject to taxation in the district (a figure that the General Assembly adjusted in FY 1996 and again in FY 1997 to begin reflecting differences in income wealth as well as property wealth among districts).

(5) The tax rate, expressed in number of mills, that is assumed to produce the local share of the guaranteed per-pupil funding. The tax rate assumed in FY 1996 was 22 mills; in FY 1997 it is assumed to be 23 mills. However, current law maintained by the bill only requires districts to actually levy 20 mills in order to participate in the state funding system.

Each district's amount of state basic aid is computed first by calculating the amount of combined state and local funds that is guaranteed to the district. This is done by adjusting the statutory per-pupil formula amount to account for the cost of doing business in the district's county, and multiplying the adjusted amount by the district's ADM, which approximates its student enrollment. Next, the assumed local share (commonly called the "charge off") is calculated by multiplying the district's taxable value by the 23 mills (2.3% tax) attributed as the local tax rate. This local share is subtracted from the guaranteed amount. The remainder is the district's basic state aid. This procedure results in the following formula, in which the first line is the guaranteed amount of combined state and local funding and the second line is the district's charge off:

[($3,500 x cost-of-doing-business factor) x ADM] -

2.3% of total taxable value, partially adjusted for income differences

FY 1997 sample calculation

If Hypothetical Local School District were located in a county with a cost-of-doing-business factor of 1.025 (meaning its cost of doing business is assumed to be 2.5% higher than the lowest cost county), its average daily membership were 1,000 students, and it had a total taxable valuation of $40 million, its FY 1997 state aid amount would be $2,667,500, calculated as follows:

$3,500 FY 1997 statutory formula amount

x 1.025 District's cost-of-doing-business factor

$3,587.50 District's adjusted FY 1997 formula amount

x 1,000 District's average daily membership (ADM)

$3,587,500 District's basic education amount

- $920,000 District's charge off (Assumed local share based

on 23 mills (2.3%) charged against the district's

$40 million in adjusted taxable valuation)

$2,667,500 **District's FY 1997 state aid amount**

Basic aid formula changes

(secs. 3317.021, 3317.022, and 3317.03; Section 46.18)

The bill changes four of the five variables that determine a district's basic aid, as follows:

Increased formula amount

The bill increases (from $3,500) the basic per-pupil amount in the formula to $3,685 in FY 1998.

Cost of doing business

For the 1995-1997 biennium, the General Assembly required that the 88 cost-of-doing-business factors be adjusted each fiscal year to increase the variance between the lowest and highest cost counties. Prior to the biennium (at the end of FY 1995), the variance was 7.5%. The General Assembly increased it to 8.2% in FY 1996 and to 8.9% in FY 1997. Each increase represented a widening of the variance by 0.7%.

The bill continues this trend not only for the 1997-1999 biennium, but through FY 2010, with 0.7% increases in the variance annually. For FY 1998, the range between the lowest cost (Gallia) and highest cost (Hamilton) counties will be 9.6%; in FY 1999, the variance will be 10.3%. By FY 2010, the variance will be 18%. Assuming the cost relationships among the counties do not change (that is, if the cost of doing business in Hamilton County continues to be the same relative to Gallia County, the cost-of-doing-business factor will grow each year for every district except those in Gallia County, which will remain the base with a cost factor of 1.

Total taxable value--adjusted for income

The bill makes permanent another change temporarily incorporated in the basic aid formula for the 1995-1997 biennium: an annual adjustment of total taxable property value to interject into the formula each district's relative income wealth as well as its property wealth.

Prior to FY 1996, income wealth was not a part of the formula. For FY 1996, the General Assembly required one-fifteenth of each district's taxable property value to be adjusted upward or downward to reflect its income wealth relative to the state median income for school districts. For FY 1997, two-fifteenths of the district's taxable property value was adjusted to reflect the district's relative income wealth. Adjusting a district's total taxable value in this manner affects the size of its charge off, the amount attributed to local share. Districts with median incomes higher than the state median will have their taxable values increased, which will *decrease* the amount of their state funds. Districts with median incomes lower than the state median will have their taxable values reduced, which will *increase* their state funds.

The bill continues the 15-year phase-in of the adjustment for relative district income wealth for some school districts and freezes the portion of taxable property value adjusted to reflect relative district income wealth at two-fifteenths for other districts. Specifically, the adjustment would be made in one of the following ways:

(1) In any fiscal year that a school district's median income is less than or equal to the statewide median income for school districts the portion of taxable property value adjusted to reflect relative district income wealth will depend on the fiscal year in which the adjustment is made; with the portion of taxable property value so adjusted being equal to 1/5 in FY 1998; 4/15 in FY 1999; 1/3 in FY 2000; 2/5 in FY 2001; 7/15 in FY 2002; 8/15 in FY 2003; 3/5 in FY 2004; 2/3 in FY 2005; 11/15 in FY 2006; 4/5 in FY 2007; 13/15 in FY 2008; and 14/15 in FY 2009. Taxable property value would be fully adjusted for relative district income wealth for districts with median income less than or equal to the statewide median income in any fiscal year after FY 2009.

(2) In any fiscal year that a school district's median income is greater than the statewide median income for school districts the portion of taxable property value adjusted to reflect relative district income wealth will be frozen at 2/15.

Calculation. The adjustment is calculated first by determining each district's "income factor." The income factor for each district is calculated under the bill by dividing the district's median income (the median income of the district's residents reported by the Department of Taxation using income from the second preceding tax year) by the statewide median income (the median of the districts' medians). This quotient, which reflects how the income wealth of each district compares to all other districts, then is utilized with a constant of $60,000 to obtain an "adjusted valuation per pupil" for the district under the following formula:

[district property valuation per pupil] - [$60,000 x (1 - district income factor)]

The district's adjusted valuation per pupil is next multiplied by the district's ADM to obtain the district's total adjusted valuation. The appropriate percentage (2/15 or 1/5 in FY 1997) of the total adjusted valuation is then substituted in the basic aid formula in lieu of an equal percentage of the district's traditional (unadjusted for income) valuation.

Average Daily Membership (ADM)

The basic aid formula uses average daily membership (ADM) to represent a school district's enrollment. The primary component of ADM is the average attendance in grades kindergarten through 12 during the first week in October. For purposes of the basic aid formula, only 50% of the average kindergarten attendance is used, since kindergarten generally convenes for half of a school day.

The bill allows certain urban districts to increase the number of kindergarten students in their ADM, thereby increasing their state basic aid funds, if they conduct either "all-day kindergarten" or "extended kindergarten." The bill defines "all-day kindergarten" as a kindergarten class that is in session five days a week for at least the same number of clock hours each day as for pupils in grades one through six. The State Board's rules require a minimum six-hour school day for grades one through six (Ohio Administrative Code § 3301-35-02(B)(11)). "Extended kindergarten" is defined as a kindergarten class that is in session five days a week for at least one hour longer each day than the State Board of Education requires for kindergarten. The State Board's rules require a minimum 2½ hour school day for kindergarten (O.A.C. § 3301-35-02(B)(10)).

The Big Eight. The first group of school districts eligible to increase their kindergarten numbers in the formula are designated by the bill as the "Big Eight." A Big Eight district is one in which

(1) Over 30% of the children who resided in the district in October 1995 lived with families receiving Aid to Dependent Children, as reported by the Department of Human Services; and

(2) The district's FY 1997 ADM exceeded 12,000.

In FY 1998, Big Eight districts will be able to increase their kindergarten numbers in the formula by including in their ADM 75% of their students enrolled in all-day kindergarten or extended kindergarten and 50% of their students in traditional kindergarten. In FY 1999, Big Eight districts will be able to count 100% of their students enrolled in all-day kindergarten, or 75% of those in extended kindergarten, and 50% of those in traditional kindergarten.

Urban districts. Two types of districts qualify as "urban districts":

(1) Districts in which (a) over 15.5% of the children who resided in the district in October 1995 lived with families receiving Aid to Dependent Children, as reported by the Department of Human Services and (b) the FY 1997 ADM exceeded 5,500; or

(2) Districts in which (a) over 5% of the children who resided in the district in October 1995 lived with families receiving Aid to Dependent Children, as reported by the Department of Human Services and (b) the FY 1997 ADM exceeded 12,000.

These districts (unless they are Big Eight districts) will continue to count 50% of all their kindergarten students in the formula in FY 1998. In FY 1999, they will be able to count 75% of their students enrolled in all-day kindergarten or extended kindergarten and 50% of their students in traditional kindergarten. (Despite not being permitted to increase kindergarten ADM in FY 1998, those urban districts providing extended or all-day kindergarten that year might still receive additional funding. See "***FY 1998 excess funds***," below.)

The following chart delineates the bill's treatment of kindergarten numbers for the Big Eight and the Urban districts.

Designation	Description	Kindergarten ADM FY 1998	Kindergarten ADM FY 1999 and after
"Big Eight Districts"	ADC children exceeded 30% in 10/95 and ADM exceeded 12,000 in FY 97	75% of the number of all-day and extended kindergarten students, 50% of traditional kindergarten students	100% of all-day kindergarten, 75% of extended kindergarten, 50% of traditional kindergarten students
"Urban Districts" (excluding the Big Eight)	ADC children exceeded 15.5% in 10/95 and ADM exceeded 5,500 in FY 97 *or*	50% of all kindergarten students	75% of the number of all-day and extended kindergarten,

	ADC children exceeded 5% in 10/95 and ADM exceeded 12,000 in FY 97		50% of traditional kindergarten students

FY 1998 excess funds. Even though the non-Big Eight urban districts cannot increase their kindergarten ADM in FY 1998, the bill supplements their basic aid that year with any money that might be left over after the Big Eight report their kindergarten enrollment. More specifically, the bill requires that if the kindergarten ADM reported by the Big Eight districts in FY 1998 turns out to be insufficient to spend all of the FY 1998 money appropriated in anticipation of their increased kindergarten numbers, the Department of Education must use the remaining money to make payments to the other urban districts providing all-day or extended kindergarten that year. The Department must determine and pay a per-pupil amount for each child enrolled in all-day or extended kindergarten in an urban district.

Basic aid guarantee

(sec. 3317.0212)

Current law

In every biennium since the original enactment of the current basic aid formula, the General Assembly has included a provision in the biennial appropriations act guaranteeing each school district some percentage of state aid received under the formula in a prior year. With three exceptions, all school districts in the state currently are guaranteed to receive at least the amount of basic aid they received in FY 1991 (either under the formula that year or under the guarantee provision of Am. Sub. H.B. 111 of the 118th General Assembly). The exceptions are:

(1) Any school district whose FY 1992 *actual* aid, after the Governor's ordered budget cuts that year, was still greater than its FY 1991 state aid, but whose basic aid subsequently has fallen below its FY 1991 basic aid or FY 1992 actual aid, is entitled to receive the difference between its current basic aid and its FY 1992 actual aid or the difference between its current basic aid and its FY 1991 basic aid, whichever is the greater difference.

(2) For each year after FY 1992 that a district has a per-pupil taxable property valuation of $285,500 or more, its FY 1991 or FY 1992 guarantee is reduced by 15%.

(3) For each year after FY 1994 that a district has a per-pupil taxable property valuation of $200,000 or more (but less than $285,000), its FY 1991 or FY 1992 guarantee is reduced by 5%.

The bill

The bill removes any district with an ADM of less than 100 from the second and third exceptions listed above. Any district with such a low enrollment will continue to receive either its FY 1991 basic aid or FY 1992 actual aid amount, whichever is greater.

Disadvantaged Pupil Impact Aid (DPIA)

(secs. 3301.0719, 3317.023, 3317.03, and 3317.10; Section 46.09)

Under current law, a school district receives an additional amount of state aid, Disadvantaged Pupil Impact Aid (DPIA), if sufficient numbers of students residing in the district receive Aid to Dependent Children (ADC). A district is eligible for DPIA if the three-year average number of such resident children was at least 5% or more of the district's average daily membership. The following table shows the amount a district receives for each ADC child as a function of the percentage of ADC children:

Tier	Payment formula
At least 5%, but less than 10% ADC children in three-year average	$198
At least 10%, but less than 20% ADC children in three-year average	($101.50 x per cent of ADC children) minus $817
At least 20%, but less than 30% ADC children in three-year average	($7.50 x per cent of ADC children) plus $1,063
Over 30% ADC children in three-year average	$1,288

The bill makes three changes to this calculation. First it requires the "Big Eight" and "Urban" school districts to increase their kindergarten numbers in the DPIA formula, if they offer all-day or extended kindergarten, in the same manner it

requires them to do in the state basic aid formula (see "***Average Daily Membership (ADM)***," above). This change may reduce the Big Eight and Urban districts' DPIA grants, since it increases the denominator of the equation used to determine the percentage of its children receiving welfare. For example, in a district with 5,000 receiving welfare out of an ADM of 20,000, the district's DPIA percentage is 25%. If increasing the count of its kindergarten students raises the ADM to 21,000, for example, the DPIA percentage would decrease to 23.8%.

Second, the bill adjusts the language of the current law to account for the state's switch from ADC to Temporary Assistance for Needy Families (TANF) on October 1, 1996. Under the bill, the formula will begin to incorporate the number of children in families receiving TANF cash assistance. This will occur over a three-year period, since the DPIA grants are based on the three-year average of welfare caseloads. In FY 1998, the grant will be based on the average number of children receiving ADC in October 1994 and October 1995 and TANF cash assistance in October 1996. In FY 1999, it will be based on the number of children receiving ADC in October 1995 and TANF cash assistance in October 1996 and October 1997. Finally, in FY 2000 and thereafter, all three years used to calculate the average will count children receiving TANF cash assistance.

Third, while not changing the actual formula for determining the DPIA grant amounts, it directs that the amounts derived from the formula be increased 4% in FY 1998, and another 5% in FY 1999.

Uses of DPIA grants

Current law, unchanged by the bill, requires 70% of all DPIA money to be set aside in a separate account and used for any of the following: (1) all-day kindergarten, (2) reduction of class sizes, (3) summer school or other remediation programs, (4) dropout prevention programs, (5) programs to guarantee that third graders are ready to progress to more advanced work, (6) summer education and work programs, (7) adolescent pregnancy programs, (8) Head Start or preschool programs, (9) reading improvement programs, (10) programs to ensure disciplined, drug-free school environments, (11) furnishing supplemental course materials free of charge to ADC students, (12) school breakfast programs, or (13) other programs to improve the educational status of disadvantaged pupils approved by the Department of Education.

If a district is considered "at-risk" *and* receives a DPIA grant of $300,000 or more, current law requires it to use at least 10% of the 70% set-aside described in the preceding paragraph for all-day kindergarten with a 15:1 student-teacher ratio, reduction of student-teacher ratios in grades one to four to 15:1, or both. Current law defines an "at-risk" district as one with a dropout rate of 30% or more that also has either an ADC rate greater than 30% or average personal income lower than 80% of the statewide average. As is the case for determining the DPIA grant, the ADC rate is calculated for this purpose based on a three-year average. The bill makes the same language change here that it makes for determining the DPIA grant: when counting the welfare caseload for 1996 and subsequent years, recipients of TANF cash assistance will be counted.

School district tuition

(secs. 3317.03 and 3317.08)

Generally, a school district must admit to its schools, without charging tuition, any child whose parents reside within the district or who has been placed for adoption within the district. A school district is also required to admit a child, but must be paid tuition for the child, if: (1) the child resides in the district in a certain type of residential facility, (2) the child resides in the district, but at least one parent is in a residential or correctional facility and the other parent, if not in a residential or correctional facility, is not known to reside in Ohio, or (3) the child requires special education. In addition, a board of education is permitted to admit any other child if tuition is paid.

The amount of tuition charged by each district is determined by dividing the sum of its property tax and income tax revenues from recent years by its ADM for grades kindergarten through 12. (This approximates the amount of local revenue generated per pupil.) Under current law, though, only 50% of the kindergarten students are counted in the ADM for this purpose.

The bill requires the "Big Eight" and "Urban" school districts to increase their kindergarten numbers in the tuition formula, if they offer all-day or extended kindergarten, in the same manner it requires them to do so in the state basic aid and DPIA formulas (see "***Average Daily Membership (ADM)***" and "***Disadvantaged Pupil Impact Aid (DPIA)***," above). As with the DPIA formula, this probably will decrease the tuition charged in these districts, since it increases the denominator of the equation; the local revenue is divided by a larger ADM.

Recomputation of aid for schools refunding property taxes

(sec. 3317.026)

The bill provides for the basic aid of a school district to be recomputed if the school district is required, in a single year, to

refund more than 3% of its property taxes levied for current expenses because of reductions in the taxable value of property. In effect, the recomputation would reimburse the school district for the formula charge-off share of the refunds.

Each year by the end of February, county auditors would have to determine the amount of taxes refunded by each school district during the previous calendar year, and certify those amounts to the Tax Commissioner along with the reductions in taxable value that resulted in those refunds. By June 1, the Tax Commissioner would have to determine whether the refunded taxes exceed 3% of the district's taxes levied for current expenses for the year in which the taxes were refunded, and, if so, certify the total reduction in taxable value resulting in those refunds to the Department of Education. On or before June 30, the Department would have to recompute the school district's basic aid for the fiscal year that ends on that date using the reduced taxable value, and pay the school district the resulting increase in state basic aid.

For the purpose of the recomputation, refunded taxes generally would include any penalties or interest that were charged and then refunded by the school district. If a refund is paid pursuant to an installment schedule as allowed under existing law, the total amount of the refund due over the entire installment schedule would be considered to be refunded by the school district on the date of the first installment payment (any interest accruing under the repayment plan after the first installment would not be considered part of the refunded taxes).

If a recomputation is made under the provision, any reductions in taxable value taken into account in the recomputation could not be considered in recomputing basic aid under two other recomputation provisions in existing law.

A special "look-back" provision would allow basic aid to be recomputed for refunds paid by school districts as early as July 1, 1996. When the determination is made in February 1998 regarding refunds paid in 1997, any refunds paid between July 1, 1996, and December 31, 1996, would be considered to have been paid in 1997.

Parental Involvement Programs

(sec. 3301.134)

Current law requires the Department of Education to encourage, seek out, and publicize innovative and exemplary school-parent partnerships to the general public and school districts (sec. 3301.131, not in the bill). Current law also requires all boards of education to adopt a policy on parental involvement in the schools of the district (sec. 3313.472, not in the bill). The policy must build "consistent and effective communication" between parents, teachers, and administrators. It is up to the individual district schools to implement the adopted policy on parental involvement.

The bill permits the Department of Education to issue awards of equal amounts up to $15,000 in each fiscal year to up to 50 public schools determined by the Department to have implemented in the immediately preceding fiscal year innovative and exemplary parental involvement programs. The programs must have enhanced parental involvement in such schools according to criteria established by the Department. Any school that receives an award may expend the money on any lawful purpose.

Separate equity tier of funding

(sec. 3317.0213)

Under current law, approximately one-third of the school districts in the state qualify for a second tier of equalization aid called "equity aid." Pursuant to this separate formula, the state furnishes additional state money to the districts with the lowest property valuations per pupil (adjusted somewhat for the household income wealth of district residents) in order to ensure that each additional mill (up to 13) levied by the district roughly results in a specified amount of actual revenue. Currently, the second tier formula amount and the number of school districts receiving equity aid vary each year depending upon the amount of money appropriated by the General Assembly.

The bill would specify that the 292 school districts with the lowest income-adjusted valuation per pupil each year would receive equity aid. The formula amount would still vary with the amount of the appropriation.

School Finance--Financing Capital Improvements

Energy conservation measures

(sec. 3313.372)

Current law permits a board of education to enter into installment payment contracts for the purchase and installation of energy conservation measures. The law exempts the financing terms of these installment payment contracts from competitive bidding and, by a two-thirds vote, permits a school board to exempt the actual installation of the energy conservation measures from competitive bidding (secs. 3313.372 and 3313.46(B)(3)). The energy conservation

installment contracts must provide that at least 1/10 of the project cost be paid within two years from the date of purchase and the balance, within ten years of the date of purchase. The school district must find in its cost-benefit analysis of the project that the energy savings will exceed the costs of the energy conservation measures for the ensuing ten years. The Department of Education must approve all installment payment contracts for energy conservation measures.

The bill increases from 10 to 15 years the allowable length of the installment payment contract, requires that under the terms of the contract at least 1/15 (instead of 1/10 as under current law) of the costs of the contract must be paid within the first two years of the contract, and requires that the district must find in its cost-benefit analysis that energy savings will exceed the costs of the energy conservation measures for the ensuing 15 years (instead of ten years as under current law).

Classroom Facilities Assistance Program

(secs. 3318.02, 3318.03, 3318.041; Section ____)

Under current law, the state through the Classroom Facilities Assistance Program provides interest-free financing of all or a part of the costs of constructing classroom facilities for school districts.

On-site visits and evaluation of district classroom facility needs

Under current law, the Ohio School Facilities Commission is required to periodically perform an assessment of the classroom facility needs in the state. Current law also requires the Commission, prior to making its decision to fund a classroom facilities project, to conduct on-site visits to school districts identified as having classroom facilities needs to confirm the findings of the periodic assessment and to further evaluate the classroom facility needs of the district. This evaluation must assess the district's need to construct or acquire new classroom facilities and may include an assessment of the district's need for building additions or for the reconstruction of existent buildings in lieu of constructing or acquiring replacement buildings.

The on-site visits must be done in "rounds" including only a specified portion of school districts having been assessed as having facility needs. The first round of on-site visits performed after May 20, 1997 must be limited to the school districts in the first through fifth percentiles of the most recent ranking of school districts according to adjusted valuation per pupil (excluding certain districts that are ineligible for funding because they have received classroom facilities assistance in the last ten years). The second round of on-site visits must be limited to the school districts in the first through tenth percentiles of the ranking of school districts according to adjusted valuation per pupil. Each succeeding round of on-site visits must be limited to the percentiles included in the immediately preceding round of on-site visits plus the next five percentiles. Except for the first round of on-site visits, current law prohibits a round of on-site visits from commencing unless 80% of the districts for which on-site visits were performed during the immediately preceding round have had projects approved for assistance.

The bill expands the first round of on-site visits performed after May 20, 1997 to encompass the first through ***twenty-fifth*** percentiles of the most recent ranking of school district according to adjusted valuation per pupil (instead of just encompassing the first through fifth percentiles). Thereafter, each round of on-site visits would include the percentiles included in the immediately preceding round plus the next five percentiles as under current law.

In addition, the bill requires the Commission to evaluate the practicability of the district's meeting its classroom facility needs through split sessions, year-round classes, joint use of school facilities with one or more other school districts, and any other means the Commission considers practicable for the district, as well as the potential effects that meeting the district's facility needs in such ways would have on the education of the students affected.

Expedited approval process

Under current law, upon performing the on-site visit and making a determination of a school district's need for additional classroom facilities, the Commission may conditionally approve the funding of a classroom facilities project for the district. At that time the Commission is required to reserve and encumber from the funds appropriated for the Classroom Facilities Assistance Program, the state's share of the project cost. The conditional approval must be submitted to the Controlling Board for approval. Once the Controlling Board has given its approval, the conditional approval of the project is certified to the school district board.

In addition, current law permits a school district in the first through fifth percentiles of the most recent ranking of school districts according to adjusted valuation per pupil to adopt and certify to the Commission a resolution specifying a proposed project that meets the requirements of the Classroom Facilities Assistance Program and meets the needs of the school district, as confirmed through an on-site visit by the Commission. The Commission must consider such projects for conditional approval and encumber funds for a project so approved in the order in which the resolutions are received.

The bill would permit school districts in the sixth through twenty-fifth percentiles of the most recent ranking of school

districts according to adjusted valuation per pupil (in addition to districts in the first through fifth percentiles) to participate in the expedited project approval process described above.

Also, the bill provides that the Commission must first consider for approval and funding--without any on-site visit or evaluation by the Commission or evaluation of the practicability of the district's meeting its classroom facility needs through split sessions, year-round classes, joint use of school facilities, etc.-- any project that has been developed with input from the community and that has been approved by the district's Business Advisory Council if the district (1) is contained in the first quartile of the most recent ranking of school districts according to adjusted valuation per pupil and (2) has an assessment of its classroom facility needs that was performed by a "professional person or firm qualified to assess the facility needs of the district." The Commission must encumber the amount of the state's share of the project cost immediately upon a district's meeting all these requirements. The electorate of the district then has one year to approve the school district tax levy, or tax levy and bond issue (if necessary), required for the project.

OTHER PRIMARY AND SECONDARY EDUCATION PROVISIONS

Desegregation costs

(Section 46.36)

The bill prohibits a school district (Lorain City School District) from being required to repay the Department of Education certain amounts ($2.6 million) paid to the district in calendar year 1991 to cover desegregation costs for fiscal year 1990 as a result of a United States District Court Order (in the case of *Lorain NAACP v. Lorain Board of Education*), and which court order was subsequently reversed by the United States Sixth Circuit Court of Appeals in 1992.

School acquisition of motor vehicles

(sec. 3313.172)

Current law permits any board of education or the governing board of any educational service center to *purchase or lease* motor vehicles (sec. 3313.172). Based on the precedent of legal opinions of the Attorney General in regard to the overall purchases of property by a board of education, there is a strong implication that installment payment contracts of property by a board of education are inappropriate unless expressly authorized under law (1965 OAG No. 030, 1963 OAG No. 501, and 1958 OAG No. 2820). An installment payment contract is a type of purchase plan in which title to property passes to the buyer after payment of a fixed number of payments. Based on the reasoning of the Attorney General Opinions, a board of education or governing board likely may not enter into an installment payment contract to purchase motor vehicles under current law.

The bill permits a board of education or the governing board of an educational service center to enter into *lease-purchase* agreements for the acquisition of motor vehicles. A lease-purchase agreement is a form of an installment payment contract. Therefore, this new provision permits a board of education or a governing board to enter into a certain type of installment payment contract to purchase motor vehicles.

The definition of motor vehicles under section 3313.172 includes school buses. School districts, however, only are entitled to a state subsidy for the *purchase* (not the lease) of school buses (sec. 3327.08 and OAC 3301-85-01). The purchase of school buses is also expressly subject to the requirements of competitive bidding (sec. 3327.08).

Midyear revision of state school funding distribution plan

(sec. 3317.01)

Under current law, the State Superintendent of Public Instruction calculates and certifies the amounts payable to each school district under the School Foundation Program. The State Board of Education, in accordance with the appropriations made by the General Assembly, distributes the money subject to the approval of the Controlling Board. At the beginning of each fiscal year, the State Board submits a yearly distribution plan to the Controlling Board at its first meeting in July. The State Board submits any proposed midyear revision of the plan at the Controlling Board's first January meeting.

The bill permits the State Board to submit any proposed midyear revision to the Controlling Board any time in January instead of at the Board's first January meeting.

Purchase of textbooks or other instructional materials

(sec. 3329.16)

The bill requires the Superintendent of Public Instruction to deduct amounts from a school district's state aid payments if

the district misspends money appropriated by the General Assembly for the specific purposes of purchasing textbooks or other instructional materials. The Superintendent must notify a school district of the determination to deduct state aid within seven days of the determination to do so.

Judgment loan

(Section 46.15)

The bill permits the state Superintendent of Public Instruction, subject to the approval of the Director of Budget and Management and the availability of appropriated funds, to enter into a loan agreement with a board of education of a school district that, during the 1995-1997 biennium, was the subject of one or more final, nonappealable judgments, consent judgments, or settlement agreements in a civil action for damages for injury, death, or loss of person or property, the amount of which was equal to at least 90% of the district's operating expenditures for the fiscal year in which any of the judgments or settlements were issued.

Under the loan agreement, the Department of Education will loan the district money to pay all or part of the judgment, or settlement, plus any accrued interest. For repayment of the loan, the agreement must require the Department to deduct annually, from state aid payments due to the district, an amount equal to 0.2% of the district's total taxable value, for the *lesser* of the following periods:

(1) 25 years; or

(2) The number of years required to deduct the total amount of the loan from the district's state aid payments.

Per-pupil funding for educational service centers

(sec. 3317.11; Section 46.19)

Under current law, state funding is provided to educational service centers at a rate of $32 per pupil in the ADM of each local school district within the service center's territory and the ADM of each city or exempted village school district that entered into a comprehensive service agreement with the service center prior to June 1, 1995. City and exempted village school districts with ADMs of 13,000 or more must have entered into an agreement with the service center prior to July 1, 1993 (sec. 3313.843, not in the bill). The bill makes two changes for the upcoming biennium. First, it permits an educational service center to receive funding for an agreement with a city school district that was entered into after June 1, 1995, as long as the agreement was entered into within one year after the city school district converted from a local school district. Second, it increases the per-pupil amount to $34 for FY 1999 and subsequent years, except for (1) circumstances when there are insufficient funds to pay all service centers and (2) certain multicounty service centers.

Insufficient funds

If appropriated funds for FY 1999 are insufficient to provide the per-pupil subsidy for the full ADM for all service centers, the per-pupil amount remains at $32; it does not increase to $34. In addition, if there are insufficient funds in either fiscal year, the bill requires the subsidy to be paid in the following priority:

(1) First, to all service centers for the ADM of the local school districts in their territories; and

(2) Second, for the ADM of city and exempted village school districts that had entered into comprehensive agreements with service centers by June 1, 1995, in the chronological order that those agreements were entered, *except* that:

(a) Any service center that received funds for pupils in the ADM of a city or exempted village school district in FY 1995 must receive FY 1998 funds for the ADM of the district if the service center has an FY 1998 agreement with the district; and

(b) Any service center that received funds for pupils in the ADM of a city or exempted village school district in both FY 1997 and FY 1998 must receive FY 1999 funds for the ADM of the district if it has an FY 1999 agreement with the district.

Multicounty service centers

The bill retains the current law that, commencing with FY 1998, "multicounty service centers" are to be paid a per-pupil subsidy equal to 10% of the formula amount in the state basic aid formula. For example, since the bill proposes a $3,685 formula amount for FY 1998, the per-pupil rate for FY 1998 would be $36.85. A multicounty service center is one whose territory was formed by the merger of at least three former service centers.

Educational service center consolidations

(Sections 46.33, 72, and 184)

Under current law, educational service centers that serve only one school district must consolidate with another educational service center by July 1, 1997. Service centers that serve more than one district but have an ADM of less than 8,000 students must consolidate with another service center by July 1, 1999. The bill postpones for one year (until July 1, 2000) the required consolidation for service centers that serve six or more school districts.

The bill also directs the Legislative Office of Education Oversight to issue, no later than January 31, 1999, a status report on the required service center mergers. The report must be issued to the Speaker of the House and the Senate President.

New option for creation of Educational Service Center Board

(secs. 3311.053, 3311.056, and 3311.057)

Under current law, educational service centers merging with other educational service centers have two options for forming the governing board of the new center. One option provides for five members to be elected at large (with the possibility of adding additional appointed members at a later date) and one provides for an odd number of board members (up to nine) to be elected from subdistricts (again, with a potential for adding additional appointed members). If the option for subdistricts is selected, the subdistricts must be drawn to be as nearly equal in population as possible so that each member represents about the same number of electors.

The bill would establish a third alternative for service centers that either have already merged (since July 1, 1995) or will merge prior to July 1, 2000. Under this third option, the board of a district that has already merged (or the respective boards of the districts that adopt resolutions to merge before July 1, 2000) may adopt a plan for a governing board of any odd-number of members to be elected either at large, by subdistrict, or some of each. If there is any transition period between the current board (or boards, where the districts have not yet merged) and the new board, the plan must also specify how the transition period will be handled.

If subdistricts are included, the plan must provide for the method of drawing the boundaries. A subtle difference in the population requirements for subdistricts exists for this option as compared to the subdistrict option in current law. Under this option, each elected member of the board must *represent* an approximately equal number of electors of the service center, but the subdistricts themselves do ***not*** have to *contain* an equal number of electors. Instead, any subdistrict containing a multiple of the number of electors in another subdistrict may elect at-large within that subdistrict, a number of board members equal to the multiple that its population is of the population of the other subdistrict. For example, if one subdistrict has twice as many electors as another, that subdistrict could elect two board members at-large while the other subdistrict would elect one.

Residential treatment pilot project

(Section 46.32)

The bill establishes for fiscal years 1998 and 1999 procedures for providing and paying for the education of children under age 22 who reside at one of the following residential treatment facilities: Abraxas, in Shelby; Paint Creek, in Bainbridge; Act One, in Akron; Friars Club, in Cincinnati; and any other facilities that have entered into a contract with the Department of Youth Services to provide services to children placed at the center by the Department and which, in fiscal year 1998 or 1999, or both, the Department pays through appropriation line item 470-401, Care and Custody.

In fiscal years 1998 and 1999, the bill requires that any youth who is an Ohio resident and has been assigned to a residential treatment facility by a juvenile court or other authorized agency be enrolled in an educational program. The educational program must be located in or near the facility and meet criteria established by the Department of Education; however, these criteria need not be adopted until September 1, 1998, which is two months after FY 1998 ends. The Ohio Family and Children First Cabinet Council must recommend criteria to the Department, and the Department must take those recommendations into consideration. It is possible that the intent of the language is to require the Department to adopt criteria immediately, and then review the criteria prior to September 1, 1998, after receiving the Cabinet Council's recommendations. However, the literal meaning of the language is that no criteria need be adopted until two months after FY 1999 begins. If that is the case, no educational programs will qualify in FY 1998.

The educational program must be provided by a school district, an educational service center, or the residential treatment facility itself. The decision of whether to contract with a district or service center is the facility's, as the bill requires that "maximum flexibility shall be given to the residential treatment facility to determine the provider." If, however, a voluntary agreement cannot be reached and the facility does not choose to provide the educational program itself, the educational service center of the county in which the facility is located must do it.

Payment for the educational program is to be made to the provider on a per-pupil basis by both a designated school district and the state, as follows:

(1) Either the school district where the facility is located (if the student would otherwise attend school in that district free of tuition obligation), or the school district that is responsible for tuition payments under current law, would have to pay tuition directly to the provider of the educational program. The tuition amount would be the amount that district normally charges students from other districts (see ***"School district tuition***," above). In addition, for a special education student with an individualized education program (IEP), this district must pay the difference between the regular tuition and the actual costs of providing the special education and related services.

(2) Over and above the amount paid by the applicable school district, the Department of Education must pay from appropriations made for this purpose, the state formula amount ($3,685 in FY 1998) for each student.

Funds paid to the education provider must be used to supplement, not supplant funds from other public and private sources for which the provider is entitled or eligible. The bill requires the Department of Education to track the utilization of the funds and monitor the effect of the funding on the educational programs they provide in the participating treatment centers. The Department must "monitor the programs for educational accountability."

Distance Learning Fund

(sec. 3317.51)

Under current uncodified law (Section 45.06 of Am. Sub. H.B. 117, the appropriations act of the 121st General Assembly), money in the Distance Learning Fund is distributed by the Department of Education on a grant basis to eligible school districts to establish "distance learning" "Distance learning" is not defined in existing law. The bill defines it as the creation of a learning environment involving a school setting and at least one other location outside of the school which allows for information available at one site to be accessed at the other through the use of such educational applications as one-way or two-way transmission of data, voice, and video, singularly or in appropriate combinations. in those districts. The bill codifies the Distance Learning Fund. The Fund consists of money paid to the Department of Education by any telephone company as a part of a settlement agreement between such company and the Public Utilities Commission in FY 1995 in part to establish distance learning throughout the state.

As under current law, money in the Fund is distributed to schools within the service area of the telephone company. Grants are authorized for eligible public and nonpublic schools that are chartered by the State Board of Education; however, the newly created Information, Learning, and Technology Authority (see below) would administer the grants. Also, under the bill, interest earned by the Fund would accrue to the Fund.

Teacher Professional Development Task Force

(Section 46.46)

The bill creates in temporary law the Teacher Professional Development Task Force (composed of six voting members--three legislative members from the Senate and three legislative members from the House) whose purpose is to develop a comprehensive structure for the delivery of continuing professional development for teachers in the state's primary, secondary, vocational, and special educational system. By January 31, 1998, the Task Force must issue to the President of the Senate, the Speaker of the House, and the State Superintendent of Public Instruction a report outlining a comprehensive structure for the delivery of continuing professional development to such school teachers. On the date of the issuance of its report, the Task Force is abolished.

Ex-officio nonvoting members of the Task Force include the State Superintendent of Public Instruction, the Director of the Office of Budget and Management, two members of institutions of higher education (one public and one private) that have teacher education colleges, and a representative member from each of the following organizations: Ohio State School Boards Association, Ohio Association of Educational Service Center Superintendents, Ohio Education Association, Ohio Federation of Teachers, and Buckeye Association of School Administrators. The voting members of the Task Force may appoint by a majority vote additional ex-officio nonvoting members to serve on the Task Force. The President of the Senate would appoint the chair and the Speaker of the House of Representatives would appoint the vice-chair from among the voting members.

Ohio Schools Technology Implementation Task Force

(Section 46.45)

The bill creates the Ohio Schools Technology Implementation Task Force to develop recommendations for a comprehensive framework for coordinating the planning and implementation of technology in Ohio schools. The Task Force must issue a report by January 31, 1998. The Task Force is composed of six voting members and seven ex officio nonvoting members. The voting members are three members of the Senate and three members of the House of Representatives (no more than two in each house can be from the same party). The ex officio members are the Superintendent of Public Instruction; the Directors of OBM, DAS, and the Office of Information, Learning, and

Technology Services; and representatives of the Ohio Education Computer Network, the Public Utilities Commission of Ohio, and the Ohio Education Broadcasting Network Commission. The President of the Senate would appoint the chair and the Speaker of the House of Representatives would appoint the vice-chair from among the voting members.

Pilot project scholarship program

(sec. 3313.975; Section 173)

Current law establishes a state-funded program under which the Superintendent of Public Instruction had to designate one school district as a pilot project district to offer alternative educational choices to students residing in the district. The school district had to be one that as of March 1995 was under a federal court order requiring supervision and operational management of the district by a state education official. On March 3, 1995, United States Circuit Judge Robert B. Krupansky ordered the Ohio State Superintendent of Public Instruction to "assume immediate supervision and operational, fiscal and personnel management" of the Cleveland City School District. This school district was the only one that fit the law's criteria for the establishment of a scholarship program and is the one in which the program was established. Beginning in FY 1997, a number of students in the pilot project school district began receiving scholarships either to attend private schools in the district or alternative public schools in adjacent school districts. An equal number of students who chose to remain in the public schools of the pilot project district were eligible to receive tutorial assistance grants to purchase additional instructional services, such as tutoring. Under the law, new participants each year are limited to those in grades kindergarten through third and all participants may receive scholarships through grade eight as long as funds are appropriated. The Superintendent must decide the number of students eligible for scholarships in the pilot project district, and this number is dependent on the costs of the program and the amount of money available.

The bill, notwithstanding section 3313.975, permits the Superintendent of Public Instruction in fiscal year 1998 to award initial scholarships (and presumably tuition assistance grants) to students enrolled in fourth grade as well as kindergarten through third. In fiscal year 1999, fifth graders may also receive scholarships (and presumably grants). The bill continues to provide that once a student receives a scholarship, he or she may continue to receive one through grade eight.

The bill also expands the scope of the program to allow its uniform application throughout the state. Under the bill, any school district that has been or ever becomes subject to a federal court requiring management of the district by the state would become part of the program (as opposed to limiting the program to districts under such a court order in March of 1995). On May 1, 1997, the Tenth Appellate District Court held the pilot project scholarship program unconstitutional, in part because the program violated Section 26, Article II of the Ohio Constitution requiring all laws to "have a uniform operation throughout the State."

Prohibition against new scholarships

The bill prohibits, notwithstanding current law pertaining to the Pilot Project Scholarship Program, awarding any scholarships in fiscal years 1998 and 1999 except to students who received scholarships in fiscal year 1997.

Statewide authority to convert public schools to chartered community schools

(secs. 2744.01, 2744.02, 2744.03, 3307.01, 3309.01, 3313.844, 3314.01 to 3314.10, 3319.17, 3323.012, 4117.01, 4117.06, and 4117.101; Section 46.40)

The bill would establish a permanent authorization for any board of education of a city, exempted village, or local school district anywhere in the state to charter community schools within its own boundaries, but only by converting all or part of an existing public school. Any person or group may propose the conversion.

Only students entitled to attend school in the district sponsoring a conversion community school (or students already attending the school preceding its conversion, through open enrollment or payment of tuition) would be eligible for admission to a community school. A window of opportunity for chartering is created from the effective date of the act until July 1, 2002. After that date, no new charters could be granted, but all community schools chartered prior to that date could continue in operation unless terminated in accordance with the bill's provisions.

An individual or group of individuals would have to propose the conversion of all or part of a public school to the school board and the board would decide whether to enter into a preliminary agreement to allow the proposing group to plan for the conversion of the school. A preliminary agreement indicates an intention to sponsor the community school. The proposers may proceed to finalize plans for the school, establish a governing authority for the school, and negotiate a contract with the school board. The bill instructs the school board to negotiate in good faith, provided that the individual or group proposing the community school adheres to the preliminary agreement and all of the bill's requirements. An unlimited number of schools could be converted in any district, provided each conversion had its own charter.

Contracts. To adopt a contract establishing a community school, a majority vote of the community school's governing authority and a majority vote of the converting school board is necessary.

Each contract must specify the following:

(1) That the school shall be established under Ohio law as a nonprofit corporation;

(2) The education program of the school, including the school's mission, the characteristics of the students the school is expected to attract, the ages and grades of students, and the focus of the curriculum;

(3) Performance standards and assessments by which the sponsor will evaluate the school's success, which must include the statewide proficiency tests;

(4) That the school governing authority will submit to the sponsoring school board and the parents of all students an annual report of its financial status (in a form prescribed by the Auditor of State) and its activities and progress in meeting the goals and standards specified in item (3);

(5) The school's admission standards (see "***Student admission standards***," below);

(6) Dismissal procedures;

(7) The ways the school will achieve racial and ethnic balance reflective of the community it serves;

(8) Requirements and procedures for program and financial audits, which must require that the school's financial records be maintained in the same manner as are financial records of school districts, pursuant to rules of the Auditor of State;

(9) The facilities to be used and their location, which presumably is an existing school building;

(10) Qualifications of teachers, including a requirement that they be licensed;

(11) That the school will provide learning opportunities to at least 25 students for a minimum 920 hours per school year;

(12) That the governing authority will purchase liability insurance or otherwise provide for the potential liability of the school;

(13) That the school will be nonsectarian in all its operations, including programs, admission policies, and employment practices, and will not be operated by a sectarian school or religious institution;

(14) The state laws with which the school will comply (see "***Applicability of state laws***," below);

(15) Arrangements for providing employee health and other benefits;

(16) The contract's length, which cannot extend beyond three years;

(17) The governing authority of the school and a description of the process for selecting the governing board in the future;

(18) A financial plan (a) detailing an estimated school budget for each year of the contract, (b) specifying the total estimated per pupil expenditure amount for each year, and (c) specifying the base formula amount that will be used to determine the annual per pupil payments by the state for nonhandicapped students (see "***Annual state payments to community schools***," below);

(19) Requirements and procedures regarding the disposition of employees, if the contract should be terminated or not renewed;

(20) Alternative arrangements, approved by the board of education of the school district in which the school is located, for students who choose not to attend the school and teachers who choose not to teach there after the conversion;

(21) Any additional details concerning the management and administration of the school;

(22) Any duties or responsibilities of an employer (for purposes of collective bargaining law) that the school board is delegating to the governing authority.

The governing authority of the community school is responsible for carrying out the provisions of the contract and has authority to sue and be sued and make contracts (other than some collective bargaining agreements) necessary to ensure the performance of any function in compliance with the Ohio Constitution, state law, and the conversion contract.

Applicability of state laws. Converted community schools will be public schools that are part of the state's system of education, but are independent of the school district and exempt from many state laws applicable to school districts. They must serve at least 25 children and provide a minimum of 920 hours of learning opportunity. They are exempt from all state rules and laws pertaining to school districts except:

(1) Laws and rules that "grant certain rights to parents" will apply to community schools. The bill does not specify which laws these are.

(2) Any facility used for a community school will have to meet all health and safety standards established by law for school buildings.

(3) Employees of community schools will be subject to the State Teachers Retirement System and the School Employees Retirement System.

(4) Community schools will be subject to the state collective bargaining law (see "***Employees***," below).

(5) Community schools will be subject to Ohio's special education laws as if they were school districts.

(6) Teachers in community schools will have to be certificated in accordance with the Revised Code, except that the schools may engage noncertificated persons to teach up to 12 hours per week in the same manner permitted by law for other schools.

(7) The contract between the school and its sponsor will have to require the school to comply with the state requirements for granting high school diplomas. However, a community school student may fulfill the curriculum requirements for graduation by successfully completing the school's curriculum rather than the curriculum specified by the Revised Code.

(8) The contract between the school and its sponsor also will have to state that the school will comply with the following laws as if it were a school district:

(a) Employee deferred compensation plans (secs. 9.90 and 9.91);

(b) The Ohio Ethics Law (Chapter 102.) except that a member of a governing board may be an employee of the community school or may have an interest in a contract a community school enters into;

(c) Requirements for missing child reporting, information, and student fingerprinting (secs. 109.65, 3313.672, and 3313.96);

(d) State fiscal auditing requirements (Chapter 117.);

(e) The Public Meetings ("Sunshine") Law (sec. 121.22);

(f) The Public Records Law (sec. 149.43);

(g) Ohio Privacy Law (Chapter 1347.);

(h) Procedures pertaining to records of adjudicated delinquents after their court records are expunged (sec. 2151.358);

(i) Child abuse reporting requirements (sec. 2151.421);

(j) Employment protection for employees on jury duty (sec. 2313.18);

(k) The Sovereign Immunity Law for public employees (Chapter 2744.);

(l) Statewide proficiency testing (secs. 3301.0710 and 3301.0711);

(m) Education Management Information System (EMIS) requirements (sec. 3301.0714);

(n) Record requirements relating to student hearing and vision testing (sec. 3313.50);

(o) Requirement that students and teachers wear industrial quality eye protection in certain industrial courses or activities (sec. 3313.643);

(p) Student suspension, expulsion, and permanent exclusion requirements and procedures (secs. 3313.66, 3313.661, and 3313.662);

(q) Requirement to keep records of student immunizations (sec. 3313.67);

(r) Requirement to request records from a child's previous school (sec. 3313.672);

(s) Screening of new kindergartners and first graders in hearing, vision, speech and communication, and health (sec. 3313.673);

(t) Requirement to include hearing and vision screening if school opts to have any dental and medical screening (sec.

3313.69);

(u) Tuberculin testing requirements (sec. 3313.71);

(v) Requirement to display the national flag (sec. 3313.80);

(w) Requirements of confidentiality of student information (sec. 3319.321);

(x) Requirements for criminal records check for job applicants (sec. 3319.39);

(y) Requirements related to admittance of children to kindergarten and first grade (sec. 3321.01);

(z) School bus driver qualifications (sec. 3327.10);

(aa) Ohio Equal Pay Law (anti-discrimination related to wages) (sec. 4111.10);

(bb) Ohio Civil Rights Act (Chapter 4112.);

(cc) Ohio Whistleblower Law (sec. 4113.52);

(dd) Workers' Compensation Law (Chapter 4123.);

(ee) Unemployment Compensation Law (Chapter 4141.); and

(ff) State Occupational Safety and Health Law (Chapter 4167.).

Lease of public schools. For a community school to be located in a facility owned by a school district or an educational service center, the district or service center must enter into an agreement to lease the facility to the community school's governing authority. The lease may contain any terms agreed to by the parties.

Student admission standards. The governing authority of each community school must establish student admission procedures specifying that:

(1) Except for other limitations described below, admission to the school must be open only to any individual entitled under state law to attend school in the school district where the community school is located or already attending a school the year preceding its conversion.

(2) Admission may be limited to: students who have attained a specific grade level or are within a specific age group; students that meet a definition of "at-risk," as defined in the school's contract; or to residents of a specific geographic area defined in the contract.

(3) There may be no discrimination in the admission of students and, upon admission of a handicapped student, the community school must comply with all federal and state laws regarding the education of handicapped students.

(4) The school may not limit admission to students on the basis of intellectual ability, measures of aptitude, or athletic ability.

(5) The community school may not admit students in numbers that exceed the capacity of its programs, classes, grade levels, or facilities.

(6) If the number of applicants exceeds the capacity restrictions, students must be admitted by lot, but with preference given to students attending the school the previous year and (at the school's discretion) their siblings. This requirement for admission "by lot" does not apply if admission is restricted as described in (2).

If the racial composition of a community school's student body violates a federal desegregation order, however, the community school must take any and all corrective measures to comply with the order, regardless of the procedures specified in items (1) through (6).

Expiration and renewal of contracts. Each contract between a community school and its sponsor must specify the contract's expiration date. A successor contract may be entered into unless the contract is terminated or not renewed.

A sponsor may terminate a contract or decline to renew it for any of the following reasons:

(1) Failure to meet the student performance requirements stated in the contract;

(2) Failure to meet generally accepted standards of fiscal management;

(3) Violation of any provision of the contract or applicable state or federal law; or

(4) Other good cause.

Notice, hearing, and appeal. A contract termination can take effect only at the conclusion of an instructional year. At least 60 days prior to termination or nonrenewal of a contract, the sponsor must notify the school in writing. The notice must include the reasons for the proposed action in detail and that the school may, within 14 days of receiving the notice, request an informal hearing before the sponsor. The request for the hearing must be in writing.

A decision to terminate (but not a decision to not renew) may be appealed to the State Board of Education. The decision of the State Board pertaining to an appeal is final.

Transfer of students. A child attending a community school whose contract is terminated or not renewed or that closes for any reason must be admitted to the schools of the district in which the child is entitled to attend. Moreover, any deadlines established for the purpose of admitting students under the state open enrollment law must be waived for these children.

Immunity for sponsors. The bill exempts the sponsor of a community school, and the sponsor's officers, directors, and employees, from liability in damages in a civil action (other than one for breach of contract or other agreement) for injury, death, or loss to person or property allegedly arising from either:

(1) A failure of the community school or any of its officers, directors, or employees, to perform any statutory or common law duty or responsibility or any other legal obligation; or

(2) An act or omission of the community school or any of its officers, directors, or employees.

Agreement with service center. The act permits the governing authority of a community school and the governing board of an educational service center to enter into an agreement, through the adoption of identical resolutions, under which the service center's board will provide services to the community school. The services provided, and the amount and manner in which the school pays for them, must be mutually agreed upon and spelled out in the service agreement. Since community school students will continue to be counted in the ADM of the city, local, or exempted village school district where they are entitled to attend school, the applicable educational service center will continue to receive per-pupil state payments for all students whose home school district also has an agreement with the service center.

Funding. Community schools will not be allowed to charge tuition, levy taxes, or issue bonds secured by tax revenues. Generally, funding for their operations will be paid by the state Department of Education and deducted from state aid payments to the school districts in which their students reside. Each city, local, and exempted village school district will count in its average daily membership (ADM) any student entitled to attend school in the district but enrolled in a community school so that the district will continue to be credited with any state basic aid funding (including DPIA funds) it otherwise would have received for the student.

Annual state payments to community schools. State payments for community schools are to be made directly to the school. For each student who is *not* receiving special education pursuant to an Individualized Education Program (IEP), the Department annually must pay the community school's "base formula amount" multiplied by the cost-of-doing-business factor of the school district in which the child is entitled by state law to attend school. The base formula amount is an amount specified in the financial plan contained in the community school's contract with its sponsor. It cannot exceed the base formula amount prescribed in state law for basic state aid (currently $3,500 per pupil).

For each student who *is* receiving special education pursuant to an IEP, the Department annually must pay to the community school the actual cost *to the school district* in which the child is entitled to attend school of providing the special education and related services, calculated in a manner acceptable to the state Superintendent of Public Instruction, *less* a prorated share for the student of any amount received from state or federal funds to provide that special education. This prorated share of state and federal funds must be determined on the basis of all such funds received by a community school for students receiving similar services, as calculated in a manner acceptable to the State Superintendent.

In addition, for every community school student whose family receives TANF, the Department annually must pay to the community school the amount of any state DPIA funding the student's home school district would have received for the student. (See "***ADC count***," below.)

Anticipation notes. The bill permits community schools to borrow money to pay "any necessary and actual expenses of the school" in anticipation of receiving these state funds. The school may issue notes to evidence the borrowing, which must mature no later than the end of the school year in which the money was borrowed. The proceeds of the notes may be used only for the purposes for which the anticipated state funds legally may be spent.

Deduction of school district funds. Each city, local, and exempted village school district annually will have amounts subtracted from its state aid payments to adjust for students of the district who enroll in community schools. The amount of the deduction is equal to the amount paid to the community school for the student.

Other funding sources. The bill provides for the possibility of additional funding for all community schools as follows:

(1) The bill permits community schools to apply to the Department for special, gifted, and vocational education unit funding the school would receive if it were a school district. Upon request of its governing authority, a community school that received unit funding as a school district-operated school before it became a community school must retain any units awarded to it as a school district-operated school as long as it continues to meet eligibility standards for the unit.

(2) The bill permits a board of education sponsoring a community school to (1) use local funds to make enhancement grants to the school or (2) agree, either as part of its contract with the school or separately, to provide any specific services to the school at no cost to the school.

(3) A community school will be considered a school district, and its governing authority a board of education, for the purpose of applying to any state or federal agency for grants that a school district may receive under state or federal law. The governing authority of a community school may apply to any private entity for additional funds.

Enrollment reports. To facilitate the exchange of funds between school districts and community schools, the bill requires the State Board of Education to adopt rules requiring the board of each city, local, and exempted village school district annually to report the number of students who are entitled by state law to attend school in the district but are enrolled in a community school, and for each of those children, the following:

(1) The community school in which the child is enrolled;

(2) If the child is receiving special education and related services in the community school pursuant to an IEP, the actual cost *to the district* of providing it, calculated in a manner acceptable to the state Superintendent of Public Instruction; and

(3) If the district receives DPIA funds for the child, the amount received for the child.

These rules also must require each community school annually to report:

(1) The number of students enrolled in the school who are *not* receiving special education and related services pursuant to an IEP;

(2) The number of students who *are* receiving special education and related services pursuant to an IEP and the number of those students who are counted in special education units approved by the State Board of Education and funded by the state;

(3) The community school's "base formula amount"; and

(4) The city, local, or exempted village school district in which the student is entitled by state law to attend school.

The Department must adjust the amounts paid to reflect the enrollment of students for less than a full year.

ADC count. To determine each community school's DPIA funding, the bill permits community schools to ask the state Department of Human Services how many of their students' families are TANF recipients. The schools may submit a list no later than March 1 that includes the name, address, and date of birth of each student and the school district where the student is entitled to attend school. The Department of Human Services must make the determination "on the basis of information readily available to it." Upon making the determination, but no later than 90 days after the school submitted its list, the Department of Human Services must report to the Department of Education the number of students on the list who reside in each school district in a family receiving TANF. The Department of Human Services' report may not include information identifying any student.

Transportation of students. The board of education of the city, local, or exempted village school district in which a community school is located must provide transportation to students enrolled in the school, but only within the boundaries of the district. Furthermore, the board is required to pick up and drop off nonhandicapped students only at regular school bus stops designated in accordance with its transportation policy.

Employees. A community school may employ teachers and nonteaching employees necessary to carry out its mission and fulfill its contract. Community school employees will be subject to the State Teachers and the School Employees retirement systems.

Collective bargaining. The bill specifically authorizes community school employees to organize and collectively bargain under the state collective bargaining law. The bill also stipulates that a collective bargaining unit containing both teachers and nonteaching employees may be considered an appropriate unit. A collective bargaining unit consists of employees grouped together for the purpose of designating its representative to bargain with an employer. Under current law, the State Employment Relations Board is required to decide whether or not such a group or unit is appropriate for purposes of

collective bargaining (sec. 4117.06).

It further prohibits a collective bargaining agreement with a school district from containing any provision limiting the effect or operation of the bill or limiting the authority of a school board to sponsor a community school. It states, however, that nothing in the bill can be construed to prohibit a collective bargaining agreement from containing requirements and procedures governing the reassignment of teachers employed at a school that is converted to a community school who choose not to teach or are not chosen to teach at the school.

Collective bargaining in converted public schools. When the community school is converted, the community school's employees will remain part of any bargaining unit in which they were included immediately prior to the conversion. They will remain subject to any collective bargaining agreement for that unit in effect on July 1 of the year in which the community school initially begins operations, and will be subject to any subsequent agreement for that unit. New employees will be included in the unit to which they would have been assigned had the conversion not occurred. The school district board of education, and not the community school, is considered the "public employer" for purposes of the collective bargaining law. This presumably means that the employees will continue to bargain with the district, not the community school governing authority.

However, a majority of the employees subject to the collective bargaining agreement may petition the State Employment Relations Board that (1) they be removed from the bargaining unit and designated as a new bargaining unit and (2) the governing authority of the community school be designated the "public employer" for purposes of the law. The petition must indicate whether the employee organization currently representing them in their original bargaining unit is to be (a) certified to exclusively represent the new bargaining unit or (b) decertified, in which case the employees would not be represented by any employee organization until such time as the employees again petitioned to be represented by an employee representative. Upon receiving a petition, the State Employment Relations Board must determine whether the signatures are sufficient. If it finds them sufficient, it must certify the petition and notify the parties involved, including the board of education, the school's governing authority, and any exclusive representative of the bargaining unit.

The changes requested in the petition take effect on the first day of the month following the date the Board certifies the petition, unless the Board receives prior to that date written allegations from three of the employees who signed the petition alleging that either the community school or the sponsoring district coerced them to sign. If this occurs, the Board must investigate the allegations and, if it determines that "substantial probability" does not exist that coercion occurred, the changes proposed on the petition go into effect on the first day of the month immediately following the date on which the Board made that determination.

If the Board determines that "substantial probability" does exist that coercion occurred, it must order an election held on the changes requested in the petition. The election must be by secret ballot and must be conducted in the same manner as representation elections under collective bargaining law. If the majority of voters in such election approve the changes, they take effect on the first day of the month immediately following the election. If the majority disapprove the changes, the changes do not take effect.

The bill specifies that filing an allegation under its provisions does not constitute the filing of an unfair labor practice. Any employee wishing to allege coercion as an unfair labor practice must file that charge separately with the Board.

Leaves of absence for district employees. The board of each city, local, exempted village, and joint vocational school district or educational service center in which a converted school is located must adopt a policy that provides a leave of absence of at least three years to each of its teaching and nonteaching employees who are employed by a community school. The leave must extend for the period during which the employee is continuously employed by the community school. The policy must permit the employee to return to the district or Service Center after leaving or being discharged by the community school for any reason.

An employee's seniority with the district or Service Center must be calculated to include all employment by the district or Service Center prior to the leave, all employment by the community school during the leave, and all employment with the district or Service Center after the leave. Any teacher who holds valid certification and returns to the district or Service Center after a leave must be restored to the previous position and salary, or a similar position and salary. If a district or the Service Center reduces its number of teachers as a result of teachers returning from leaves, it must make the reductions in accordance with the law governing teacher reductions by school districts.

Unless a collective bargaining agreement providing otherwise is in effect, an employee on leave to work in a community school will remain eligible for any benefits that the district or Service Center provides to its employees, but the employee must pay the entire cost of the benefits. Personal leave and vacation leave cannot be accrued for use after the employee returns to the district or Service Center unless the district or Service Center board adopts a policy expressly permitting its accrual.

While on leave, a teacher may use sick leave (accumulated while teaching in the public school) during the time employed

by the community school. In such case the community school would have to pay the costs of employing a substitute teacher, but the sponsoring school district would have to pay the salary of the teacher using the leave while sick.

LOEO study. By December 31, 2002, the Legislative Office of Education Oversight must complete an evaluation of the assets and liabilities to the state's system of educational options that result from the establishment of community schools under the act. The evaluation must at least include an assessment of any advantages to providing a greater number of educational choices to Ohio parents, any detrimental impacts on the state education system or on individual school districts, and the effects of attending community schools on the academic achievement of students.

Minimum standards for elementary and secondary schools

(Section 141)

Under current law, division (D) of section 3301.07 requires the State Board of Education to prescribe minimum standards to be applied to all elementary and secondary schools. Such standards must provide for curriculum, competency education programs, certification and assignment of teachers and administrators, instructional materials and equipment, the proper organization and supervision of each school, records and reports, buildings, health and sanitary facilities, admission of pupils, promotion from grade to grade, requirements for graduation, and such other factors as the Board finds necessary.

In FY 1998 and 1999 (as in the two prior biennia), the bill requires that no amendments to those minimum standards that were adopted by the State Board and in effect on January 1, 1993, be amended or repealed unless the proposed changes are filed with the chairpersons of the committees in the House of Representatives and the Senate that are responsible for consideration of education legislation and unless the proposed changes are approved through the adoption of a concurrent resolution by a majority of the members of both the House of Representatives and the Senate.

As in the prior two biennia, the bill also requires that in FY 1998 and 1999 any proposed changes to the minimum standards that establish "learner outcomes" or that would require school districts to implement or comply with "performance-based standards" for the development of curriculum or for the assessment of students be limited to changes that are directly related to student academic or vocational performance.

Interscholastic extracurricular activities

(sec. 3313.535)

Current law would seem to permit school districts to adopt rules for the eligibility, including academic eligibility, of students to participate in extracurricular activities. School districts participating in interscholastic sports sponsored by the Ohio High School Athletic Association must require all seventh and eighth grade participants in such sports to have attained "passing grades" in 75% of the classes in which they were enrolled for the preceding grading period. OHSAA rules also require high school students generally to attain passing grades in at least four "one-credit courses or the equivalent" in the preceding grading period. These high school courses must count toward graduation to be included in determining eligibility.

The bill mandates each school board to adopt rules specifying a minimum grade point average that seventh through twelfth grade students would have to attain in order to participate in certain extracurricular activities. The rules would apply only to "interscholastic extracurricular activities," defined as school or district sponsored programs that include participants from more than one school or school district and that are not activities included in the district's graded course of study, and would have to be adopted by July 1, 1998. The rules could include an exemption from the grade point requirement for handicapped students receiving special education if the student's individualized education program (IEP) indicates an exemption is advisable.

Under the bill, each school board would also have to adopt a policy either prohibiting or allowing participation in interscholastic extracurricular activities by students who receive one or more failing grades for any class or course in the preceding grading period. This policy would have to be adopted no later than July 1, 1998.

The bill would also expressly permit each board to adopt rules establishing "additional standards for determining" eligibility for participation in interscholastic extracurricular activities and requirements for reeligibility for that participation.

Performance-based incentives

(Section 46.37)

The bill requires the Department of Education to make recommendations to the General Assembly on implementing performance-based incentives for school districts. The recommendations must be made no later than January 1, 1998. Under the bill, the basis of the recommendations must be derived from the following criteria: proficiency test scores, graduation rates, staff attendance, parental involvement, and student attendance and dropout rates.

The recommendations must include (1) methods of measuring the criteria that assign a higher weight to positive results produced by school districts that spend less per pupil and (2) suggested methods of rewarding school districts with high or improved performance. Also, the recommendations must provide a range of options for rewarding performance or improvement and a cost estimate of each option.

Ohio Education Computer Network

(sec. 3301.075)

Under current law, the State Board of Education must adopt rules governing the purchasing and leasing of data processing services and equipment for all local, exempted village, city, and joint vocational school districts and all educational service centers. The rules are required to include provisions for the establishment of an Ohio Education Computer Network under procedures, guidelines, and specifications of the Department of Education.

The bill permits the Department of Education to contract with an independent for-profit or nonprofit entity to provide current and historical information on Ohio government through the Ohio Education Computer Network to school district libraries, in order to assist school teachers in social studies course instruction and support student research projects. The bill requires that any such contract be awarded in accordance with state law governing state agency purchasing, including a competitive selection process.

College enrollment options for high school students

Post-Secondary Enrollment Options Program

(secs. 3365.01, 3365.02, 3365.021, 3365.03, and 3365.06; Sections 46.42 and 46.43)

Under current law, the Post-Secondary Enrollment Options Program allows 11th and 12th grade students in public and chartered nonpublic high schools to enroll at a college, on a full- or part-time basis, and complete nonsectarian courses for high school and college credit. A student participating in the program may elect to receive only college credit for a course taken under the program, or may elect to receive both college and high school credit for such a course. If the student elects to receive only college credit, the cost of the course must be paid entirely by the student. However, if the student elects to receive both college and high school credit, the cost of the course is subsidized through direct payments to the college out of the state foundation payments of the school district, if the student is enrolled in a public high school, or is subsidized by funds appropriated by the General Assembly, if the student is enrolled in a chartered nonpublic school.

Beginning July 1, 1998, the bill permits ninth and tenth grade students in public and chartered nonpublic high schools to enroll in college courses in the same manner as eleventh and twelfth grade students under current law. Also, an uncodified law section of the bill requires the Department of Education to adopt rules by which it may allow children in the first through eighth grade to participate in the Post-Secondary Enrollment Options Program. The rules must include the conditions for such participation, including conditions under which the parent or guardian of such a child may be required to accompany the child to the course. Also, the rules are permitted to include an exemption for such a child from the limitation under current law on the maximum number of years a student may participate in the program.

High school credit for certain college coursework

(sec. 3313.613)

Apart from the Post-Secondary Enrollment Options Program (see above under "***Post-Secondary Enrollment Options Program***"), the bill requires any school district that operates a high school to award high school credit for a course successfully completed outside of regular school hours by a student at an accredited post-secondary institution provided the course is free of charge or paid for by the parent, guardian, or custodian of the student. The bill requires the high school credit awarded to count toward the graduation requirements and subject area requirements of the school district. Under the bill, if a course comparable to the post-secondary course is offered by the school district, the district board must award comparable credit for the completed equivalent course. However, if no comparable course is offered by the school district, the district board must grant to the student an appropriate number of credits in a similar subject area.

Information, Learning, and Technology Authority

(secs. 3301.80 and 3301.801)

Under current law, the Technology Advisory Committee is established to monitor and oversee the operations of, and programs administered by, the Office of Information, Learning, and Technology Services. The Office is an independent agency within the Department of Education supervised by a director appointed by the State Superintendent of Public Instruction, and approved by a majority vote of the Technology Advisory Committee. The director serves at the pleasure of the Committee. Under current law, the Office of Information, Learning, and Technology Services is required to direct

all programs for the provision of financial and other assistance to school district and other educational institutions for the acquisition and utilization of educational technology, including SchoolNet and SchoolNet Plus.

The bill also requires the Office of Information, Learning, and Technology Services to establish a clearinghouse that can be accessed by classroom teachers. The "clearinghouse" would have to contain lesson plans and materials and other practical resources for use in classroom teaching submitted by teachers, researchers, and others. The Office must develop methods for soliciting ideas from teachers for inclusion in the clearinghouse data base and for informing teachers of the availability of resources through the clearinghouse. The Office is required to effectively implement the clearinghouse by December 1, 1997, and may contract or collaborate with other agencies and organizations to meet that deadline. The Office must periodically report to the General Assembly regarding the clearinghouse and must make any recommendations for changes in law that may facilitate its usefulness.

Under current law, the Technology Advisory Committee consists of nine members, five of whom are voting members. Of the voting members, one is appointed by the Governor. The remaining voting members are the State Superintendent of Public Instruction, the Director of the Department of Administrative Services, the Chairperson of the Public Utilities Commission, and the Director of the Ohio Educational Telecommunications Network Commission. Of the nonvoting members, two are members of the House of Representatives appointed by the Speaker of the House and two are members of the Senate appointed by the President of the Senate.

The bill abolishes the Technology Advisory Committee and establishes the Information, Learning, and Technology Authority. The Authority consists of eleven members, seven of whom are voting members. The seven voting members are the Superintendent of Public Instruction, the Directors of the Office of Budget and Management, the Department of Administrative Services, the Ohio Educational Telecommunications Network Commission, the chairperson of the Public Utilities Commission, and two nonlegislative members, one each appointed by the Speaker of the House and the President of the Senate for two year terms. The nonvoting members are legislators, two each appointed by the Speaker of the House and the President of the Senate. The bill requires the initial members of the Authority to be appointed prior to August 1, 1997.

Under the bill, the monitoring and oversight of the Office of Information, Learning, and Technology Services is transferred to the Information, Learning, and Technology Authority. The bill also eliminates the requirement that the Office be in the Department of Education, and requires that the director of the Office be appointed by the Authority and not the Superintendent of Public Instruction as under current law.

Other functions of the Authority

(sec. 3317.51)

The bill transfers the administration of the Distance Learning Fund from the Department of Education to the Information, Learning, and Technology Authority.

Education management information system (EMIS)

(sec. 3301.0714(L) and (M))

Under current law, the State Board of Education is required to establish a statewide education management information system (EMIS) and adopt rules for its implementation and for the preparation of annual information profiles of individual school districts.

With respect to the operation of EMIS, the bill requires the Department of Education to make a report of any of the following actions by school districts.

(1) The school district fails to meet any deadline established for the reporting of any data to EMIS;

(2) The school district fails to meet any deadline established for the correction of any data reported to EMIS;

(3) The school district reports data to EMIS in a condition, as determined by the Department, that indicates that the district did not make a good faith effort in reporting the data to EMIS.

Any report by the Department must include recommendations for corrective action by the school district.

The first time during a fiscal year that the Department makes a report, the bill requires the Department to withhold 10% of the total amount of state aid due during that fiscal year to the school district to which the report applies. Upon making a second report during a fiscal year, the bill requires the Department to withhold an additional 20% of the total state aid due to the district during that fiscal year. The bill prohibits the Department from releasing the funds to the district unless it determines that the district has taken corrective action. In addition, the bill prohibits withheld funds from being released at all if the district fails to take the corrective action within 90 days of the date upon which the report about the district was

made by the Department.

The bill also permits the State Board of Education to suspend or revoke the educator license or teacher's certificate of any school district employee who willfully reports erroneous, inaccurate, or incomplete data to EMIS.

Uniform computer software for EMIS

(sec. 3301.0714(M))

Under current law, school districts are required to report information and data to the State Department of Education through the Statewide Education Management Information System (EMIS). The State Board of Education is, under current law, responsible for creating and managing EMIS and adopting standards and procedures for the collection and compilation of data received from school districts.

Under the bill, the Department of Education is, after consultation with the Ohio Education Computer Network, permitted to provide at no cost to school districts uniform computer software for use in reporting data to EMIS. The bill prohibits a school district from being required to utilize the uniform software to report data to EMIS if the district is currently reporting the data in an accurate, complete, and timely manner in a format compatible with that required by EMIS.

Retention of certain students based on proficiency test scores

(sec. 3301.0711(N))

Under current law (sec. 3301.0710, not contained in the bill), statewide proficiency tests are prescribed by the State Board of Education to test fourth, sixth, ninth, and twelfth grade levels of literacy and basic competency in five subject areas: reading, writing, mathematics, science, and citizenship. The fourth and sixth grade tests must be administered by school districts at least once annually to all students in those respective grades, and the ninth grade tests must be administered at least twice annually to all students in the ninth, tenth, eleventh, or twelfth grade who have not yet attained passing scores on the tests. Current law also permits a school district to administer the ninth grade tests to students in the eighth grade once annually in March.

Also under current law, school districts are prohibited from denying a student promotion to a higher grade level solely because of the student's failure to attain passing scores on any of the proficiency tests (sec. 3301.0711(E)).

Under the bill, if a school district offers summer school to a fourth or sixth grade student who has failed to attain passing scores on three or more of the five tests prescribed for the fourth grade or sixth grade, respectively, or to an eighth grade student who has failed to attain passing scores on three or more of the five ninth grade tests, and the student chooses not to attend summer school or does not maintain an acceptable level of attendance in summer school, the district may use the failure to attain passing scores on those tests as a reason for retaining the student for an additional year in the grade (fourth, sixth, or eighth) in which the tests were administered. The bill defines summer school as a six-week remedial course in the areas covered by the proficiency tests on which the student failed to attain passing scores.

Reporting of students not taking proficiency tests

(sec. 3301.0711(C)(2))

Under current law, all boards of education are required to report by May 31 of each year the number of students who have not taken one or more of the state proficiency tests. The bill changes the annual reporting date to June 30, which the Department of Education states allows districts to report this information in their year-end EMIS report (as required by section 3301.0714(F)).

Nonbid purchases of software services and supplies for schools

(secs. 125.04 and 125.05)

The bill exempts the Office of Information, Learning, and Technology Services, the Department of Education, or the Ohio Education Computer Network from the regular procedures for state agency purchases of services and supplies (including following competitive bidding for purchases over certain dollar amounts, and obtaining Controlling Board approval when the agency is released from the competitive bidding requirement) when acting as an agent for school districts in purchasing software services and supplies. The Office, Department, or Network may directly purchase those software services and supplies for the districts when it certifies to the Department of Administrative Services that it can purchase the services or supplies at a price less than that for which the districts could purchase the same services or supplies for themselves.

Membership dues to accrediting associations

(sec. 3313.871(A))

Under current law, school district boards are permitted to appropriate from the district's general fund an amount sufficient to pay annual membership dues and service fees to one or more accrediting associations that have the purpose of improving education. Current law limits the annual membership dues and service fees to $400 per public school evaluated for accreditation in the district.

The bill increases from $400 to $500 the maximum amount per public school evaluated for accreditation that a school district board may appropriate from the district's general fund to pay annual membership dues and service fees to accrediting associations.

Eligible investments of a board of education

(sec. 135.142)

"Interim money" is public money that is not needed to meet current demands but that will be needed before the end of a designated period, such as the fiscal year or fiscal biennium.

At present a board of education--by a two-thirds vote of its members--is allowed to invest up to 25% of its interim money in (1) bankers' acceptances of banks that are members of the Federal Deposit Insurance Corporation, provided they mature within 180 days after purchase and are eligible for purchase by the Federal Reserve System, and (2) commercial paper notes that are issued by U.S. for-profit corporations with assets exceeding $500 million, provided they mature within 180 days after purchase, are rated at the time of purchase in the highest classification established by at least two standard rating services, and do not aggregate more than 10% of the aggregate value of the aggregate value of the outstanding commercial paper of the corporation. The bill expands the kinds of commercial paper notes in which the board may invest this 25% part of its interim money to include commercial paper notes issued by a number of other kinds of business entities that meet these same requirements. These entities are (1) business trusts or associations, (2) real estate investment trusts, (3) common law trusts, (4) unincorporated businesses or for-profit organizations (including general or limited partnerships), and (5) limited liability companies.

Also at present, a board of education is authorized to enter into an agreement with the Treasurer of State providing for the purchase by the Treasurer of State of debt securities the board issues in anticipation of the collection of current property tax revenue. The bill authorizes a board of education that has such an agreement and any such outstanding debt securities to invest interim money of the board (without limit as to percentage) in "debt interests" (not defined) that are rated in either of the two highest rating classifications by at least two nationally recognized rating agencies, mature not later than the latest maturity date of the outstanding tax anticipation securities of the board, and are issued by for-profit corporations or any of the other entities whose commercial paper notes are acceptable, above.

If any of these debt interests fails to maintain either of the two highest rating classifications, the bill provides, its issuer must notify the Treasurer of State of the fact within 24 hours. Thereafter the Treasurer of State may require the debt interests to be collateralized--at 102% of the remaining obligation of the issuing entity--with the kinds of low-risk securities in which the Treasurer of State is authorized to invest interim funds of the state. The collateral must be delivered to and held by a custodian acceptable to the Secretary of State and marked to market (that is, revalued as to its worth on the open market) daily. Any default in the securities serving as collateral must be cured within 12 hours, as by substituting, for the defaulted ones, other securities in which the Treasurer of State is authorized to invest interim funds of the state.

Restructuring or refinancing fiscal watch school district loans

(secs. 3316.03, 3316.04, and 3316.041)

Under the current School District Fiscal Emergency Law, the Auditor of State must declare a school district to be in a state of fiscal watch if (1) the district has an operating deficit for the current fiscal year that exceeds 8% of its general fund revenues for the preceding fiscal year, (2) the unencumbered cash balance in the district's general fund at the end of the prior fiscal year, less any advances of property taxes, was less than 8% of the district's general fund expenditures for such prior year, and (3) the district voters have not passed a levy that the Auditor expects will raise enough money to solve the district's problems for the next fiscal year. Districts in even deeper financial trouble than "fiscal watch" districts and that meet other statutory criteria must be declared to be in a state of "fiscal emergency," triggering the creation of a Financial Planning and Supervision Commission for the district.

The bill requires the Auditor of State also to declare a school district to be in a state of "fiscal watch" if a school district has outstanding securities that were issued to restructure its debt while the district was in a state of "fiscal emergency" and its Financial Planning and Supervision Commission, which supervised the issuance of the new debt, has been terminated.

Under specified conditions, the bill allows a "fiscal watch" school district to refinance and restructure loans it obtained or is in the process of obtaining under the existing law governing state-backed loans made by private lenders to financially

distressed school districts. Before a district can do this, the bill requires all of the following conditions must be met:

(1) The restructuring or refinancing must be approved by the Superintendent of Public Instruction;

(2) The operating deficit certified for the district for the current or preceding fiscal year exceeds 15% of the district's general fund revenue for the fiscal year preceding the year for which the certification of the deficit is made;

(3) The district voters have approved, during the period of the fiscal watch, the levy of a tax that will provide new operating revenue;

(4) The board of education of the district has adopted or amended its financial plan (such a plan is required under current law for every fiscal watch district) to reflect the restructured or refinanced loans, and sets forth the means by which the district will bring its budget in to balance for the life of any such loan.

The bill permits the school district, subject to the approval of the Superintendent of Public Instruction, to issue its securities to evidence the restructuring or refinancing, notwithstanding restrictions that might otherwise apply under the Uniform Public Securities Law or the law governing state-backed loans to financially distressed school districts. Such securities may extend the original period for repayment, but not to exceed ten years, and may alter the frequency and amount of payments, interest or other financing charges, and other terms or agreements under which the loans were originally contracted, provided that loans received under the state-backed loan program must be repaid from the school district's School Foundation Program allocations. Securities issued for the purpose of restructuring or refinancing loans must be repaid in equal payments and at equal intervals over the term of the debt and are not eligible to be included in any subsequent restructuring or refinancing proposal.

The bill requires the Auditor of State to declare a state of fiscal emergency for a school district that has restructured or refinanced loans under the bill's provisions if: (1) the district runs an operating deficit for any year prior to the repayment of the restructured or refinanced loan, (2) the Superintendent of Public Instruction determines, in consultation with the Auditor, that the school district is not complying with the terms of the district's financial plan, or (3) the board of education of the school district fails to submit an updated financial plan that is acceptable to the Superintendent.

"Fiscal watch" school district to update their financial plans annually

(sec. 3316.04)

The board of education of a "fiscal watch" school district must prepare and submit to the Superintendent of Public Instruction a financial plan delineating the steps the board will take to eliminate the district's operating deficits. Failure of the board to submit a plan that is acceptable to the Superintendent of Public Instruction within 120 days of the order declaring the district to be in a state of fiscal watch, results in an order from the Auditor of State declaring the district to be in a state of fiscal emergency, and triggers the appointment of a Financial Planning and Supervision Commission for the district.

The bill requires the school board of a fiscal watch district to submit an updated financial plan to the Superintendent every year the district is in a state of fiscal watch. If the Superintendent does not approve the updated plan by the anniversary of the date on which the first such plan was approved, the Auditor must declare the district to be in a state of fiscal emergency.

School speech-language pathologists and audiologists

(secs. 3319.223, 3319.224, 4753.08, and 4753.12; Sections 72 and 95.14)

Background: teacher certification and educator licensing

With the enactment of Am. Sub. S.B. 230 of the 121st General Assembly, the state is preparing for a transition from a teacher certification process to educator licensing. In November 1996, the State Board of Education adopted educator licensing rules and the General Assembly approved them by adopting Senate Concurrent Resolution 32 of the 121st General Assembly. The educator licensing rules take effect January 1, 1998. The transition will begin at that time; educators can continue working for a specified number of years with a certificate as they move toward attaining an educator's license.

Under the State Board's current temporary certification rules (which do not change in 1998), a "temporary" teacher's certificate can be issued at the request of a school district superintendent when the district has been unable to find a properly certificated candidate to fill a teaching position. The temporary certificate allows a person to be employed as an educator even though the person has not completed all the classes required for full certification. Ohio Administrative Code § 3301-23-26.

Neither the Revised Code nor the State Board's rules authorize the issuance of temporary certificates or temporary

licenses for school speech-language pathologists, however. The Board may amend its licensure rules to provide for temporary licensure, but they must be approved by a concurrent resolution of the General Assembly and cannot take effect until one year from the New Year's Day following their adoption and publication.

Background: qualifications of school speech-language pathologists

Prior to passage of Am. Sub. S.B. 230, to receive a teacher's certificate in the area of school speech-language pathology, a person had to have a master's degree and pass the State Board of Education's examination, but the person did not have to possess a license from the Board of Speech-Language Pathology and Audiology. O.A.C. § 3301-23-12(A)(5). To receive an educator's license in school speech-language pathology, however, a person will first have to obtain a license from the Board of Speech-Language Pathology and Audiology, and then meet the requirements for an educator's license. O.A.C. § 3301-24-05(E)(1)(e). The authority of certificated school speech-language pathologists to practice in schools without a license from the Board of Speech-Language Pathology and Audiology expires January 1, 2002. Thus, beginning in the year 2002, current law requires all speech-language pathologists practicing in schools to possess a license from *both* Boards.

Temporary educator licenses

The bill grants statutory authority to the State Board of Education to issue temporary licenses in the field of school speech-language pathology. This authority begins on the bill's effective date and ends January 1, 2002 (when, under current law, all school speech-language pathologists must be permanently licensed by both Boards).

A temporary license must be requested on a person's behalf by a school district superintendent. To qualify for a temporary educator license, an individual must have at least a bachelor's degree (instead of the master's degree currently required by both Boards) in speech and hearing. A temporary license will be valid only for teaching in the school district whose superintendent requested it. It expires one year after it is issued, and may be renewed only if the district superintendent presents evidence satisfactory to the State Board of Education that the license holder either:

(1) Is enrolled in a master's degree program leading to licensure by the Board of Speech-Language Pathology and Audiology; or

(2) Within the past year has applied to a master's degree program in Ohio leading to licensure by that Board and is qualified to be unconditionally enrolled in that program, but was denied enrollment.

District contracts

The bill authorizes school districts and educational service centers to contract with speech-language pathologists and audiologists who are licensed by the Board of Speech-Language Pathology and Audiology to provide speech and language or audiology services. This has the effect of allowing them to obtain the services of speech-language pathologists and audiologists who do not possess educator licenses or certificates. The bill stipulates that the contracted services may be retained only after the district or service center has demonstrated to the Department of Education that its attempts to obtain the services of a speech and language or audiology provider with an educator's license have been unsuccessful.

Studies

The bill requires the Legislative Office of Education Oversight to conduct a study of the shortage of speech-language pathologists and audiologists available to treat students in schools. The Office will determine the study's contents and methodology, but it must consult with the Department of Education, the Ohio Board of Regents, and the Board of Speech-Language Pathology and Audiology. The Office must submit a report of its findings and recommendations no later than December 31, 1998, to the Governor, the Speaker of the House, and the President of the Senate.

The Ohio Board of Regents also must conduct a study. It must survey all state universities and all private colleges and universities to determine (1) their current capacity to educate and train speech-language pathologists and audiologists and (2) strategies for increasing that capacity to meet the state's need for school speech-language pathologists and audiologists. The Board must submit its findings and recommendations no later than December 31, 1998, to the Governor, the Speaker of the House, and the President of the Senate.

Technical wording change

Current law. Current law exempts school speech-language pathologists and school audiologists from the examination requirements of the Board of Speech-Language Pathology and Audiology if (1) on January 1, 2001, they hold teachers certificates that are in good standing and (2) they file with that Board, at any time during the year 2001, proof of the certificate. This will permit them to obtain a license from that Board without taking its examination. This provision terminates January 1, 2002.

Section 12 of Am. Sub. S.B. 230 of the 121st General Assembly states that any reference in the Revised Code to teacher certification is deemed to refer to educator licensure, unless expressly indicated otherwise. Since the examination exemption provision refers generically to professionals holding "certificates," it is unclear whether, pursuant to Section 12 of S.B. 230, it applies only to those holding educator *licenses*. If that is the case, the provision is currently meaningless, since school speech-language pathologists and school audiologists must first obtain a license from the Board of Speech-Language Pathology and Audiology in order to obtain an educator license. They would not qualify for the exemption because they could not yet possess educator licenses.

The bill. The bill specifies that the exemption applies to those still holding certificates who presumably are working toward earning their educator licenses. It does not supersede the January 1, 2002, termination of this exemption.

POST-SECONDARY EDUCATION PROVISIONS

Proprietary school registration fees

(sec. 3332.07)

Current law requires a proprietary school to apply for the issuance and renewal of a certificate of registration and for program authorization to offer each of its educational programs in order to operate in the state. Agents must also obtain permits to represent proprietary schools. A fee is required upon application for such issuance or renewal of a certificate, program authorization, or an agent permit. The fee amounts are established by the State Board of Proprietary School Registration. The law further requires that if in any fiscal year the amount received in registration fees does not equal or exceed 50% of the amount appropriated to the Board for the fiscal year by the General Assembly, the Board must increase fees for the ensuing fiscal year by an amount sufficient to produce revenues equal to 50% of the appropriated amount for that ensuing fiscal year.

The bill changes the registration fee increase provision so that if in any fiscal year the amount received in fees does not equal or exceed 50% of Board expenditures for the fiscal year, the Board must increase fees for the ensuing fiscal year by an amount estimated to be sufficient to produce revenues equal to 50% of estimated expenditures for that ensuing fiscal year. The basis of the fee increase calculation becomes one of actual and estimated expenditures of the Board rather than appropriations to the Board by the General Assembly.

Requirements and limitations on state universities in fiscal exigency

(sec. 3345.70)

Under the bill, a board of trustees of any of the 13 four-year state universities that declares its university is in a state of fiscal exigency must do all of the following until it declares that the university is no longer in fiscal exigency:

(1) File quarterly reports on an annualized budget, comparing the budget to actual spending with projected expenses. Such reports must include narrative explanations as appropriate;

(2) Place all residence hall and meal fees in a rotary account dedicated to the upkeep and maintenance of the dormitory buildings and to fund meal programs;

(3) Place moneys for the operation of residence hall and meal programs in separately maintained auxiliary funds in the university accounting system;

(4) File the minutes from board meetings with the Board of Regents within 30 days of the meetings.

The bill also prohibits a state university under fiscal exigency to do any of the following:

(1) Use state funds for the purpose of providing grants or scholarships to out-of-state students;

(2) Use state funds to subsidize off-campus housing or subsidize transportation to and from off-campus housing.

Requirements for Central State University

(Section 95.16)

The bill requires that Central State University remain in a state of fiscal exigency, as currently declared by its Board of Trustees, in fiscal years 1998 and 1999, and that it pay all its remaining debt with the appropriations made under the bill for that purpose. In addition, the bill requires the Central State Board of Trustees, not later than June 30, 1998, to submit a plan to the Board of Regents for phasing out all academic programs that cannot reasonably be contained within the purview of either the University's College of Business, College of Education, or College of Arts and Sciences. The bill

requires the Board to reduce the number of faculty employed by Central State to a level needed to support such academic programs, and prohibits the Board from entering into any collective bargaining agreement after July 1, 1997, unless the agreement is consistent with, and appropriate for providing, such academic programs, and consistent with budget projections for Central State.

The bill also requires Central State University to do all of the following:

(1) Raise its admission standards for freshman entering after July 1, 1998;

(2) Reduce its student attrition rate to a level agreed upon by the Board of Regents and the Board of Trustees of Central State;

(3) Gain reaccreditation from the North Central Accrediting Agency;

(4) Seek funds to rebuild its endowment fund to a level that at least meets fund level targets appropriate for institutions of comparable size to Central State;

(5) Implement a system for alumni donations that at least meets donation targets appropriate for institutions of comparable size to Central State;

(6) Reduce its cohort default rate for student loans.

The bill prohibits Central State University from expending any private or public funds for University sponsorship of, or participation in, intercollegiate sports activities for which Central State was under sanction as of June 1, 1997, by the National Association of Intercollegiate Athletics. In addition, the bill requires Central State to reduce expenditures for all other intercollegiate sports activities it sponsors, or participates in, to a maximum of the fiscal year 1997 expenditure levels for those activities.

In addition, the bill requires the Director of Budget and Management to maintain a financial supervisor at Central State University to monitor adherence to the University's Fiscal Recovery Plan and to advise the Director of the financial status of the University. The financial supervisor must, during fiscal year 1998, prepare quarterly reports on the progress of the University in implementing its Fiscal Recovery Plan. Within ten days after the end of each month, Central State University is required to prepare a payables report delineating by fund and vendor all outstanding payables owed by the University. A comparative analysis by month must be presented with the rationale provided for the variances reflected for changes from the previous month.

Finally, the bill specifies that it is the intent of the General Assembly that if Central State University fails to comply with any of the requirements described above or any of the requirements for universities in a state of "fiscal exigency" (see above under "***Requirements and limitations on state universities in fiscal exigency***") the Board of Regents must develop and implement a plan for the closure of the University.

"Fiscal watch" status for Central State University

Under current law (sec. 3345.72, not in the bill), the Board of Regents must place a state university or college on a "fiscal watch" when criteria specified in rules adopted by the Office of Budget and Management apply to the institution. Under a fiscal watch, the Governor may transfer powers and duties of the institution's board of trustees to a temporary conservator and governance authority.

The bill requires that, effective July 1, 1999, Central State University be subject to all of the requirements under current law that apply to state universities declared by the Board of Regents to be in a state of "fiscal watch."

Fiscal management of Central State University during FY 1998 and 1999

(Section 155)

During the 1998 and 1999 fiscal years the bill requires the Director of Budget and Management to take such actions as the Director determines necessary to report the following financial information concerning Central State University:

(1) The university's adherence to a balanced budget;

(2) The status of the current and projected cash flow of university funds, by fund type;

(3) The status of outstanding payable accounts;

(4) The timelines of intrafund transfers;

(5) The collection of federal receipts; and

(6) The University's efforts to control bad debt expenses.

The bill requires the Central State University Board of Trustees to work in cooperation with the Director of Budget and Management to create a stable and responsible fiscal operation for the University. However, if in the judgment of the Director the fiscal environment at Central State University is not meeting acceptable fiscal standards, upon written notice to the board of trustees, the Director must assume responsibilities as the chief financial officer for the institution and take such actions as the Director determines necessary to bring the University's accounting practices into compliance with acceptable fiscal standards. The bill states that "acceptable fiscal standards" include: continuous efforts to maintain a balanced budget as passed by the board of trustees; realistic projections of cash flow, by fund type; timely payment of accounts, intrafund transfers, and collection of federal receipts; and sufficient efforts to control bad debt expenses.

In achieving and maintaining a balanced budget, the bill directs the Central State University Board of Trustees to (1) maintain through the 1998-1999 biennium its declaration of a state of financial exigency, (2) make budget reallocations by means other than uniform, across-the-board budget reductions or solely from non-salary sources, (3) give priority to funding requests in support of general undergraduate education, (4) reduce academic support units before reducing academic programs, and (5) take other appropriate actions that may include, but are not limited to, reducing the number of faculty and staff.

Ohio Instructional Grants (OIG grants)

(sec. 3333.12; Section 95.07)

Current law provides for grants to full-time students in two- or four-year degree programs attending Ohio "state-assisted" (public) or private nonprofit colleges or universities and schools with certificates of registration from the State Board of Proprietary School Registration (commonly called "proprietary schools"), including persons who are imprisoned but eligible for parole within five years of applying for the grant. Grant amounts are generally based on the following factors: whether an applicant is financially dependent or financially independent; the combined income of the applicant and the applicant's parent (if financially dependent) and spouse; the number of dependents in the applicant's family; and whether the applicant attends a public, private nonprofit, or proprietary school. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

Under current law, six separate tables exist for determining the grant amounts, one for each of the following: (1) financially dependent students enrolled in private nonprofit institutions, (2) financially independent students enrolled in private nonprofit institutions, (3) financially dependent students enrolled in proprietary schools, (4) financially independent students enrolled in proprietary schools, (5) financially dependent students enrolled in public institutions, (6) financially independent students enrolled in public institutions. Each table has headings for income ranges and the number of dependents in the family and then a corresponding grant amount. Under current law, the maximum grant amount is $3,750 per academic year for students attending private nonprofit institutions, $3,180 per academic year for students attending proprietary institutions, and $1,512 per academic year for students attending public institutions. The maximum grant amount is available to financially dependent students whose annual family incomes and numbers of dependents range from $10,000 or less with one dependent to $13,001 to $14,000 with five or more dependents. The maximum grant amount is available to financially independent students whose annual family incomes and numbers of dependents range from $3,300 or less with no dependents to $5,401 to $5,900 with five or more dependents.

The OIG grants generally decrease from the maximum amounts as annual family income increases and as the number of dependents decreases. Under current law, the minimum grant amount is $612 per academic year for students attending private nonprofit institutions, $522 per academic year for students attending proprietary institutions, and $252 per academic year for students attending public institutions. The minimum grant amount is available to financially dependent students whose annual family incomes were $28,001 to $30,000 with only one dependent. The minimum grant amount is available to financially independent students whose annual family incomes and numbers of dependents range from $11,901 to $13,400 with no dependents to $23,901 to $28,600 with five or more dependents.

New grant amounts for FY 1998 and FY 1999

Under the bill, the grant amounts for financially dependent and financially independent students attending each of the three types of institutions are increased as follows:

(1) For students attending private nonprofit institutions, the maximum grant amount is increased to $4,296 in FY 1998 and $4,428 in FY 1999 and the minimum grant amount is increased to $702 in FY 1998 and $720 in FY 1999. This is a 14.5% increase in the maximum grant amount and a 14.7% increase in the minimum grant amount in FY 1998 and a 3.1% increase in the maximum grant amount and a 2.6% increase in the minimum grant amount in FY 1999.

(2) For students attending proprietary institutions, the maximum grant amount is increased to $3,642 in FY 1998 and $3,750 in FY 1999 and the minimum grant amount is increased to $594 in FY 1998 and $612 in FY 1999. This is a

14.5% increase in the maximum grant amount and a 13.8% increase in the minimum grant amount in FY 1998 and a 3% increase in both the maximum and minimum grant amounts in FY 1999.

(3) For students attending public institutions, the maximum grant amount is increased to $1,734 in FY 1998 and $1,782 in FY 1999 and the minimum grant amount is increased to $288 in FY 1998 and $294 in FY 1999. This is a 14.7% increase in the maximum grant amount and a 14.3% increase in the minimum grant amount in FY 1998 and a 2.8% increase in the maximum grant amount and a 2.1% increase in the minimum grant amount in FY 1999.

New plan for FY 2000 and thereafter

Under current law, OIG grants are generally available only to full-time students; part-time students may receive OIG grants only in their last semester. The bill requires the Ohio Board of Regents to adopt a plan under which OIG grants will be based on the number of credit hours for which the student is enrolled and made equally available to full-time and part-time students. The amount of the per credit hour payment must be based on (1) whether the student is financially dependent or independent, (2) whether the student is enrolled in a state university or college, a private nonprofit institution, or a proprietary institution, (3) the student's family income, and (4) the number of dependents in the student's family. The bill requires that this plan be implemented in the place of the current law beginning in FY 2000.

Merit OIG grant supplement

(sec. 3333.12(G); Section _____)

The bill establishes a supplemental, "merit grant" to be added to the OIG grant of any student who passed all of the twelfth-grade proficiency tests. Such a student qualifies for a merit grant for as long as the student receives an OIG grant. Like OIG grants, the merit grants are to be paid to the institution in which the student is enrolled, and the institution must refund money to the state if the student disenrolls or otherwise ceases to be eligible for an OIG grant.

All students qualifying for a merit grant are eligible to receive the same amount, regardless of income and family size, and a student's eligibility for a merit grant cannot affect the amount of his or her OIG grant. However, the combined amount of the OIG grant and the merit grant cannot exceed the instructional and general charges of the student's institution. The Ohio Board of Regents is to determine the amount of the merit grant annually by dividing the total amount appropriated for merit grants (the bill earmarks $4.5 million in each of FY 1998 and FY 1999), plus any additional amounts the Board receives from other sources, by the number of qualifying students.

Eligibility of prisoners

(secs. 3333.12 and 3333.27)

The bill eliminates the provision which, under current law, requires that OIG grants be paid to eligible students, including any person serving a term of imprisonment who is eligible for parole within five years of making application for the grant. Persons serving prison terms would no longer be eligible for OIG grants under the bill.

In the case of Student Choice grants (available to students attending nonprofit nonpublic institutions of higher education), current law makes no mention of whether prison inmates are eligible. The bill prohibits prisoners from receiving them.

Funding War Orphans Scholarships

(sec. 5910.04)

Under current law, War Orphans Scholarships are provided to eligible students in the amount of 100% of the general and instructional fees at state-assisted colleges and universities. If the student attends a nonpublic institution, the amount of the scholarship is equal to 100% of the average value of all the scholarships awarded to students attending state-assisted schools the preceding year.

The Board itself determines eligibility for the scholarships within the following parameters established in the statutes:

--the student must be between 16 and 21 years old at time of application and must be the child of a deceased or disabled veteran (or the child of certain categories of deceased or disabled persons serving in the National Guard).

--the student must have resided in the state for the one year prior to application (if the veteran entered the armed forces as an Ohio resident) or the five years prior to application if the veteran was not an Ohio resident at the time of entry.

--the student must be in financial need.

--the student must be recommended by the principal of a high school the student attended.

The bill would permit the Ohio War Orphans Scholarship Board to establish a percentage (less than 100%) at which scholarships would be funded in any year in which insufficient funds were appropriated to fully fund the scholarships for all eligible students.

Current law also specifies that the child of any Ohio resident formally declared to be "missing in action" or a prisoner of war in Viet Nam is entitled to a War Orphan Scholarship if the child is between 16 and 21 years old at time of application, regardless of the child's residency or need. These MIA/POW scholarships also include amounts for room and board, as well as instructional and general fees, and are given priority for funding under current law.

The bill would make an exception to the provision for reducing the amount of scholarships when funding is insufficient in the case of these students whose eligibility derives from being the child of an MIA/POW. These students would have priority for 100% funding from any appropriated funds for War Orphans Scholarships.

University and college development activities

(sec. 3345.182)

The bill permits the board of trustees or managing authority of any four-year state university, technical college, university branch, or community college "to expend funds of the university or college and utilize lands, facilities, equipment, and personnel of the university or college on activities to benefit the people of Ohio by creating and preserving jobs and employment opportunities or improving the economic development and welfare of the people of Ohio" if the board of trustees or managing authority finds that there is a reasonable assurance that the proposed activity (1) will not interfere with or compromise the university's or college's mission, (2) will not unfairly interfere with, displace, or compete with any existing private or public entity's performance of the same or similar activity, (3) will result in revenues to the university or college in an amount that offsets any expenses incurred from the activity, and (4) will allow public or private entities or enterprises the opportunity to compete more effectively in the marketplace and fulfill needs that are being inadequately met by the private market.

Performance judging of co-located, two-year institutions

(sec. 3333.20; Section 95.02)

Under current law, the Ohio Board of Regents must adopt educational service standards for all community colleges, state community colleges, university branches, and technical colleges. These standards are used to determine the amount of the institutions' Performance Challenge funds. The law requires that if a university branch and a technical college are located on the same campus, the Board must consider them as a whole entity when applying the standards.

The bill requires the Board to make an additional evaluation when applying the standards to and determining the Performance Challenge funding for *any* of these types of two-year institutions that are co-located (not just a university branch and technical college). In addition to considering them as a whole entity, the Board must consider them as separate entities. The institutions must be awarded Performance Challenge funds based on whichever approach produces the higher amount.

Instructional subsidies

(Section 95.15)

The bill requires the Board of Regents to issue to the chairpersons and ranking minority members of the House and Senate Finance Committees a report, within one year of the effective date of this provision, on how to phase in a reduction of instructional subsidies for foreign, subsidy eligible full-time equivalent students at all state-assisted universities.

Modification of the Ohio Tuition trust Authority prepaid tuition program

(secs. 3334.01, 3334.03, 3334.08, 3334.09, 3334.10, 3334.11, and 3334.17)

Under existing Ohio law, the Ohio Tuition Trust Authority provides for a college savings program that allows a purchaser to acquire tuition credits under a tuition payment contract with the Authority. Under section 529 of the federal Internal Revenue Code, such programs receive favorable federal tax treatment for the programs' assets and distributions to beneficiaries if the program qualifies as a "qualified State tuition program." "Qualified State tuition program," under the federal law, means a program established and maintained by a state or agency or instrumentality thereof under which a person (1) may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or (2) may make contributions to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

The bill requires that the Ohio Tuition Trust Authority operate as a qualified state tuition program within the meaning of section 529 of the Internal Revenue Code (sec. 3334.03 (A)). To conform Ohio law to the requirements of section 529 of the Internal Revenue Code, the bill makes the following changes:

(1) Includes proprietary schools within the definition of "institution of higher education" in the law governing the Trust Authority's programs and requires that such institutions meet the definition of "eligible educational institutions" under the federal Internal **r**evenue Code;

(2) Requires the designation of a single beneficiary under a prepaid tuition contract;

(3) Allows the use of tuition credits for higher education expenses not related to tuition and fees;

(4) Authorizes the Trust Authority or a contract purchaser to terminate a prepaid tuition contract under specified circumstances;

(5) Authorizes the state, including the Authority, any political subdivision of the state, and certain tax-exempt organizations to establish prepaid scholarship programs and establishes purchases of tuition credits for scholarship programs as separate transactions from the purchases of tuition credits for designated beneficiaries;

(6) Specifies an alternative refund under specified circumstances;

(7) Authorizes contract enrollment if either the purchaser or the beneficiary is an Ohio resident.

The bill also repeals the provision of current law permitting a person or entity purchasing tuition credits on behalf of a governmental or nonprofit scholarship program to register the program with the Authority at the time of purchasing the credits. Presumably, the program would now have to be registered prior to the purchase of any credits.

Local administration of higher education capital projects

(secs. 3345.50 and 3345.51; Sections 210 and 229)

Current law permits state universities, freestanding state medical colleges, and state community colleges to administer locally, without Department of Administrative Services supervision, any project for the construction, reconstruction, improvement, renovation, enlargement, or alteration of public improvements under their jurisdiction, if the amount expected to be appropriated by the General Assembly for the project does not exceed $4 million. The bill increases this amount to $6 million, effective July 1, 1998.

Current law also allows those institutions to administer locally any project for "basic or supplemental renovation" of public improvements under their jurisdiction, if the amount expected to be appropriated by the General Assembly for the project does not exceed $1.5 million. The bill increases this amount to $2.5 million, effective July 1, 1998.

Technical changes

(secs. 3345.11 and 3345.12)

The bill makes nonsubstantive changes to current law governing construction or acquisition of auxiliary or educational facilities and housing and dining facilities by state colleges and universities.

Commission on Public Legal Education

(Section 95.13)

Creation of the Commission

The bill creates the Commission on Public Legal Education, consisting of ten members. One member must be a judge of the Supreme Court, appointed by the Chief Justice; one member must be a member of the Senate, appointed by the President of the Senate; one member must be a member of the House of Representatives, appointed by the Speaker of the House of Representatives; one member must be a member of the Ohio State Bar Association, appointed by the President of that Association; one member must be a member of the Ohio Board of Regents, appointed by the Chairperson of that Board; and each of the remaining five members must be a dean of one of the five state-supported law schools, or the dean's designee.

Members must be appointed by November 1, 1997. The member appointed by the Chief Justice of the Supreme Court must convene an organizational meeting not later than two weeks after all appointments to the Commission have been made. The Commission may elect its own chairperson.

The bill requires the Ohio Board of Regents to provide office space and support staff for the Commission to carry out its

duties. Members of the Commission must serve voluntarily and do not receive compensation or reimbursement of expenses for serving as a member.

Duties of the Commission

The bill requires the Commission to do all of the following:

(1) Review and evaluate the Action Plan (see "***Definition***," below) and determine what parts of the Plan, if any, are necessary to sufficiently protect the public interest to ensure quality legal education in Ohio;

(2) Review the accreditation standards and requirements imposed on law schools by the American Bar Association and the Association of American Law Schools and standards and requirements imposed on law schools by the Ohio Supreme Court to determine whether these standards and requirements sufficiently protect the public interest to ensure quality legal education in Ohio;

(3) If, after reviewing and evaluating the Action Plan, the Commission finds that any or all of the Plan is not necessary to sufficiently protect the public interest, report that finding. If the Commission determines that the standards and requirements described in (2) above do not sufficiently protect the public interest, it must determine what standards and requirements should be imposed or removed in order to protect the public interest. The Commission is required to recommend whatever changes in the Action Plan or the standards and requirements it determines are necessary.

(4) Submit a report of its findings and recommendations to the Education Committees of the Senate and the House of Representatives by May 1, 1998.

Termination of the Commission

The Commission ceases to exist on May 2, 1998, or after submitting its report, whichever occurs sooner.

Effect on the Action Plan

The bill requires that the dates for implementing the Action Plan be delayed until the General Assembly acts upon the recommendations in the Commission's report.

Definition

The bill defines "Action Plan" to mean the "Action Plan for Public Legal Education in Ohio" adopted by the Ohio Board of Regents in July 1996. The Action Plan is part of the Board's review of doctoral and professional education in Ohio to determine, in regard to legal education, what the state "is . . . getting in return for its investment in terms of quality and responsiveness to state needs" and whether "the current level of state investment represent[s] the best use of the limited resources available to fund public higher education in Ohio."

health and human services

- Modifies the local administration of the Family and Children First Initiative by (1) eliminating "local intersystem services for children clusters" and requiring that all counties have a "county family and children first council," (2) modifying county family and children first council membership, (3) establishing an appeals process to address the issue of council members sharing responsibilities, (4) eliminating requirements for making certain reports to the state, and (5) providing for state monitoring of each county's service coordination mechanism, instead of a formal state approval process.
- Creates in permanent law the Wellness Block Grant Program established by Am. Sub. S.B. 310 of the 121st General Assembly.
- Creates in the State Treasury the Human Services Stabilization Fund from which the Director of Budget and Management may transfer moneys to the General Revenue Fund to meet identified shortfalls in the Department of Human Services.
- Removes statutory references to Worley Terrace and Glendale Terrace residential facilities.

- Repeals a requirement that county departments of human services prepare a local needs report analyzing local need for Title XX social services and consider the report in the development of the county Title XX plan.
- Renames county welfare advisory boards "county human services planning committees" and provides for new membership on the committees and new responsibilities.
- Provides that county departments of human services are responsible for all burials required by state law.
- Requires the Director of the Ohio Department of Health to establish a pregnancy loss registry through which physicians report on the pregnancy losses of their patients, and requires the Director to perform studies on the causes of pregnancy losses.
- Requires the Ohio Cancer Incidence Surveillance System operated by the Department of Health to follow the model for cancer data collection set forth by the National Cancer Institute's Surveillance, Epidemiology, and End Results Program.
- Requires the Director of Health to maintain registries of hospitals, clinics, physicians, or other health care providers for referral of individuals who may have been exposed to tuberculosis.
- Requires a hospital to provide a patient with a free copy of the patient's medical record and permits a hospital to charge a reasonable copying fee for additional requests.
- Requires the Director of Health to adopt rules establishing fees for licensure of ambulatory surgical facilities; freestanding dialysis centers, inpatient rehabilitation facilities, birthing centers, and radiation therapy centers; and mobile or freestanding diagnostic imaging centers.
- Establishes the Quality Monitoring and Inspection Fund to be used by the Director of Health to administer and enforce safety and quality of care standards for certain health care procedures and quality standards for health care facilities subject to licensure.
- Extends until April 1, 1998, the date by which certain freestanding health facilities in rural areas must be licensed under the rules for quality adopted by the Department of Health.
- Provides that certain health care construction projects and capital expenditures in rural areas are reviewable under the Certificate of Need law until April 1, 1998.
- Continues for an additional two years the moratorium on accepting certificate of need applications for certain long-term care beds that is to expire July 1, 1997.
- Exempts the addition of up to 52 nursing home beds by the Ohio Veteran's Home from the certificate of need requirement if the beds are in service prior to June 30, 1999.
- Establishes a study committee to perform an examination of the roles and functions of health service agencies.
- Requires money generated by Ohio Department of Health fees for vital records and services to be used only for the administration and enforcement of vital statistics' law.
- Raises fees related to the Ohio Department of Health's radiation control program.
- Establishes in statute Board of Pharmacy fee increases.
- Creates the Alcohol and Drug Addiction Services Fund.
- Abolishes the Alcoholism Detoxification Centers Fund and the Drivers' Treatment Intervention Fund and transfers moneys and obligations from those funds to the Alcohol and Drug Addiction Services Fund.

- Increases fees for licenses, permits, certificates, and registration associated with dentistry.
- Requires fines or forfeitures of bond in an action for a violation of the Dental and Dental Hygienists Law to be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund rather than to the credit of the General Revenue Fund.
- Requires that the State Dental Board discuss with the Ohio Dental Association criteria for transferring complaints filed with the Board to the Association's peer review process.
- Increases to $35 the maximum fee the Board of Nursing may charge for the biennial renewal of any license or certificate.
- Makes changes to the law governing nurse licensure, including changing the continuing education requirement for nurses from one hour to a number of hours to be specified by the Board of Nursing and allowing the Board to share information regarding its investigation of a nurse with law enforcement.
- Permits advanced practice nurses (APNs) who are authorized to prescribe drugs and therapeutic devices as part of the pilot programs for medically underserved areas to personally supply to their patients certain drugs and therapeutic devices that are within an APN's authority to prescribe.
- Increases specified fees collected by the State Medical Board.
- Establishes a staggered biennial license renewal system for physicians and podiatrists.
- Extends the sunset date of the Physician Loan Repayment Program to July 30, 2001.
- Requires the State Medical Board to develop and implement a quality intervention program designed to improve physicians' clinical and communication skills through remedial education.
- Provides a qualified immunity for providers of educational and assessment services selected by the State Medical Board for the quality intervention program.
- Requires the State Medical Board to institute a staggered biennial license renewal for persons holding a certificate to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.
- Requires the state to provide and pay for the defense of such providers who meet certain conditions relative to requesting and cooperating in the defense.
- Creates the State Medical Board Operating Fund on July 1, 1998, and requires most receipts of the State Medical Board to be credited to that Fund instead of the Occupational Licensing and Regulatory Fund or General Revenue Fund after that date.
- Requires one-half of the fines collected for a violation of the law governing physicians and limited practitioners of medicine to be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund rather than to the credit of the General Revenue Fund.
- Requires a single surety, instead of two or more sureties, for the bond required of the Secretary of the State Board of Psychology.
- Authorizes the Ohio Association of Black Psychologists and the Multi-Ethnic Mental Health Consortium to approve programs or courses for continuing education for psychologists.
- Makes a $100 increase in the annual license renewal fee for chiropractors.
- Redirects receipts from fines imposed for practicing chiropractic without a certificate and related violations from the General Revenue Fund to the Occupational Licensing and

Regulatory Fund.

- Establishes a fee for an original nursing home administrator's license.
- Increases the annual registration fee for nursing home administrators.
- Allows physical therapists, physical therapy assistants, occupational therapists, and occupational therapy assistants to be disciplined by reprimand or probation.
- Establishes aiding or abetting unlicensed practice and being disciplined by the licensing authority of another state or country as additional reasons for imposing discipline on an occupational therapist, occupational therapy assistant, physical therapist, physical therapy assistant, or athletic trainer.
- Eliminates the authority of out-of-state occupational therapists to practice in Ohio.
- Eliminates the requirement of current law that licensure examinations for physical therapists and physical therapist assistants be held in Columbus.
- Requires one-half of all fines collected for violations of the Occupational and Physical Therapists Law to be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund rather than to the credit of the General Revenue Fund.
- Revises educational requirements for licensure as a professional counselor.
- Permits the Director to establish offices, bureaus, and sections within the Department of Human Services, in addition to the divisions the Director is currently permitted to establish.
- Authorizes the Director of Human Services for an 18-month period to take certain personnel actions relating to Department of Human Services employees who are not subject to the Public Employee Collective Bargaining Law.
- Establishes the Title IV-E Private Agency Training Fund consisting of funds contributed by private child placing agencies and private noncustodial agencies for the purpose of obtaining federal funds to pay training costs incurred by those agencies.
- Provides that counties may spend money provided under the state child welfare subsidy for the costs of kinship care and other services a public children services agency considers necessary to protect children from abuse, neglect, or dependency.
- Creates a 15-member "Grandparents Raising Grandchildren Task Force," to study the needs of such grandparents and create an action plan based on its study.
- Replaces county plans of cooperation that set forth operating procedures for responding to reports of child abuse or neglect and other offenses involving children with memorandums of understanding and revises the list of local officials who develop the plan and what the plan must include.
- Eliminates the requirement that a public children services agency submit a plan concerning the children services it provides before it receives money under the state child welfare subsidy.
- Requires that all funds that a public children services agency receives from appropriations made by the board of county commissioners or any other source for the purpose of providing county children services be deposited into the county children services fund.
- Eliminates a requirement that a public children services agency (PCSA) conduct, or contract with an independent contractor to conduct, an annual evaluation of the services the PCSA provides to children under its care and that the PCSA order inadequate conditions to be remedied or activities or programs to be instituted that the PCSA determines from the evaluation to exist or be needed at a child care facility operated by the

PCSA.

- Authorizes a public children services agency (PCSA) to contract with specified entities for the purpose of assisting the PCSA with its duties.
- Permits the Department of Human Services to apply to the federal government for a waiver of the child welfare requirements established under Title IV-B of the Social Security Act or any other federal law, in order to conduct demonstration projects or otherwise improve the effectiveness and efficiency of the children services function.
- Permits a juvenile court to order the removal of a child from the county served by the court if the child was placed in foster care in the county from another county and the child is disrupting the educational process in the school district in which the child is attending school, pursuant to a complaint filed by the superintendent of the school district.
- Requires the juvenile court of the county that required the child's placement for foster care in another county pursuant to a journalized case plan or other order to make changes to the case plan or issue another order concerning the child's placement consistent with any order removing the child from the other county.
- Designates the public children services agency responsible for conducting certain duties and providing services under the Juvenile Code to abused, neglected, or dependent children temporarily residing in shelters for domestic violence and homeless shelters in a county other than their county of residence.
- Requires shelters for victims of domestic violence and homeless shelters to obtain and disseminate information concerning the last known residence address and county of residence of persons to whom the shelters provide accommodations.
- Authorizes the Department of Human Services to seek approval to establish a demonstration project to expand eligibility for and services provided under federal "Title IV-E" foster care and adoption assistance.
- Replaces the right of subrogation that the Department of Human Services has with regard to the liability of a third party for the cost of medical services and care arising out of injury, disease, or disability of a Medicaid or Disability Assistance Medical Assistance recipient with a right of recovery.
- Provides that state law barring an action against a political subdivision under a subrogation provision in an insurance or other contract does not prohibit the Department of Human Services from recovering from a political subdivision, pursuant to its right of recovery, the cost of medical assistance benefits provided under Medicaid or Disability Assistance Medical Assistance.
- Provides that a Department of Human Services' recovery claim against a liable third party is to be the amount a managed care organization pays for medical services or care rendered to a Medicaid or Disability Assistance Medical Assistance recipient if the recipient receives medical services or care through the managed care organization.
- Authorizes county departments of human services to contract with boards of education that have adopted a resolution to provide for a recipient of Temporary Assistance for Needy Families who has a child enrolled in a public school in that district to volunteer or work at the school under the Work Experience Program component of the JOBS Program.
- Requires the Department of Human Services, to the maximum extent permitted by federal law, to count toward fulfillment of the TANF work requirements any time a child's parent or guardian spends volunteering at the child's Head Start agency.

- Authorizes a county department of human services to contract with a private entity for the entity to assume some or all of the county department's duties under the Job Opportunities and Basic Skills Training Program.
- Authorizes the Department of Human Services to enter into agreements with public children services agencies and private child placing agencies under which the Department will make payments to encourage the adoptive placement of children in the permanent custody of a public children services agency.
- Exempts from child day-care licensure requirements child day-care provided on the premises of a parent's, guardian's, or custodian's place of employment if the parent, guardian, or custodian is employed on the premises two and one-half or fewer hours a day.
- Requires that the Department of Human Services adopt rules (1) specifying the maximum amount of adjusted income a family may have and still qualify for publicly funded child day-care and (2) allowing a family to continue to receive the day-care until the family's adjusted income exceeds 150% of the federal poverty guideline.
- Provides continued eligibility and guaranteed publicly funded child day-care for a family that has a child enrolled in Head Start and receives publicly funded child day-care for that child until the end of the Head Start program year.
- Requires the Department of Human Services to allocate and use at least 4% of federal funds received under the Child Care and Development Block Grant for activities to provide comprehensive consumer education, increase parental choice, and improve the quality and availability of child day-care and provides that not more than five per cent of federal funds may be expended for administrative costs.
- Requires that the Department of Human Services monitor anticipated future expenditures of publicly funded child day-care each month with the assistance of the Office of Budget and Management, county departments of human services, and child day-care providers and advocates.
- Requires that the Department of Human Services conduct quarterly, rather than annual, evaluations of publicly funded child day-care and specify in the reports of the evaluations the number of participants and amount of expenditures by county.
- Requires that the Department of Human Services submit the state TANF plan to certain members of the General Assembly before submitting it to the United States Secretary of Health and Human Services and gives the General Assembly 30 days to enact a concurrent resolution disapproving the plan.
- Requires the Department of Human Services, in consultation with the State Board of Education, to create a program under which recipients of Temporary Assistance for Needy Families are involved in the education of their children enrolled in grade twelve or lower.
- Renames the Adult Emergency Assistance Program the Non-TANF Emergency Assistance Program and provides for its continued operation in fiscal years 1998 and 1999.
- Provides that persons age 18 or older who are ineligible for Temporary Assistance for Needy Families and have incomes not greater than 40%, rather than 32%, of the federal poverty guideline may receive assistance under the Non-TANF Emergency Assistance Program.
- Allows local entities that receive funds under the Non-TANF Emergency Assistance Program to use up to 4%, rather than 3%, of the funds for administrative purposes.
- Authorizes expansion of Medicaid eligibility, subject to federal approval and not sooner

than January 1, 1998, to include children not otherwise eligible who are age six or older but under age 19 with family incomes at or below 150% of the federal poverty guideline.

- Grants the Department of Human Services express authority to adopt rules for Medicaid reimbursement of drugs and sets the current dispensing fee of $3.50 as the lowest fee that may be used for Medicaid reimbursement of drugs.
- Creates the Medicaid Drug Reimbursement Study Committee to review the Medicaid drug reimbursement system and requires the Committee to issue an annual report to the Governor and General Assembly.
- Provides that the value of a prepaid burial contract cannot be considered when determining Medicaid eligibility if the contract's value is not more than $8,000 and the Department of Human Services is designated the recipient of any funds remaining after burial costs are paid.
- Requires the Department of Human Services to conduct a study or contract to have a study done to determine the extent to which applicants for nursing home services paid for through Medicaid are transferring their assets for less than fair market value become Medicaid eligible but still to avoid depleting assets.
- Requires the application for appointment as the executor or administrator of an estate to state whether the deceased after age 55 was a Medicaid recipient, and provides that letters of administration may not be issued if the deceased was such a recipient until the probate court is notified that a copy of the application has been filed with the Office of the Attorney General for purposes of recovery on behalf of the state, and requests that the Supreme Court promptly adopt, pursuant to its constitutional authority, any rules needed to implement these requirements.
- Requires the Ohio Department of Human Services to adopt rules to implement managed care for Medicaid recipients but eliminates provisions specifying the matters to be dealt with in the rules.
- Creates the Medicaid Managed Care Reimbursement Study Committee to review, on an ongoing basis, reimbursement under the managed care system established under existing law for Medicaid recipients.
- Repeals a statute that requires ODHS to establish a case management system for Medicaid recipients whose care is exceptionally expensive.
- Requires the Office of Budget and Management and the Department of Human Services, when preparing the next Medicaid budget, to attempt, if appropriate, to incorporate a managed care system for providing services to individuals with mental retardation and developmental disabilities, if such a system is proposed by the Hattie Larlham Foundation.
- Repeals current law authorizing the Ohio Department of Human Services to seek federal approval to establish an assisted living waiver program under Medicaid.
- Extends the Hospital Care Assurance Program to July 1, 1999, eliminates the requirement that a separate audit of the program be conducted, and extends cost-reporting deadlines that apply to hospitals.
- Requires that the Department of Human Services report monthly to the Legislative Budget Office (LBO) and Office of Budget and Management (OBM) demographic information about recipients of Disability Assistance that is available to the Department and that the Department, LBO, and OBM agree will be in the reports.
- Eliminates provisions that require the Department of Mental Health to maintain separate

institutions for children and to operate a statewide system of "receiving hospitals."

- Requires that the Department of Mental Health submit to the committees of the House of Representatives and Senate that work with issues of finance and appropriations annual reports providing information concerning positions at community settings or locations other than a public hospital that were terminated or continued the previous year.
- Requires that the Directors of Mental Health and Alcohol and Drug Addiction Services convene a workgroup to examine management controls and related standards for Medicaid-covered community mental health, alcohol, and drug addiction services.
- Makes changes in reimbursement to counties for expenses related to proceedings for hospitalization of mentally ill persons.
- Permits the Department of Mental Retardation and Developmental Disabilities to waive support collection requirements of an individual who resides in a residential facility, and the individual's liable relative, if the individual is preparing to move into an independent living arrangement.
- Abolishes the Division of Administrative Services and the Division of Developmental Center Services in the Department of Mental Retardation and Developmental Disabilities.
- Permits the Department of Mental Retardation and Developmental Disabilities to delegate to county boards of mental retardation and developmental disabilities the authority to enter into and negotiate contracts and subcontracts for residential services and requires the boards to administer the contracts and subcontracts in compliance with rules and the boards' existing laws.
- Restores the express authority to terminate a person's membership on a county board of mental retardation and developmental disabilities when the person is an elected public official or has certain familial or business ties to the board or an agency under contract with the board.
- Requires the Department of Mental Retardation and Developmental Disabilities (DMR/DD) to establish a system of accreditation for county boards of mental retardation and developmental disabilities (MR/DD boards) under which DMR/DD conducts periodic, on-site reviews of each board and issues or denies accreditation according to its findings.
- Prevents an MR/DD board that is denied accreditation for all or part of its programs or services from receiving state or federal funds for the programs or services in an amount that exceeds the amount it received when DMR/DD first determined the board was not in compliance with the accreditation standards.
- Grants MR/DD boards an opportunity to prepare and implement a plan of correction before accreditation is denied.
- Requires the following to occur when accreditation is denied: (1) that the MR/DD board contract with an accredited MR/DD board or another qualified entity to administer the board's unaccredited programs and services, (2) if no contract is entered into, that DMR/DD appoint an administrative receiver, (3) that the board transfer control of funds as necessary for the contractor or receiver to fulfill its duties.
- Requires DMR/DD to adopt rules that establish standards for MR/DD boards to follow in administering, providing, arranging, or operating programs and services.
- Modifies the program for promoting and advancing the quality of life of MR/DD board clients by (1) specifying that residential services and supported living are to be provided in accordance with the needs of the individual being served, (2) expanding the funds that

MR/DD board can use in fulfilling the goals of the quality standards, (3) coordinating the DMR/DD reviews on quality with the reviews it conducts under the accreditation system, and (4) permitting, rather than requiring, acceptance of private accreditation as proof that the board is in compliance with the quality standards.

- Provides that each county board of mental retardation and developmental disabilities may be eligible to receive a subsidy from the Department of Mental Retardation and Developmental Disabilities for the employment of a business manager.
- Establishes a two-year moratorium on new residential facility beds for individuals with mental retardation and developmental disabilities.

Content and Operation

Family and Children First Initiative

(secs. 121.37 and 121.38)

County councils and local clusters

Exiting law requires each county to establish either a "county family and children first council" or a "local intersystem services for children cluster." Both are required to coordinate services for families and children who require services offered by more than one agency and both can receive grants from the Ohio Family and Children First Council. The required membership of local clusters is somewhat smaller than that of county councils, but the significant difference between the two is that a county council can apply to the Cabinet Council to receive an exemption from state rules and policies to implement an alternative program of delivering services.

Under the bill, each county must establish a county council. The authority to establish a local cluster is repealed. The bill clarifies that an alternative program of service delivery is not always a "program," but may be an alternative "approach."

Membership of county councils

The bill modifies the county council membership requirements as follows: (1) requires that the three or more members who represent families be appointed from families who are or have received services from an agency that serves children and families, (2) permits the director of a board of alcohol, drug addiction, and mental health services that serves more than one county to designate a person to serve on the council in his or her place, (3) provides that the members appointed to represent health districts may be limited to the health commissioners of the two districts with the largest populations, (4) allows the administrative judge of a county juvenile court or, where there is no administrative judge, the juvenile court judge senior in service to designate another juvenile court judge to serve in the senior judge's place, and (5) to accommodate counties in which there is no city, provides that the member appointed to represent the county's largest "city" is, in fact, a representative of the "municipal corporation" with the largest population.

Sharing responsibilities as members

The bill requires the Cabinet Council to establish a state appeals process to resolve disputes among the members of a county council concerning whether reasonable responsibilities as members are being shared. The appeals process may be accessed only by a majority vote of the council members who are required to serve on the council. On appeal, the Cabinet Council may order that state funds for services to children and families be redirected to a county's board of county commissioners.

Elimination of reports

The bill eliminates requirements for counties to submit the following reports to the Cabinet Council: (1) periodic reports regarding the number of children referred to the county council and the progress made in meeting the needs of each child, and (2) annual reports on the number of disputes among service agencies that are resolved by the county's dispute resolution process, the number of cases resolved by judicial determination, and the amount each agency spent using either process.

Administrative agent

The bill requires each county council to designate an administrative agent for the council. The agent must be appointed from among the following public entities: the board of alcohol, drug addiction, and mental health services; board of county commissioners; boards of health; county department of human services; the county children services board; county board of mental retardation and developmental disabilities; boards of education or governing boards of educational service

centers; or county juvenile court. Any of the foregoing public entities, except for the board of county commissioners, may decline to serve as the council's administrative agent.

The administrative agent is required to serve as the council's appointing authority. The council's annual budget must be filed with its administrative agent, with copies filed with the county auditor and the board of county commissioners.

The administrative agent must ensure that all of the council's expenditures are handled appropriately and has authority to act in specified financial capacities on behalf of the council including the authority to enter into agreements and administer contracts to fulfill specific council business. Such agreements and contracts are exempt from county competitive bidding requirements if they have been approved by the county council and if they are for the purchase of family and child welfare or child protection services or other social or human services for families and children. It specifies that the approval of the county council is not required to exempt from those bidding requirements specified agreements or contracts regarding certain programs administered by the Department of Youth Services.

Service coordination plans/mechanisms

Current law requires each county to develop a service coordination plan for providing services to families and children, including a procedure for designating service responsibilities among the various state and local service agencies. The plan must be submitted to the Cabinet Council for review. If the plan is rejected, the Council must develop a plan for the county.

The bill eliminates the requirement for Cabinet Council approval of the county's plan, but continues the Council's authority to monitor the implementation and administration of the plan. Finally, it reidentifies the plan as a "mechanism."

Wellness Block Grant Program created

(sec. 121.371)

The bill creates in permanent law the **w**ellness **b**lock **g**rant **p**rogram established in temporary law in Am. Sub. S.B. 310 of the 121st General Assembly. The Ohio Family and Children First Cabinet Council oversees the program and the Children's Trust Fund Board serves as the program's administrative agent. The Board and the Cabinet Council must establish guidelines for operating the program.

Under the Wellness Block Grant Program, the Children's Trust Fund Board may accept gifts, donations, grants, or other moneys for the program from any source. The Board must use the funds received to make block grants to county family and children first councils. The bill provides that the councils must use the funds for community-based programs of prevention services that address issues of broad social concern, as determined by the Cabinet Council and the Board, and to fund state-directed training, evaluation, and education programs pertaining to the issues being addressed.

As requested by the Board on behalf of the Cabinet Council, each county council must submit program and fiscal accountings regarding the use of its block grant. The Board and the Cabinet Council must establish criteria for assessing a county council's progress in achieving the goals of the Wellness Block Grant Program. If a county council does not operate in accordance with the program guidelines and criteria established by the Board and the Cabinet Council, they may revise the allocation of funds the county council receives.

The Board must prepare an annual report detailing the results of the Program and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Human Services Stabilization Fund

(sec. 131.41; Section 143)

The bill creates in the State Treasury the Human Services Stabilization Fund. The Fund consists of moneys deposited into it pursuant to acts of the General Assembly. The Director of Budget and Management, with advice from the Director of Human Services, may transfer moneys in the Fund to the General Revenue Fund for the Department of Human Services. Moneys may be transferred due to identified shortfalls, such as higher caseloads, federal funding changes, and unforeseen costs due to significant state policy changes. Before transfers are authorized, the Director of Budget and Management must exhaust the possibilities for transfers of moneys within the Department of Human Services to meet the identified shortfall. Transfers cannot be used to fund policy changes not contemplated by acts of the General Assembly.

The bill provides that accumulated interest in the Human Services Stabilization Fund at the end of fiscal year 1997 earned in fiscal years 1996 and 1997 is to be transferred to the Low and Moderate Income Housing Trust Fund.

Removal of references to Worley Terrace and Glendale Terrace residential facilities

(secs. 173.02 and 173.07)

The bill removes a statutory reference to Worley Terrace in Columbus and Glendale Terrace in Toledo as residential facilities for housing older persons for which the Department of Aging may adopt rules of operation. The bill also repeals a statute governing the fees charged to the residents of those two facilities who elect to purchase food provided by the Department.

Title XX social services

(secs. 329.04 and 5101.461)

Under the provisions of Title XX of the Social Security Act, block grants are made by the federal government to the states for the purpose of funding the provision of social services. State funds may be appropriated to supplement the federal funds, and most counties are required to provide a local share equal to 10% of the federal and state funds allocated. A county may receive a waiver of all or part of the 10% local match requirement. Counties in the Appalachian region of the state are granted an automatic waiver.

Current law requires that each county department of human services perform duties assigned by the Ohio Department of Human Services (ODHS) regarding the provision of Title XX social services. The bill repeals current law that requires that county departments, in the development of a county plan for Title XX services, prepare a local needs report analyzing local need for Title XX services and consider the report in the development of the county Title XX plan. The bill also repeals current law that requires (1) that a county Title XX plan list the services a county will provide with Title XX funds and the eligibility categories that will be provided with each of the services and (2) that a county department, after the General Assembly approves the comprehensive Title XX social services plan prepared by ODHS, take steps necessary to ensure the efficient administration of Title XX services, including the negotiation of contracts with providers of services and the performance of other duties ODHS assigns.

Pursuant to the repeal of the requirement that county departments prepare a local needs report for Title XX services, the bill repeals a requirement that ODHS rules governing the preparation, review, and revision of the comprehensive Title XX plan include (1) guidelines for the preparation of local needs reports and (2) the procedure for ODHS to review and evaluate local needs reports.

County welfare advisory boards

(secs. 329.04 and 329.06; repealed sec. 329.07)
Current law requires that each county have a county welfare advisory board and specifies its size and membership requirements. A county welfare advisory board has authority to suggest rules regarding the organization of the county department of human services and to advise the county department and the board of county commissioners on budget estimates, policies, and other problems of welfare activities. Also, the county welfare advisory board is responsible for holding a public hearing on each proposed biennial state Title XX social services plan.

The bill renames county welfare advisory boards "county human services planning committees" and provides for new membership determined by boards of county commissioners. Membership must be broadly representative of the following:

(1) Public agencies serving the county, including the county department of human services; the county board of mental retardation and developmental disabilities; the board of alcohol, drug addiction, and mental health services; boards of health; boards of education; and any other public agencies the county commissioners consider appropriate;

(2) Private entities that serve or advocate for recipients of social services, including entities that serve or advocate for recipients of Temporary Assistance for Needy Families and any other private entities the county commissioners consider appropriate;

(3) Interested residents of the county, including individuals who represent community, business, and agricultural interests.

The bill also repeals current law governing county welfare advisory boards' responsibilities and requires instead that county human services planning committees make recommendations to boards of county commissioners regarding the use of federal, state, and local funds available for social services programs, including Temporary Assistance for Needy Families, publicly funded child day-care, Title XX social services, and any other social services provided in a county.

Pursuant to the repeal of the requirement that county welfare advisory boards hold public hearings on proposed Title XX social services plans, the bill repeals current law that requires that county departments of human services consider the comments and recommendations made during the hearings.

Burials

(sec. 329.04(A)(4))

Current law provides that a county department of human services is responsible for administering burials insofar as burials were the responsibility of the board of county commissioners prior to September 12, 1947. September 12, 1947 is the effective date of Am. S.B. 241 of the 97th General Assembly, which appears to be the first statute to give boards of county commissioners the express authority to transfer all of their duties regarding burials of the poor to what were then called county departments of public welfare. The bill specifies that a county department of human services is also responsible for burials that are "otherwise required by state law."

Pregnancy Loss Registry

(sec. 3701.031)

The bill requires the Director of Health to establish a population-based pregnancy loss registry to monitor the incidence of various types of pregnancy losses that occur in this state; make appropriate epidemiological studies to determine any causal relations of the pregnancy losses with occupational, nutritional, environmental, genetic, or infectious conditions; and determine what can be done to prevent such losses. For these purposes, the Director must advise, consult, cooperate with, and assist, by contract or otherwise, agencies of the state and federal government, agencies of governments of other states, agencies of political subdivisions of this state, universities, private organizations, corporations, and associations.

The Director must accept and administer grants from the federal government or other sources, public or private, for carrying out functions related to the pregnancy loss registry.

"Pregnancy loss" is defined as a termination of pregnancy within the first 20 weeks of pregnancy either spontaneously or by means other than through abortion.

Cancer and tuberculosis registries

(secs. 3701.14 and 3701.261)

Cancer

Current law requires the Director of Health to maintain a population-based cancer registry to monitor the incidence of various types of malignant disease in Ohio; make appropriate epidemiological studies to determine any causal relationships between cancer and occupational, nutritional, environmental, or infectious conditions; and alleviate those conditions. The Department of Health has established the Ohio Cancer Surveillance System (OCISS) as Ohio's cancer registry. OCISS is required to follow the model for cancer data collection set forth in the National Cancer Institute's Surveillance, Epidemiology, and End Results (SEER) Program, which is used as a data collection model for cancer registries throughout the United States. This provision was included in Am. Sub. H.B. 117 of the 121st General Assembly as uncodified law. The bill would add the requirement that the SEER Model be used to the Revised Code provisions dealing with the establishment of the registry.

Tuberculosis

The bill requires the Director of Health to maintain registries of hospitals, clinics, physicians, or other health care providers for referral of individuals who make inquiries to the Department of Health regarding exposure to tuberculosis. This provision was included in Am. Sub. H.B. 117 of the 121st General Assembly as uncodified law.

Free copy of medical record

(sec. 3701.74)

Existing law requires a hospital to prepare a finalized medical record for each patient. At the request of a patient, a hospital is required to permit the patient to examine the record or provide a copy of the record. The bill requires a hospital to provide a patient with a free copy of the patient's medical record. For additional requests, the bill permits a hospital to charge a reasonable copying fee.

Quality Monitoring and Inspection Fund

(sec. 3702.31)

Current law requires the Director of Health to establish safety and quality of care standards for specified health care services, including organ transplantation, open-heart surgery, and operation of specialized equipment such as cobalt radiation therapy units. The Director must also establish quality standards for the following health care facilities and issue licenses to those that meet the standards: ambulatory surgical facilities; freestanding dialysis centers, inpatient rehabilitation facilities, birthing centers, and radiation therapy centers; and mobile or freestanding diagnostic imaging centers. The bill creates the Quality Monitoring and Inspection Fund in the State Treasury to be used by the Director of Health to administer and enforce the safety and quality of care standards. Under current law, a health care provider is not permitted

to carry out certain "reviewable activities" unless it obtains a certificate of need (CON) or a specific statutory exemption from the requirement. Am. Sub. S.B. 50 of the 121st General Assembly phases out CON. Beginning May 1, 1997, CON will be eliminated for all health care providers except nursing homes and replaced by the safety and quality of care standards.

The bill requires the Department of Health to adopt rules in accordance with the Administrative Procedure Act establishing fees for license applications and the inspection of health care facilities subject to the safety and quality of care standards. The license fees are not to exceed the actual and necessary costs of issuing and renewing licenses; the inspection fees are not to exceed the actual cost of inspection, including any indirect costs incurred by the Department for staff, salary, and other administrative costs.

The bill requires the Director of Health to provide each health care facility or provider inspected pursuant to quality of care monitoring provisions or licensing requirements with an itemized statement showing the costs incurred during the inspection. Within 15 days after receiving this statement, the facility or provider must forward the total amount of the fee to the Director.

Under the bill, the inspection fees collected by the Department cannot exceed $1,000 for each service for which a quality of care standard has been adopted. For each health care provider, the annual inspection fees cannot exceed $4,000. The bill provides that the fee must exclude any costs that are reimbursable by the United States Health Care Financing Administration as part of the certification process for Medicare or Medicaid. The Director is prohibited from establishing a fee for any licensing or inspection service for which the health care provider already pays a state agency.

Certificate of need in rural areas

(secs. 3702.30 and 3702.511)

Under current law, certain freestanding health facilities must be licensed by May 1, 1997 under the rules for quality adopted by the Department of Health. The bill extends this deadline and maintains Certificate of Need review of certain health care construction and capital expenditures in rural areas until April 1, 1998.

To provide consistent dates for deregulation in rural areas, the bill also extends Certificate of Need review from March 20, 1998, to April 1, 1998 for certain high-technology services.

Moratorium on long-term care beds

(sec. 3702.68; Sections 182 and 183)

Under current law, the Director of Health is prohibited, until July 1, 1997, from accepting for review any application for a certificate of need (CON) for any of the following purposes:

(1) Approval of beds in a new health care facility or an increase in beds in an existing health care facility, if the beds are proposed to be licensed as nursing home beds;

(2) Approval of beds in a new county home or county nursing home, or an increase of beds in an existing county home or county nursing home, if the beds are proposed to be certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

(3) Recategorization of hospital beds as skilled nursing beds, an increase of hospital beds registered as long-term care beds or skilled nursing facility beds, or recategorization of hospital beds that would result in an increase of beds registered as long-term care beds or skilled nursing facility beds. The Director is required to accept for review a CON application for nursing home beds in a health care facility, or skilled nursing facility beds or nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. The Director also is required to accept for review an application seeking CON approval for existing beds located in an infirmary that is operated exclusively by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and was providing care exclusively to members of such a religious order on January 1, 1994.

Current law provides that, beginning July 1, 1997, only the moratorium on accepting applications for a CON to recategorize hospital beds as skilled nursing beds is to continue. That moratorium continues indefinitely.

The bill extends the moratoriums currently scheduled to expire July 1, 1997, until July 1, 1999. Beginning on the later date, only the moratorium concerning recategorizing hospital beds as skilled nursing beds will continue. As under current law, that moratorium does not have an expiration date.

Exemption for beds at the Ohio Veteran's Home

(sec. 3702.5211)

The bill exempts the addition of up to 52 beds at the Ohio Veteran's Home, including the Secrest Nursing Home and Giffen Care Facility, from the requirement that a certificate of need be obtained from the Director of Health if the beds are in service prior to June 30, 1999.

Health services agencies study

(Section 59.02)

Continuing law requires that the Director of Health designate geographic regions of the state as health service areas and designate one health service agency for each health service area. Each health service agency must be a nonprofit private corporation exempt from federal income taxation that is not a subsidiary of, or otherwise controlled by, any other private or public corporation or other legal entity. Health service agencies perform functions related to the planning and implementation of health care facilities and health care services and monitoring the health care system in the health service area, conduct certain community activities, promote improvements in the health of the residents of the health service area, and implement the certificate of need program on the local level.

The bill establishes a study committee to perform an examination of the roles and functions of health service agencies. The committee is required to consider the value of health service agencies by examining whether other entities duplicate the roles held and the functions performed by health service agencies.

The committee is to be comprised of the chair of the House of Representatives Health, Retirement, and Aging Committee, the chair of the Senate Health Committee, the ranking minority members of those committees, and the following who are to be appointed jointly by the Speaker of the House and the President of the Senate:

(1) Two representatives of health service agencies;

(2) One representative of the Department of Health;

(3) One representative of the Department of Human Services;

(4) One representative of the Ohio Association for Hospitals and Health Systems;

(5) One representative of the Ohio Public Health Association;

(6) One representative of the Association of Ohio Health Commissioners.

The two members who are the chairs of the House and Senate Committees are to serve as co-chairs and the committee is to meet at their call. Members are to serve without reimbursement, except to the extent that serving on the committee is considered a part of their regular employment duties.

The committee is required to complete its examination and submit a report to the Speaker of the House and President of the Senate not later than June 30, 1998. The committee ceases to exist when it submits its report.

Vital records fees

(sec. 3705.24)

Current law provides for fees to be paid into the State Treasury received by the Ohio Department of Health for copies of vital records and services provided in relation to vital statistics requests. The bill requires that the money generated by the fees be used only for administration and enforcement of vital statistics law.

Radiation control program fees

(secs. 3748.07, 3748.12, and 3748.13)

The bill increases the following fees related to the Ohio Department of Health's radiation control program:

(1) The biennial registration fee for a facility that handles radioactive material or radiation-generating equipment is increased to $150 (from $100).

(2) The radiation expert application fee for certification is set at $50 by current law. The bill provides for an additional $25 fee for each type of radiation-generating equipment for which application is being made.

(3) Inspection fees paid by facilities containing radiation equipment are increased as follows:

Equipment	*Fee in Current*	*Fee Under*

	Law	***Bill***
First dental x-ray tube, gauging x-ray tube, or analytical x-ray equipment used in nonhealth care applications	$60	$80
Each additional dental x-ray tube, cabinet x-ray tube, gauging x-ray tube, or analytical x-ray equipment used in nonhealth care applications at the same location	$30	$40
First x-ray tube other than dental, cabinet, or gauging, or analytical x-ray equipment used in nonhealth care applications	$120	$160
Each additional x-ray tube other than dental, cabinet, or gauging, or analytical x-ray equipment used in nonhealth care applications at the same location	$60	$80
Each unit of ionizing radiation-generating equipment capable of operating at or above 250 kilovoltage peak	$240	$320
First nonionizing radiation-generating equipment of any kind	$120	$160
Each additional nonionizing radiation-generating equipment of any kind at the same location	$60	$80
Assembler-maintainer inspection consisting of an inspection of records and operating procedures of handlers that install sources of radiation	$150	$200

(4) The inspection fee paid by a facility that is not licensed or registered is raised to $250 (from $125), plus the inspection fee listed above.

(5) The fee for a review of each room where a source of radiation is used is raised to $400 (from $300). This fee is in addition to any other applicable fee.

Pharmacy board fee increases

(secs. 3719.02, 3719.021, 4729.15, 4729.52, and 4729.54)

Places in permanent law annual fee increases approved by the Controlling Board for certain licenses issued by the State Board of Pharmacy. The bill also changes the date by which a person must submit a renewal application from during the month of December to on or before December 31 and provides that the license renewal fee for wholesale distributor of dangerous drugs or terminal distributor of dangerous drugs categories I through III, will not be returned if the licensee fails to qualify for renewal.

Type of license/reason for fee	***Present statutory annual fee--paid on time***	***Bill's annual fee--paid on time***	***Present statutory fee--paid late***	***Bill's fee--paid late***
Manufacture of controlled substances	25.00	37.50	37.50	55.00
Wholesaler of controlled substances	25.00	37.50	37.50	55.00
Identification card for pharmacists	65.00	97.50	90.00	135.00
Identification card for pharmacists with more than a 3 year lapse in renewal			225.00	337.50
Pharmacist reciprocity	225.00	337.50		
Pharmacy intern registration	15.00	22.50	15.00	22.50
Replacement certificates for pharmacists	15.00	22.50		
Replacement certificates for pharmacy interns	5.00	7.50		
Replacement identification card for pharmacists	25.00	37.50		
Replacement identification card	5.00	7.50		

for pharmacy interns				
Certifying registration and grades for reciprocal registration	6.75	10.00		
Wholesale distributor of dangerous drugs	100.00	150.00	137.50	255.00
Terminal distributor category I	30.00	45.00		
Terminal distributor category II or limited category II	75.00	112.50		
Terminal distributor category III	100.00	150.00		
Penalty for renewal after February 1			37.50	55.00

Reorganization of alcohol and drug addiction related funds

(secs. 4301.30 and 4511.191; Sections 167, 194, and 213)

The bill abolishes the Alcoholism Detoxification Centers Fund and the Drivers' Treatment Intervention Fund, transferring money in the funds and their obligations to the Alcohol and Drug Addiction **s**ervices Fund, which is created by the bill.

Alcohol and Drug Addiction Services Fund

(secs. 3793.10, 3793.21, 4301.10, 4301.30, 4511.191, and 4511.83)

Amounts previously paid to the Alcoholism Detoxification Centers Fund and the Drivers' Treatment Intervention Fund are to be paid to the Alcohol and Drug Addiction Services Fund. The newly created fund will consist of money in the following amounts from the following sources: 1/2 of 1% of the gross profit from the wholesale and retail sale of spirituous liquors by the **d**epartment of **l**iquor **c**ontrol; 21% of the Undivided Liquor Permit Fund not being paid into the General Revenue Fund; $75 of a $250 fee for reinstatement of a driver's license suspended pursuant to an arrest for suspected driving while under the influence of alcohol or a drug of abuse. The Fund will also receive additional money from the reinstatement fee that is not distributed to a local indigent driver alcohol treatment fund because the **d**irector of Alcohol and Drug Addiction Services lacks the information necessary to identify the county or municipal corporation where the offender was arrested and money from a charge for certification of ignition lock devices.

Moneys in the Alcohol and Drug Addiction Services Fund from license reinstatement fees or charges for certification of ignition lock devices or may be used only for alcohol and drug addiction programs and drivers' intervention programs. All other revenues may be used for other programs and services of the Department of Alcohol and Drug Addiction Services and for administrative, quality assurance, and planning purposes.

Dentistry fees

(secs. 4715.13, 4715.14, 4715.16, 4715.21, 4715.24, and 4715.27)

The following fees are increased by the bill:

(1) License to practice dentistry, from $113 to $141 if issued in an odd-numbered year and from $188 to $235 if issued in an even-numbered year;

(2) Biennial registration to practice dentistry, from $130 to $163;

(3) General anesthesia permit, from $75 to $94;

(4) Conscious intravenous sedation permit, from $75 to $94;

(5) Duplicate license to practice dentistry, from $12 to $15;

(6) Limited dental resident's license, from $5.85 to $7.50;

(7) Limited teaching license for a dentist, from $60 to $75;

(8) Temporary limited continuing education license for out-of-state dentists, from $60 to $75;

(9) Temporary limited continuing education license renewal, from $60 to $75;

(10) Dental hygienist license, from $57 to $71 if issued in an odd-numbered year, from $87 to $109 if issued in an even-

numbered year;

(11) Dental hygienist biennial registration fee, from $60 to $75;

(12) Dental hygienist teacher's certificate, from $34 to $43.

Deposit of dentistry fine review

(sec. 4715.35)

Currently, fines or forfeitures of bond in an action for a violation of the Dental and Dental Hygienists Law (Chapter 4715.) are deposited into the state treasury to the credit of the General Revenue Fund. The bill requires instead that such money be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund.

Dental Board peer-review study

(Section 41)

Under the bill, representatives of the State Dental Board are required to meet with representatives of the Ohio Dental Association to discuss establishing criteria for transferring appropriate complaints filed with the Board to the Association's peer review process. A report on the matter is due to the General Assembly not later than December 31, 1997.

Nurse licensure

(secs. 4723.24, 4723.28, 4723.41, and 4723.46)

Current law provides that to be eligible for renewal of an active license to practice nursing as a registered nurse or licensed practical nurse, each individual who holds an active license must, in each two-year period, complete one hour of continuing nursing education for each month or portion of a month for which the license was active. The bill changes the continuing education requirement from one hour for each month or portion of a month for which the license was active to a number of hours specified by Board of Nursing rules.

The bill requires a person applying to practice nurse-midwifery to have a master's degree in a clinical nursing specialty, as opposed to the requirement in current law that the master's degree be in a nursing specialty.

The Board of Nursing under current law must investigate evidence that appears to show that any person has violated the laws governing nurses or any rule of the Board. The Board is permitted by the bill to share information received pursuant to an investigation of a person licensed by the Board with law enforcement officers and government entities investigating the person, and prohibits a law enforcement officer or government entity with knowledge of information disclosed by the Board pursuant to this authority from divulging the information other than for the purposes of an adjudication to which the person to whom the information relates is a party.

The Board is required under current law to establish a list of national certifying organizations approved by the Board to examine and certify registered nurses to practice nursing specialties. To be approved by the Board, a national certifying organization must meet certain requirements, including a requirement that the organization have testing requirements open only to registered nurses who have successfully completed the organization's education program. The Board is permitted by the bill to approve organizations whose testing requirements are open to persons other than registered nurses who have successfully completed the organization's education program.

Board of Nursing fee increases

(sec. 4723.08)

The bill increases from $25 to $35 the statutory fee the Board of Nursing may charge for license or certificate renewals, thus conforming the statutory fee to the Controlling Board-approved fee now in effect. (Continuing law permits the Board of Nursing, subject to approval by the Controlling Board, to establish fees in excess of those in statute but not by more than 50%.)

Limited dispensing authority for advanced practice nurses participating in the pilot programs

(secs. 4723.56, 4723.561, 4723.59, 4729.29, 4729.51, and 4729.55)
Current law provides for the establishment of pilot programs for the use of advance practice nurses (APNs) in medically underserved areas. The programs are operated by the schools of nursing at Case Western Reserve University, Wright State University, and the University of Cincinnati. The law authorizing the programs is scheduled to be automatically repealed on January 1, 2010.

Under the pilot programs, participating APNs may be approved to prescribe drugs and therapeutic devices. The bill authorizes an APN to personally supply to patients the following drugs and devices that are included within the APN's authority to prescribe: antibiotics, antifungals, scabicides, contraceptives, and prenatal vitamins. The advanced practice nurse must maintain a written record of drugs and devices personally supplied under the bill. For each drug or device supplied, the collaborating physician must review the record within 72 hours. An APN who does not personally supply drugs in accordance with the amendment is guilty of unprofessional conduct and subject to disciplinary action under the nursing law. APNs who are authorized to personally supply drugs are exempted by the bill from provisions of the pharmacy law that limit who may possess dangerous drugs. Current law exempts certain other professionals who are authorized to dispense drugs, such as physicians, dentists, and veterinarians.

State Medical Board fee increases

The bill increases fees collected by the State Medical Board as follows:

Section	*Type of fee*	*Existing fee*	*Increased fee*
4731.09	Certificate of preliminary examination for persons who desire to practice medicine and surgery or osteopathic medicine and surgery	$25	$35
4731.10	Certification of an application for licensure in another state for persons licensed in Ohio	$35	$50
4731.14	Issuance fee for certificate to practice medicine and surgery or osteopathic medicine and surgery as it relates to graduate medical education and persons who have obtained certification from the educational commission for foreign medical graduates and who have completed specified graduate medical education	$100	$300
4731.15	Biennial registration fee for holders of a certificate to practice a limited branch of medicine or surgery	$35	$50
4731.17	Certificate to practice a limited branch of medicine or surgery	$100	$250
4731.26	Duplicate of any certificate	$25	$35
4731.281	Biennial certificate of registration for holders of certificates to practice medicine and surgery, osteopathic medicine and surgery, or podiatry	$250	$275
4731.291	Training certificate for internship, residency, or clinical fellowship, and renewals of training certificates	$25	$35
4731.53	Certificate of preliminary examination for persons who desire to practice podiatry	$25	$35
4731.56	Certificate issuance fee for certificate to practice podiatry	$100	$300

Staggered physician license renewal procedure

(sec. 4731.281; Section 213)

Under existing law, the renewal of all certificates of registration held by physicians and podiatrists occurs on the first day of July of each even-numbered year. The bill requires the State Medical Board to institute a biennial renewal system that is staggered quarterly and ordered alphabetically. The system will be implemented over a two-year period and provides for graduated renewal fees and adjustments in continuing education requirements during the initial implementation period.

Physician loan repayment program

(secs. 4731.14, 4731.24, 4731.281, and 4731.56; Sections 157, 158, and 213)

Under the Physician Loan Repayment Program, the Ohio Student Aid Commission agrees to repay all or part of the principal and interest of a government or other educational loan taken by a primary care physician who has been selected

by the Director of Health and agreed to assignment to a health resource shortage area. The Program was created pursuant to Sub. H.B. 478 of the 119th General Assembly, which took effect in 1992. The enabling legislation is repealed effective July 30, 1998. The bill extends the repeal date to July 30, 2001.

State Medical Board's Quality Intervention Program

(sec. 4731.22(C)(2) and (K); Section 236)

Under the State Medical Board's duties to investigate evidence that a person has violated the Physicians and Limited Practitioners Law (Chapter 4731.) or rules adopted under that Law, the bill requires the Board to develop and implement a quality intervention program designed to improve physicians' clinical and communication skills through remedial education. In developing and implementing the quality intervention program, the Board may do all of the following:

(1) Offer in appropriate cases as determined by the Board, an educational and assessment program to physicians pursuant to an investigation the Board conducts;

(2) Select providers of educational and assessment services for physicians, including a quality intervention program panel of case reviewers;

(3) Refer physicians to educational and assessment service providers and approve individual educational programs recommended by those providers. The Board shall monitor the progress of each physician undertaking such an educational program.

(4) Determine successful completion of an educational program undertaken by a referred physician, and require further monitoring of a physician or other action that the Board determines to be appropriate;

(5) Adopt rules in accordance with the Administrative Procedure Act to further implement the quality intervention program.

Additionally, the bill requires a physician who participates in an individual educational program pursuant to this provision to pay the financial obligations arising from that educational program.

The bill further provides that, in the absence of fraud or bad faith, a provider of educational and assessment services selected by the Board for the quality intervention program cannot be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to the Physicians and Limited Practitioners Law. This qualified immunity would be identical to the immunity current law confers upon current or former members, agents, and representatives of the State Medical Board. Under the bill, the state will provide and pay for the defense of any claim or action arising out of a provider of educational and assessment services acts, etc., and any resulting judgment, compromise, or settlement (other than punitive damages) of the claim or action of a provider if the provider meets certain conditions relative to requesting and cooperating in the defense.

State Medical Board Operating Fund

(secs. 4731.24, 4731.281, 4731.40, and 4743.05; Section 213)

Under current law, receipts of the State Medical Board, except a portion of certain fees and fines, must be deposited in the State Treasury to the credit of the Occupational Licensing and Regulatory Fund or to the General Revenue Fund (GRF). Receipts so deposited must be used solely for the administration and enforcement of the Physician Assistants and Physicians and Limited Practitioners Laws (R.C. Chapters 4730. and 4731.). The bill requires that, beginning July 1, 1998, the receipts currently being credited to that Fund or to the GRF be credited instead to the State Medical Board Operating Fund, which the bill creates on that date.

Currently, one-half of all fines collected for a violation of the law governing physicians and limited practitioners of medicine (Chapter 4731.) are deposited into the state treasury to the credit of the General Revenue Fund; the other one-half is distributed to the treasury of the county or municipal corporation where the violation occurred. The bill requires that the one-half of fines collected that goes to the state be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund in fiscal year 1998 and to the credit of the State Medical Board Operating Fund thereafter.

Bond required of the Secretary of the State Board of Psychology

(sec. 4732.04)

Under the bill, the Secretary of the State Board of Psychology must give a bond of $10,000 to the state, with only one surety instead of the two or more sureties that are required under current law.

Chiropractor's license renewal fee

(sec. 4734.07)

The bill increases the annual license renewal fee for chiropractors from $150 to $250.

Deposit of fines for practicing chiropractic without a certificate

(sec. 4734.16)

The bill redirects funds from fines collected for practicing chiropractic without a certificate, holding one's self out as a chiropractor without having a certificate from the Chiropractic Examining Board, or practicing chiropractic after the person's certificate is revoked or suspended prior to reinstatement from the General Revenue Fund to the Occupational Licensing and Regulatory Fund.

Nursing home administrators' license fees

(secs. 4751.06 and 4751.07)

The bill requires an applicant for licensure as a nursing home administrator to pay to the Board of Examiners of Nursing Home Administrators an original license fee of $210.

An individual licensed as a nursing home administer holds a certificate of registration which must be renewed annually. The annual registration fee is $150. The bill would increase it to $210.

Occupational therapists, physical therapists, athletic trainers, and assistants

(secs. 1785.01, 4755.10, 4755.12, 4755.40, 4755.41, 4755.47, 4755.48, and 4755.64)

Under current law, the appropriate section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board may suspend, revoke, or refuse to issue or renew the license of an occupational therapist, occupational therapy assistant, physical therapist, physical therapy assistant, or athletic trainer who is found to have committed certain acts related to the profession or is convicted of an offense involving moral turpitude or a felony reasonably related to the profession. The bill provides that, with regard to a conviction, the disciplinary action may be taken regardless of the state or county in which it occurred. The bill adds to the sanctions the Occupational Therapy or Physical Therapy Section may impose reprimanding a license holder or placing the license holder on probation. (The Athletic Trainers Section already has this authority.) The bill also adds as grounds for discipline (1) having been disciplined by the licensing authority of another state or country for an act that would constitute grounds for discipline by the Board and (2) aiding or abetting the unlicensed practice of occupational therapy, physical therapy, or athletic training.

Current law permits an occupational therapist with a license from another state to practice in Ohio for up to 120 days per year without an Ohio license. The bill eliminates this authority.

The bill conforms and clarifies certain provisions of the laws pertaining to the Board's authority, including a requirement that administrative hearings be held in accordance with the Administrative Procedure Act, prohibitions that apply to waiving insurance copayments or deductibles, and provisions that allow an athletic trainer's license to be reinstated after revocation.

Physical therapist examinations

(sec. 4755.43)

Under current law, licensure examinations for physical therapists and physical therapist assistants are required to be held in Columbus. The bill eliminates this requirement.

Deposit of Occupational and Physical Therapists Law fine revenues

(secs. 4755.49 and 4755.99)

Currently, one-half of all fines collected for violating generally the Occupational and Physical Therapists Law (Chapter 4755.) and for violating the prohibition on practicing or offering to practice occupational therapy without a license are deposited into the state treasury to the credit of the General Revenue Fund; the other one-half of the fines are paid to the treasurer of the municipal corporation or county in which the violation occurred. The bill requires the portion of the fines being credited to the General Revenue Fund instead be credited to the Occupational Licensing and Regulatory Fund.

Educational requirements for licensure as a professional counselor

(secs. 4757.22 and 4757.23; Sections 169 and 170)

Existing law specifies that the counselor training required for licensure as a professional counselor or as a professional clinical counselor must include participation in a supervised practicum or internship in counseling. The bill requires participation in both a supervised practicum and internship as opposed to requiring one or the other.

Under current uncodified law, until September 18, 1998, an individual holding only a Master's degree in counseling may be eligible for licensure as a professional counselor by completing 60 quarter hours of specified graduate credit and not less than three years of specified supervised experience, two years of which must be post-graduate experience. This requirement replaces the statutory requirement of 90 quarter hours of specified graduate credit, which may be completed while working toward or subsequent to receiving a graduate degree in counseling. The bill modifies the uncodified requirement by specifying that it applies to individuals holding only a Master's degree who graduate on or before September 18, 1998.

Department of Human Services' offices, bureaus, and sections

(secs. 5101.02, 5101.06, and 5101.07)

The Director of Human Services is currently permitted to establish divisions within the Department of Human Services and prescribe their powers and duties. Each division must consist of a chief and the officers and employees necessary for the performance of the functions assigned to it. The Director must supervise the work of each division. The bill adds that the Director may also establish offices, bureaus, and sections. Under the bill, the provisions of law that apply to divisions also apply to offices, bureaus, and sections established by the Director.

Personnel actions within the Department of Human Services

(Section 144)

The bill provides that beginning on October 1, 1997, and for a period of 18 months thereafter, the Director of Human Services has full authority to establish, change, and abolish positions for, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote, all employees of the Department of Human Services who are not subject to the Public Employee Collective Bargaining Law. If such an action taken during this period will result in an employee being assigned to a position in a classification assigned to a pay range lower than the pay range to which the employee's classification on the bill's effective date is assigned, the Director, or in the case of a transfer outside the Department, the Director of Administrative Services, must assign the employee to the appropriate classification and place the employee in Step X (a pay classification for employees whose compensation exceeds the maximum compensation for the pay range to which the employee's job classification is assigned). The employee may not receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation. The Director must report any actions taken as described above to the House Speaker, Senate President, and Minority Leaders of the House and Senate on an annual basis in 1997, 1998, and 1999.

Current law generally makes the Director of Administrative Services responsible for classifying and reclassifying employees and placing them in Step X. The bill does not deny employees affected by personnel actions taken by the Director of Human Services the right granted under existing law to appeal these actions to the State Personnel Board of Review.

Title IV-E Private Agency Training Fund

(sec. 5101.112)

The bill establishes in the state treasury the Title IV-E Private Agency Training Fund and requires each private child placing agency and private noncustodial agency in the state that receives federal funds under Title IV-E of the Social Security Act (foster care and adoption assistance) to pay an annual fee into the new fund. An agency's annual fee is the greater of $300 or 15¢ per day times the average number of children to which the agency is providing services. The fee must be paid at the time the agency submits its annual application for a determination of the amount it will receive from the Department of Human Services under Title IV-E.

The fees credited to the fund must be used solely to receive federal financial participation for the training costs incurred by the private child placing agencies and private noncustodial agencies that receive Title IV-E funds and to reimburse those agencies for training costs. The Department is required to inform each agency of the estimated amount it will receive for training costs pursuant to this provision. The estimate must cover at least two years. All federal funds received by the Department as a share of the training costs incurred by the agencies must be allocated to the agencies that paid the fees. An agency may submit requests for reimbursement of training costs to the Department on a monthly basis. The Department is permitted to adopt rules pursuant to the Administrative Procedure Act to implement the fund and reimbursement provisions. The bill also provides that if the federal government determines that the fees collected under

this section are not state funds that can be submitted for receipt of federal financial participation under Title IV-E, the Department must cease collecting the fees and return the fees remaining in the fund to the private agencies that paid them.

State child welfare subsidy

(secs. 5101.14 and 5153.16; Section 214)

Current law requires the Ohio Department of Human Services (ODHS) to make payments ("state child welfare subsidies") to counties within 30 days after the beginning of each calendar quarter for part of their costs for county children services. The state subsidy may be used only for (1) home-based services to children and families, (2) protective services to children, (3) finding, developing, and approving adoptive homes, and (4) short-term, out-of-home care and treatment for children. The bill adds new allowable expenditures: (1) costs for the care of a child who resides with a caretaker relative, other than the child's parent, and is in the legal custody of a public children services agency (PCSA) pursuant to a voluntary temporary custody agreement or in the legal custody of a PCSA or the caretaker relative pursuant to an allegation or adjudication of abuse, neglect, or dependency and (2) other services a PCSA considers necessary to protect children from abuse, neglect, or dependency.

Under current law, ODHS may not pay a county its state child welfare subsidy until the Director of ODHS approves a county children services plan submitted by the county's PCSA for the current calendar year. ODHS is required to adopt rules prescribing the general content of the plan and of an evaluation the PCSA or an independent contractor must conduct each year of children services the PCSA provides. The bill eliminates the requirements of the PCSA children services plan and ODHS rules.

"Grandparents Raising Grandchildren Task Force"

(Section ____)

The bill creates the "Grandparents Raising Grandchildren Task Force" to study the unique needs of grandparents raising their grandchildren and develop an action plan to address their needs. As part of its duties, the Task Force must also conduct a survey to determine the number of grandparents raising their grandchildren in the state and the needs of those grandparents.

The Task Force is to consist of the following members:

- The Director of Human Services or the Director's designee;
- The Director of Aging or the Director's designee;
- Two representatives of the Ohio Association of Area Agencies on Aging as designated by the Association;
- A representative of the Ohio Association of Community Action Agencies as designated by the Association;
- Two persons representing county departments of human services in urban counties as designated by the chairperson of the Task Force;
- Two persons representing county departments of human services in rural counties as designated by the chairperson of the Task Force;
- A representative from the state's Kinship Care Task Force as designated by that Task Force;
- Five additional members appointed by the chairperson of the Task Force.

Of the five additional members of the Task Force, no more than three may be from the same political party. The Speaker of the House of Representatives and the President of the Senate are jointly to appoint the chairperson of the Task Force no later than August 1, 1997. Appointments required to be made to the Task Force by the chairperson must be made no later than September 1, 1997. Vacancies must be filled in the same manner as appointments. Members are to serve without compensation, except that they must be reimbursed for any expenses they incur in attending meetings or conducting any other duties in connection with the Task Force. Administrative expenses of the Task Force and expenses of the members will be divided between the Department of Human Services and the Department of Aging and each agency must pay half of the expenses.

The Task Force is to meet at the chairperson's call. Prior to June 1, 1999, the Task Force must report its activities, findings, recommendations, and action plan to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The Task Force will cease to exist on making its report.

Child abuse and neglect reports

(sec. 2151.421; Section 226)

County plan of cooperation

Current law requires that each county have a committee prepare a plan of cooperation setting forth the normal operating

procedure for responding to reports of alleged child abuse or neglect, nonsupport of dependents, endangering children, interference with custody, and contributing to unruliness or delinquency. The committee consists of a juvenile judge or representative, the county peace officer, chief municipal peace officers, chief township peace officers, the county prosecutor, city law directors, village solicitors, and the public children services agency. The committee's plan must include (1) a system for cross-referral of reported cases of abuse and neglect as necessary, (2) standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and neglect, methods to be used in interviewing children, categories of persons who may interview children, videotaping interviews, sharing information obtained from interviews and the videotapes, and reducing the number of times children are interviewed, (3) other standards, procedures, or systems the committee believes may minimize the damage and trauma to children, and (4) the name and title of the official responsible for making reports to the Department of Human Services' Central Registry on Child Abuse and Neglect.

The bill eliminates the committee and the need to prepare a county plan of cooperation. Instead, each PCSA must prepare a memorandum of understanding that establishes the normal operating procedure for responding to reports of alleged child abuse or neglect, nonsupport of dependents, endangering children, interference with custody, and contributing to unruliness or delinquency. The memorandum must be signed by a juvenile judge or representative, the county peace officer, chief municipal peace officers, other law enforcement officers handling child abuse and neglect cases in the county, and, if the PCSA is not the county department of human services, the county department of human services. The memorandum must include (1) the rules and responsibilities for handling emergency and nonemergency cases of abuse and neglect and (2) standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and neglect, methods to be used in interviewing children, and categories of persons who may interview children.

Information provided to the accused

Under current law, a PCSA must advise a person alleged to have committed child abuse or neglect of the disposition of the investigation. The PCSA is prohibited from providing the accused a statement of the allegations. The bill provides instead that the PCSA may not provide the accused any information that identifies the person who made the report alleging child abuse or neglect.

Notice to out-of-home care provider

Current law requires that a PCSA provide written notice of the disposition of a child abuse or neglect investigation to the administrator, director, or other chief administrative officer and the owner or governing board of an out-of-home care entity in which the alleged abuse or neglect occurred. The bill requires that the agency send, rather than provide, the notice.

County children services fund

(secs. 5101.14, 5101.141, 5101.143, and 5153.16; Sections 214 and 215)

Under current law, each county must have a children services fund into which state child welfare subsidies and federal "Title IV-E" foster care and adoption assistance money are deposited. Money in the fund may only be used for county children services.

The bill requires that all funds that a public children services agency receives from appropriations made by the board of county commissioners or any other source for the purpose of providing county children services be deposited into the county's children services fund.

Annual evaluation of county children services

(secs. 5101.14, 5153.16, 5153.161, and 5153.162; repealed sec. 5153.164)
The bill eliminates a requirement that each public children services agency (PCSA) Each county has a PCSA. It is either the children services board or the county department of human services. conduct, or contract with an independent contractor to conduct, an annual evaluation of the services the PCSA provides to children under its care, including services provided in child care facilities Current law defines "child care facility" as a public 24-hour residential facility for six or more children. during the previous calendar year under the PCSA's county children services plan. Under current law, the evaluation is due on or before each April 15, and must be submitted to the board of county commissioners, the citizens advisory committee on children's services, if any, and the Ohio Department of Human Services (ODHS). The evaluation must determine whether children residing in a child care facility receive (1) competent and adequate care, protection, treatment, and supervision from the staff and employees of the facility or are mistreated, neglected, or otherwise abused by the personnel, (2) wholesome and well-balanced meals, ample clothing and wearing apparel, sufficient linens and toiletries, and other similar items necessary for their health, hygiene, and physical and mental development, (3) appropriate public education in accordance with state law, (4) adequate recreational opportunities, and

(5) instruction and training with respect to emergency fire and tornado procedures.

The bill also eliminates a requirement that a PCSA order the individual in charge of a child care facility operated by the PCSA to remedy inadequate conditions or to institute activities or programs the PCSA determines from the annual evaluation to exist or to be needed.

Public children services agency contracts

(sec. 5153.16)

The bill permits a public children services agency (PCSA), in accordance with rules of the Ohio Department of Human Services (ODHS) and on behalf of children in the county the PCSA considers to be in need of public care or protective services, to contract with all of the following for the purpose of assisting the PCSA with its duties:

(1) County departments of human services;

(2) Boards of alcohol, drug addiction, and mental health services;

(3) County boards of mental retardation and developmental disabilities;

(4) Regional councils of political subdivisions;

(5) Public and private providers of services;

(6) Managed care organizations and prepaid health plans.

A PCSA contract regarding the PCSA's duties concerning reports and investigations of known and suspected child abuse and neglect may not provide for the entity under contract with the PCSA to perform any service not authorized by ODHS rules.

Demonstration projects

(sec. 5101.142)

The bill permits the Department of Human Services to apply to the Secretary of Health and Human Services for a waiver of the child welfare requirements established under Title IV-B of the Social Security Act or under any other federal law or regulations, in order to conduct demonstration projects or otherwise improve the effectiveness and efficiency of the children services function exercised by public children services agencies.

Removal from the county of a child placed in foster care in a county other than the child's county of residence because the child is disrupting the educational process in the school the child is attending

(secs. 2151.23 and 2151.55)

The bill permits a juvenile court to order the removal of a child from the county served by the court if the child was placed for foster care in the county from another county and the child is causing a significant and unreasonable disruption of the educational process in the school the child is attending. The bill permits the superintendent of the school district in which the child resides in foster care to file a complaint requesting that the child be removed from the county.

The court is required to conduct a hearing as soon as possible, but no later than 30 days after the complaint is filed. No later than five days before the date on which the court hearing is to be held, the court must send to the entity that placed the child for foster care in the county and to the superintendent written notice by first class mail of the date, time, place, and purpose of the hearing. The hearing is limited to determining whether the child is causing a significant and unreasonable disruption to the educational process. If the court determines the child is causing such a disruption, the court is required to order the entity that placed the child for foster care in the county to remove the child from the county. If the court determines the child is not causing such a disruption, the court must dismiss the complaint.

If it orders the removal of the child, the court is required to send written notice of the removal order to the court that required the child's placement for foster care in the county either pursuant to a journalized case plan or other order. On receipt of the removal notice, the juvenile court receiving the notice must enter the notice on its journal and do one of the following:

(1) If a case plan was journalized as part of the dispositional order, the court shall schedule a hearing to be held no later than ten days after the removal notice was received. The court must give notice of the date, time, and location of the hearing to all parties and the guardian ad litem. At the hearing, the court must make appropriate changes to the case plan consistent with the removal order and journalize the case plan.

(2) If no case plan was journalized as part of the dispositional order, the court must immediately issue a new order concerning the child's placement pursuant to the Juvenile Code that is consistent with the removal order.

The bill does not affect the jurisdiction of a court with respect to a child for which the court issued a dispositional order under the Juvenile Code. The bill gives juvenile courts exclusive, original jurisdiction over the action described above that may be initiated to order the removal of a child from the county.

Designation of the public children services agency responsible for conducting certain duties and providing services to an abused, neglected, or dependent child temporarily residing in a shelter for domestic violence or homeless shelter in a county other than the county of residence

(secs. 2151.421, 2151.422, and 3113.40)

The bill requires a public children services agency, on receipt of a report of child abuse or neglect, to determine whether the child subject to the report is living in a shelter for victims of domestic violence or a homeless shelter and whether the child was brought to the shelter pursuant to an agreement with a shelter in another county. If so, the agency must immediately notify the agency of the county from which the child was brought of the report and all the information contained in the report. The county from which the child was brought, on receipt of the notice, must conduct the investigation of the report and perform all duties required of the agency pursuant to the Juvenile Code with respect to the child. Some examples of those duties include consulting with a peace officer prior to removal of the child from the child's parents, stepparents, or guardian or any other person; providing protective and emergency supportive services; providing updates to certain persons who make reports of child abuse and neglect on the general status of the child and the investigation of abuse or neglect; and finding foster homes for the child. If a child subject to a report is not living in a shelter or was not brought from another county, the agency that received the report must conduct the investigation and perform all duties required pursuant to the Juvenile Code with respect to the child. The agency of the county in which the shelter in which the child is living is located and the agency of the county from which the child was brought may ask the shelter to provide information concerning the child's residence address and county of residence to the agency.

The bill also provides that if a child is living in a shelter and the child was brought to the shelter from a shelter in another county pursuant to agreement, the agency of the county from which the child was brought must provide any services to or take custody of the child if the services or custody are needed or required.

Duty of shelters for victims of domestic violence and homeless shelters to obtain and disseminate certain information concerning persons to whom they provide shelter

(secs. 2151.422 and 3113.40)

The bill requires shelters for victims of domestic violence A technical amendment is necessary to amend section 3113.33 to make the definition of "shelter for victims of domestic violence" provided in that section specifically applicable to the provisions of the bill requiring such a shelter to keep records about the residence address and county of residence of persons to whom they provide shelter. and homeless shelters to determine, if possible, the last known residence address and county of residence of persons to whom they give shelter. The shelters must keep the information confidential and may only release it to a public children services agency in the county in which the shelter is located or from which the child was brought, on the request of such an agency.

"Title IV-E" foster care and adoption assistance

Foster care services

(sec. 5101.141)

Federal funding is provided to states for foster care and adoption assistance under Title IV-E of the Social Security Act. Federal law allows states to use Title IV-E funds for all of the following expenses of foster care maintenance:

(1) A child's food, clothing, shelter, daily supervision, and school supplies;

(2) A child's personal incidentals;

(3) Reasonable travel to a child's home for visitation;

(4) Liability insurance with respect to a child.

Current state law requires counties, on behalf of children eligible for Title IV-E foster care maintenance payments, to cover the cost of the first three of these expenses. The bill allows counties to make payments to cover the cost of liability insurance with respect to children eligible for Title IV-E foster care maintenance payments.

Demonstration project

(secs. 5101.141 and 5101.142)

The bill authorizes the Ohio Department of Human Services (ODHS) to apply to the United States Secretary of Health and Human Services for a waiver of Title IV-E requirements established by federal law or regulations to conduct a demonstration project expanding eligibility for and the services provided under Title IV-E. ODHS may enter into agreements with the U.S. Secretary necessary to implement the project, including agreements establishing the terms and conditions of the waiver authorizing the project. If a project is to be established, ODHS is required to do all of the following:

(1) Adopt rules in accordance with the Administrative Procedure Act governing the project. The rules must be consistent with the agreements ODHS enters into with the U.S. Secretary.

(2) Enter into agreements with public children services agencies (PCSAs) that ODHS selects for participation in the project. ODHS is prohibited from selecting a PCSA that objects to participation or refuses to be bound by the terms and conditions of the project.

(3) Contract with persons or governmental agencies providing services under the project.

(4) Amend the state plan for Title IV-E services as needed to implement the project;

(5) Conduct ongoing evaluations of the project;

(6) Perform other administrative and operational activities required by the agreement with the U.S. Secretary.

The bill authorizes a county, if it is participating in the project, to make payments on behalf of children eligible for Title IV-E foster care maintenance payments to cover the cost of providing services under the project.

Rules

(sec. 5101.141)

Current law requires ODHS to adopt rules implementing its authority as the single state agency administering Title IV-E funds. The rules must be adopted in accordance with the Administrative Procedure Act, which requires a public hearing. Under the bill, ODHS is not to follow the Administrative Procedure Act, and therefore is not required to hold a public hearing, when adopting internal management rules governing financial and administrative requirements applicable to public children services agencies. Rules establishing eligibility, program participation, and other requirements are to be adopted in accordance with the Administrative Procedure Act.

Medicaid and Disability Assistance Medical Assistance right of recovery

(secs. 2744.05, 5101.58, and 5111.18)

Current law provides that the acceptance of Temporary Assistance for Needy Families, Medicaid, or Disability Assistance gives a right of subrogation to the Ohio Department of Human Services (ODHS) and a county department of human services against the liability of a third party for the cost of medical services and care arising out of injury, disease, or disability of the recipient. *Black's Law Dictionary* defines subrogation as follows:

> The substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities. [*Black's Law Dictionary* (6 Ed. 1990) 1427]

The bill replaces right of subrogation with right of recovery. Under the right of subrogation, ODHS or a county department, by substituting itself for a recipient, is subject to the limits the recipient faces when bringing an action or claim against a third party liable for the cost of medical services provided to the recipient. A subrogee cannot succeed to a right not possessed by its subrogor. [*Galanos v. Cleveland* (1994), 70 Ohio St. 3d 220, at 222.] According to Bob Byrne of the Ohio Attorney General's Office, unlike right of subrogation, right of recovery gives ODHS and a county department authority to seek reimbursement of Medicaid and Disability Assistance Medical Assistance independent of the recipient and therefore may not be subject to the limits the recipient faces when seeking payment from a liable third party. This could be significant, for example, when a recipient fails to bring a civil action within the period prescribed by a statute of limitation. The Ohio Supreme Court has held that "the state of Ohio, absent express statutory provision to the contrary, is exempt from the operation of a generally worded statute of limitations." [*Ohio Dept. of Transportation v. Sullivan* (1988), 38 Ohio St. 3d 137, at 140.] As long as the statute of limitation that bars the recipient from bringing the action is not also expressly applied to the state, ODHS, acting independently of the recipient under the right of recovery rather than in substitution of the recipient under the right of subrogation, may bring an action to recover its Medicaid or Disability

Assistance Medical Assistance costs. ODHS is permitted to adopt rules in accordance with the Administrative Procedure Act to implement the right of recovery.

Recovery from a political subdivision

Current law governing the liability of a political subdivision for damages stemming from injury, death, or loss to a person or property caused by an act or omission in connection with a governmental or proprietary function provides that if a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits must be disclosed to the court and the amount of the benefits must be deducted from any award against a political subdivision recovered by the claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to those benefits.

The Ohio Supreme Court has applied this law to an attempt by ODHS to seek reimbursement from a political subdivision for the costs of providing medical benefits to a Medicaid recipient needed after the recipient suffered injuries caused by a political subdivision's negligence. The Court held that the law barred ODHS from bringing an action under its right of subrogation against the political subdivision with respect to the Medicaid benefits provided to the recipient. [*Galanos v. Cleveland* (1994), 70 Ohio St. 3d 220.]

The bill provides that the current law does not prohibit ODHS from recovering from a political subdivision, pursuant to its right of recovery, the cost of medical assistance benefits provided under Medicaid or Disability Assistance Medical Assistance.

Recovery based on services provided by a managed care organization

Under current law, ODHS, when seeking reimbursement from a liable third party for costs of providing medical benefits under Medicaid or Disability Assistance Medical Assistance, may not receive an amount exceeding the amount of medical expenses ODHS paid on behalf of a recipient. The bill provides that, in the case of a recipient who receives medical services or care through a managed care organization, the amount of ODHS's recovery claim is to be the amount the managed care organization pays for medical services or care rendered to the recipient, even if that amount is more than the amount ODHS and a county department pays to the managed care organization for the recipient's medical services or care.

TANF recipients working in public schools

(secs. 3317.14, 3319.089, and 5101.831)

The bill allows a board of education of any city, local, or exempted village school district to adopt a resolution approving a contract with a county department of human services to provide for a recipient of Temporary Assistance for Needy Families who is required to participate in the Job Opportunities and Basic Skills (JOBS) Training Program and has a child enrolled in a public school in that district to volunteer or work for compensation in that public school under the Work Experience Program component of the JOBS Program. As part of a volunteer or work position, a recipient must attend academic home enrichment classes that provide instruction for parents in creating a home environment that prepares and enables children to learn at school. Unless it is not possible or practical, contracts must provide for a recipient to volunteer or work at the school as a classroom aide. If that is impossible or impractical, the contract may provide for the recipient to volunteer or work in another position at the school. A recipient volunteering or working as a classroom aide is not required to obtain an educational aide permit or paraprofessional license. Boards of education may receive funding to pay for coordinating, training, and supervising recipients volunteering or working at public schools.

Before a recipient is assigned to a public school, the appointing or hiring officer of the board of education is required to request a criminal records check of the recipient in the same manner current law requires that a request be made for a person who will be responsible for the care, custody, or control of a child. A recipient may not be assigned to a school if he or she previously has been convicted of or pleaded guilty to an offense that bars a person from working for a school district in a position in which the person is responsible for the care, custody, or control of a child.

The bill provides that a recipient volunteering or working at a public school under the JOBS Program is not an employee of the board of education. The recipient also is not considered an employee for the purposes of state law governing the civil liability of political subdivisions and is not entitled to any immunity or defense available to employees of political subdivisions under state law or Ohio common law.

Privatizing the JOBS Program

(sec. 5101.891)

Under current federal and state law, recipients of Temporary Assistance for Needy Families and food stamp benefits who

are considered "employable" must participate in work activities as a condition of eligibility. Current state law establishes the Job Opportunities and Basic Skills (JOBS) Training Program consisting of many components to which employable recipients are assigned to fulfill work activity requirements. The Ohio Department of Human Services is required to administer the JOBS Program through each county department of human services. County department responsibilities under the JOBS Program include determining whether a recipient is employable, assigning employable recipients to the various components, and monitoring their participation.

The bill authorizes a county department to contract with a community action agency, Continuing law defines "community action agency" as a community-based and operated private nonprofit agency or organization that includes or is designed to include a sufficient number of projects or components to provide a range of services and activities having a measurable and potentially major impact on the causes of poverty in the community or those areas of the community where poverty is a particularly acute problem and is designated as a community action agency by the office of community services. private child placing agency, private noncustodial agency, religious organization, or other private entity for the entity to assume some or all of the county department's duties under the JOBS Program. If more than one private entity offers to contract with a county department, the county department is required to give priority in contracting to entities that offer to share costs of performing the duties under the contract.

Adoptive placement payments

(sec. 5103.12)

The bill authorizes the Department of Human Services to enter into agreements with public children services agencies and private child placing agencies under which the Department will make payments to encourage the adoptive placement of children in the permanent custody of a public children services agency. If the Department terminates, or refuses to enter or renew, an agreement with an agency, the agency is entitled to a hearing under the Administrative Procedure Act. The Department is not required to follow competitive selection procedures or to receive the approval of the Controlling Board to enter into the agreements or to make payments pursuant to agreements.

The bill requires that the Department adopt rules in accordance with the Administrative Procedure Act to implement the agreements. The rules must establish (1) a single, uniform agreement that, at a minimum, prescribes a payment schedule and the terms and conditions with which an agency must comply to receive a payment, (2) eligibility requirements an agency must meet to enter into an agreement with the Department, (3) eligibility requirements that a child who is the subject of an agreement must meet, and (4) other administrative and operational requirements.

Child day-care licensure exemption

(sec. 5104.02)

Continuing law generally prohibits the operation of a child day-care center or type A family day-care home without a license issued by the Director of Human Services. A child day-care center is any place in which child day-care is provided for thirteen or more children at one time or any place that is not the permanent residence of the licensee or day-care administrator in which child day-care is provided for seven to twelve children at one time. A type A family day-care home is the permanent residence of a day-care administrator in which child day-care is provided for seven to twelve children at one time or the permanent residence of a day-care administrator in which child day-care is provided for four to twelve children at one time if four or more children at one time are under age two.

Current law provides that a facility is exempt from day-care licensure if the Director of Human Services determines that at least one parent, custodian, or guardian of each child receiving child day-care at the facility is on the premises and readily accessible at all times. Child day-care provided on the premises of a parent's, guardian's, or custodian's place of employment is not exempt under this provision. The bill provides instead that child day-care provided on the premises at which a parent, guardian, or custodian is employed more than two and one-half hours a day is not exempt. This means child day-care provided on the premises of a parent's, guardian's, or custodian's place of employment is not required to be licensed if the parent, guardian, or custodian is employed on the premises two and one-half or fewer hours a day.

Publicly funded child day-care

(secs. 5104.30, 5104.38, and 5104.39)

Eligibility

Current law designates the Department of Human Services as the state agency responsible for administration and coordination of federal and state funding for publicly funded child day-care in Ohio. The bill codifies current policy that the following are eligible for publicly funded child day-care:

(1) Recipients of Temporary Assistance for Needy Families (TANF);

(2) Former recipients of TANF no longer receiving TANF due to earnings who receive transitional child day-care;

(3) Subject to available funds, other individuals determined eligible in accordance with rules the Department adopts.

The bill requires that the Department's eligibility rules specify the maximum amount of adjusted income a family may have for initial eligibility and allow a family to continue to receive publicly funded child day-care until the family's adjusted income exceeds 150% of the federal poverty guideline. Initial and continued eligibility is subject to available funds if the family is not receiving TANF or transitional child day-care.

Publicly funded child day-care guaranteed for certain Head Start children

(sec. 5104.381)

Under the bill, a family becomes ineligible for publicly funded child day-care when its adjusted income exceeds 150% of the federal poverty guidelines. The bill exempts from this restriction families that have a child enrolled in Head Start and are also receiving publicly funded child day-care for that child until the end of the Head Start program year and provides that publicly funded child day-care for those families is guaranteed.

With this provision, the bill provides three categories of guaranteed publicly funded child day-care: (1) assistance groups receiving Temporary Assistance for Needy Families (TANF), (2) assistance groups receiving transitional child day-care, and (3) assistance groups that have a child enrolled in Head Start who is also receiving publicly funded child day-care until the end of the Head Start program year.

Schedule of fees

Current law requires that the Department's eligibility rules establish a schedule of fees requiring any or all eligible caretaker parents to pay a fee for publicly funded child day-care according to adjusted income and family size. The bill requires that the schedule of fees apply to all eligible caretaker parents, other than those whose children receive protective day-care or who are eligible because they are TANF recipients.

Use of federal day-care funds

In accordance with former federal law, current state law requires that the Department allocate and use at least 25% of federal funds received under the Child Care and Development Block Grant for activities related to improving the quality and increasing the supply of child day-care and providing before- and after-school and early childhood development services. Not less than 75% of the 25% must be used to establish or to expand and conduct early childhood development programs or before- and after-school child day-care. Not less than 20% of the 25% must be used for child day-care resource and referral services, to assist child day-care providers in meeting the requirements of state law, to monitor compliance with state law, to provide training and technical assistance relative to child day-care, and to improve compensation paid to child day-care staff. Current law also establishes requirements for county proposals requesting grants to expand and conduct early childhood development programs or before- and after-school child day-care programs. The bill repeals these provisions and provides instead that, in accordance with new federal law enacted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Department must allocate and use at least 4% of the federal funds for activities (1) to provide comprehensive consumer education to parents and the public, (2) to increase parental choice, and (3) to improve the quality, and increase the supply, of child day-care.

Also in accordance with the new federal law, the bill provides that not more than 5% of the aggregate amount of federal funds received under the Child Care and Development Block Grant for a fiscal year may be expended for administrative costs.

Monitoring expenditures

Under current law, the Department is required to monitor the anticipated future expenditures for publicly funded child day-care with the assistance of the Office of Budget and Management (OBM). The bill requires that the Department monitor the expenditures each month and that county departments of human services and child day-care providers and advocates also assist.

Reports

The Department is required by current law to conduct an annual evaluation of publicly funded child day-care and file a report of the evaluation with both houses of the General Assembly. The bill requires that the Department conduct quarterly evaluations that specify for each county the number of participants and amount of expenditures. In addition to providing reports of evaluations to the General Assembly, the Department must provide reports to interested parties on request.

State TANF plan submitted to General Assembly

(sec. 5107.021)

Federal law requires that a plan outlining how a state intends to operate the Temporary Assistance for Needy Families (TANF) Program be submitted to the United States Secretary of Health and Human Services every two years. The bill requires that the Department of Human Services submit the plan to the following members of the General Assembly before submitting it to the United States Secretary:

(1) The President of the Senate;

(2) The Speaker of the House of Representatives;

(3) The chairpersons of the Senate Finance and Financial Institutions Committee and the House of Representatives Finance and Appropriations Committee.

If the General Assembly enacts a concurrent resolution disapproving the plan not later than 30 days after the date the plan is submitted to the specified members of the General Assembly, the Department is prohibited from submitting the plan to the United States Secretary. Instead, the Department is required to submit a new plan to the specified members of the General Assembly with the changes stated in the concurrent resolution and continue to submit new plans until a period of 31 days following submission of the plan has passed in which the General Assembly has not enacted a concurrent resolution disapproving the plan.

Program to involve TANF recipients in their children's education

(sec. 5107.35)

The bill requires that the Department of Human Services, in consultation with the State Board of Education, adopt rules to create a program under which a recipient of Temporary Assistance for Needy Families who is the parent of, or caretaker relative responsible for the care of, a child enrolled in grade twelve or lower is involved in the child's education on a regular basis.

Head Start volunteering by TANF recipients

(sec. 5101.832)
The bill requires the Department of Human Services, to the maximum extent permitted by the federal law, to count toward fulfillment of the TANF work requirements any hours an employable recipient who is the parent of, or a relative responsible for the care of, a child enrolled in a Head Start agency spends volunteering at the child's Head Start agency.

Non-TANF emergency assistance

(Sections 163 and 164)

Substitute House Bill 167 of the 121st General Assembly required that the Department of Human Services establish the Adult Emergency Assistance Program for fiscal years 1996 and 1997. Funds appropriated for the Program are used to assist persons age 18 or older who are not eligible for assistance under the Family Emergency Assistance Program and have incomes not greater than 32% of the federal poverty guideline. Recipients receive assistance with emergency needs such as food, clothing, and shelter.

The bill renames the program the Non-TANF Emergency Assistance Program and provides for its operation in fiscal years 1998 and 1999. Funds appropriated for the program are to be used to assist persons age 18 or older who are ineligible for Temporary Assistance for Needy Families and have incomes not greater than 40% of the federal poverty guideline. Recipients are to receive assistance with emergency needs including food, clothing, shelter, and other essential goods or services.

As with fiscal year 1997 appropriations, the Department of Human Services is required to distribute, in a single payment, fiscal years 1998 and 1999 appropriations to the Ohio State Set-Aside Committee of the Federal Emergency Management Agency or to a fiscal agent designated by the Committee. The Committee is required to distribute the appropriations to the counties in allotments the Committee determines. Each county's allocation is to be paid to a nonprofit entity that serves as the county's emergency food and shelter board or a fiscal agent designated by the entity. Current law provides that a local entity that receives funds under the program in fiscal year 1997 may use up to 3% of its allocation for administrative purposes. The bill provides that a local entity that receives funds in fiscal years 1998 and 1999, or the entity's designee, may use up to 4% of the county's allocation for administrative purposes.

As in fiscal years 1996 and 1997, each local entity that receives funds under the program in fiscal years 1998 and 1999 is required to report to the State Set-Aside Committee information regarding the use of the funds. The Committee is

required to compile the information and provide it to the Department and General Assembly. Under current law, information pertaining to fiscal year 1997 is due August 29, 1997. The bill requires that the information for fiscal years 1998 and 1999 be provided no later than September 30 of each fiscal year.

Medicaid expansion for children

(secs. 5111.01 and 5111.011)

Children currently are eligible for Medicaid as follows: (1) children under age six with family incomes at or below 133% of the federal poverty guideline and (2) children age six or older but under age 19 with family incomes at or below 100% of the federal poverty guideline (eligibility for this category is being phased-in, and currently applies to children age 13 and younger).

The bill authorizes the Ohio Department of Human Services to expand Medicaid eligibility to include individuals under age 19 with family incomes at or below 150% of the federal poverty level. The expansion will not occur unless the Department receives approval from the federal government. The expansion may be implemented on any date selected by the Department, but not sooner than January 1, 1998. The Office of Budget and Management estimates that by 1999, the expansion will make an additional 97,000 children eligible for Medicaid.

The bill grants the Department general rule-making authority for operating the Medicaid program and specifies that the rules may establish special conditions for the Medicaid expansion authorized by the bill. It allows the Department, by rule, to exempt individuals eligible under the expansion from some or all of the existing laws that prohibit certain transfers of assets for purposes of qualifying for Medicaid. Public hearings are not required as part of the rule-making process.

Medicaid eligibility determination

(sec. 5111.011)

The bill provides that the value of a prepaid burial contract cannot be considered when determining Medicaid eligibility if the contract's value is not more than $8,000 and the Department of Human Services is designated as the recipient of any funds remaining after the burial costs are paid.

Medicaid drug reimbursement

(secs. 5111.07 and 5111.08)

Under general rule-making authority, the Department of Human Services has established a drug reimbursement system for the Medicaid program. The reimbursement formula includes a dispensing fee that is based on a study that the Department is required to conduct under existing law. The bill gives the Department specific rule-making authority with regard to Medicaid drug reimbursement and requires that the rules be adopted under the Administrative Procedure Act. The bill provides in statute that the dispensing fee may not be lower than $3.50, which is the current dispensing fee that the Department has set by rule.

Study committee

The bill creates the Medicaid Drug Reimbursement Study Committee. The Committee is required, on an ongoing basis, to review the Medicaid drug reimbursement system, including the impact of "cognitive services" provided by pharmacists and "unit-dose reimbursement." The Committee may propose any changes in the reimbursement system that it determines are necessary. The Committee is to meet at intervals agreed to by its members and at the call of the chairperson. Each September, beginning in 1997, the Committee must submit a report of its activities, findings, and recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill requires the Committee's membership to include: (1) the Director of Human Services or a designee, (2) the Director of Budget and Management or a designee, (3) a member of the Senate appointed by the President of the Senate, (4) a member of the House of Representatives appointed by the Speaker of the House of Representatives, (5) a representative of the Ohio Pharmacists' Association selected by the Association, and (6) a representative of the Council of Institutional Pharmacists of the Ohio Health Care Association selected by the Association.

Members must be appointed and selected no later than 15 days after the bill's effective date and will serve at the pleasure of the body that appointed or selected them. Vacancies must be filled in the same manner as original appointments and selections. The Committee chairperson must be jointly appointed by the Speaker of the House of Representatives and President of the Senate. Committee members will serve without compensation. The Department of Human Services is responsible for any administrative expenses incurred by the Committee.

Medicaid estate recovery

Study of transfer of assets and the Medicaid estate recovery program

(Section 63.08)

Current law requires the Ohio Department of Human Services to institute an estate recovery program against the property and estates of Medicaid recipients to the extent federal law and regulations permit. The Department may seek to recover only after a Medicaid recipient and the recipient's spouse, if any, have died and only at a time when the recipient has no surviving child who is under age 21, blind, or permanently and totally disabled. Recovery is restricted to the costs of nursing facility services, home and community-based services, and hospital and drug services related to nursing facility or home and community-based services correctly paid under Medicaid to a recipient age 55 or older.

The bill requires ODHS to conduct a study or contract for a study to be conducted for the purpose of determining the extent to which applicants for nursing home services paid for through the Medicaid program are transferring their assets for less than fair market value to avoid depleting the assets for their own support prior to becoming eligible for Medicaid. The study must include an analysis of the Medicaid estate recovery program, including a compilation of data regarding the frequency of homestead property being available for recovery and the experience of other states in operating Medicaid estate recovery programs. The study must include recommendations for legislative changes that would deter pre-eligibility asset transfers or enhance the efficacy of the Medicaid estate recovery program. The study results must be filed with the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 1, 1999.

Estate administrator statement concerning whether deceased was a Medicaid recipient

(sec. 2113.07; Section 154)

Current law provides that, before being appointed executor or administrator of a decedent's estate, a person must make and file an application containing certain information related to administration of the estate. The bill requires the application to include a statement of whether the deceased had after age 55 been a Medicaid recipient under Ohio law. The bill also provides that if the application states that the deceased had received Medicaid after age 55, letters of administration are not to be issued until the person notifies the court that a copy of the application has been filed with the Office of the Attorney General for purposes of recovery on behalf of the state. The General Assembly, under the bill, requests the Supreme Court to promptly adopt, pursuant to its constitutional authority any rules needed to implement these provisions.

Medicaid managed care rule-making authority

(sec. 5111.17)

Current law requires the Ohio Department of Human Services (ODHS) to establish in Franklin, Hamilton, and Lucas counties a managed care system under which designated Medicaid recipients are required to obtain medical services from providers designated by ODHS. ODHS is authorized to require Medicaid recipients in any other county to receive all or some of their health care through managed care organizations and the providers designated by them. The managed care organizations contract with ODHS and are paid by ODHS pursuant to a capitation or other risk-based methodology provided for in rules. The rules must include all of the following:

(1) A monthly capitation or other risk-based payment rate system for managed care organizations under contract to provide managed care to participating Medicaid recipients;

(2) The method by which ODHS will issue requests for proposals from managed care organizations interested in providing managed care to participating Medicaid recipients, including public notice, process, timing, and data requirements;

(3) Performance standards of managed care organizations under contract with ODHS;

(4) A review process for any managed care organization that has submitted a proposal to have ODHS reconsider the denial or termination of a contract;

(5) Any other procedures or requirements ODHS considers necessary to implement managed care.

Under the bill, ODHS is still required to adopt rules to implement the law but the matters to be dealt with in the rules are no longer specified in statute.

Medicaid Managed Care Reimbursement Study Committee

(sec. 5111.172)

The bill creates the eight-member Medicaid Managed Care Reimbursement Study Committee to review, on an ongoing basis, reimbursement under the managed care system established under existing law governing the Medicaid program and

to propose any changes it determines are necessary. The committee is to consist of the following members:

(1) The Director of the Department of Human Services or a designee;

(2) The Superintendent of Insurance or a designee;

(3) The Director of Budget and Management or a designee;

(4) The chairpersons of the committees of the House of Representatives and Senate with primary responsibility for finance legislation;

(5) Two representatives of the Ohio Association of Health Plans;

(6) A representative of a health maintenance organization (HMO) participating in the Medicaid program that has received a full three-year accreditation from the National Committee for Quality Assurance prior to the date of the appointment;

(7) A representative of an HMO participating in the Medicaid program that is a wholly owned subsidiary of a hospital located in the county with the greatest number of Medicaid recipients as of the date of the appointment.

Members must be appointed under (5), (6), and (7) not later than 30 days after the bill's effective date and serve at the pleasure of the governing body appointing the member. All other members serve as long as they hold the position that qualifies them for membership on the committee. Vacancies are filled in the same manner as original appointments. The Speaker of the House of Representatives and President of the Senate jointly appoint the chairperson of the committee. Members serve without compensation, and the Department is responsible for any administrative expenses incurred by the committee in performing its duties.

Prior to September 1, 1997, and each September 1 thereafter, the committee is required to report its activities, findings, and recommendations to the Governor, Speaker of the House, and Senate President.

Case management system for Medicaid recipients receiving exceptionally expensive medical treatment and care

(repealed sec. 5111.171)

Current law requires ODHS, after seeking a waiver of any federal requirements from the United States Department of Health and Human Services, to establish a case management system to ensure that Medicaid recipients whose medical treatment and care is exceptionally expensive receive medical services in a cost-effective manner. The bill repeals this provision.

Medicaid managed care for individuals with MR/DD

In preparing the budget for medical assistance for state fiscal years 2000 and 2001, as it pertains to services provided to individuals with mental retardation and developmental disabilities, the Office of Budget and Management and the Department of Human Services must review the results of any study regarding the use of a managed care system that is prepared and submitted to it by the Hattie Larlham Foundation and any other entity that may have participated in the study. If a study is submitted, the Office and Department must attempt to incorporate the study's proposed managed care system in the medical assistance budget, if appropriate.

Assisted living waiver

(repealed sec. 5111.85; Section 205)

Current law authorizes the Ohio Department of Human Services permission to apply to the United States Secretary of Health and Human Services for a home or community-based services waiver to establish within the Medicaid Program a program under which assisted living services are made available in the community to older adults who require the level of care provided by nursing homes. ODHS is authorized to enter into an interagency agreement with another state agency providing for the other agency to operate the waiver program if established. ODHS has not established the waiver program.

The bill repeals this law.

Hospital Care Assurance Program

(secs. 5112.04, 5112.18, and 5112.21; Sections 184, 185, and 186)

Under the Hospital Care Assurance Program, hospitals are annually assessed an amount, which is used by the state's Medicaid program to receive matching federal funds. The assessments are combined with the federal matching funds and distributed to the hospitals for use in providing care to indigents that otherwise is uncompensated.

The statutes authorizing the program are scheduled to be repealed on July 1, 1997. The bill extends the repeal to July 1, 1999. However, repeal of the requirement for an annual audit of the program remains July 1, 1997. According to the Office of Budget and Management, the audit duplicates information available from other audits conducted by the Auditor of State.

The bill extends the deadlines by which hospitals must submit cost reports to the Department of Human Services. Currently, a hospital must submit cost reports within 120 days after the end of its cost reporting period. The bill permits the reports to be submitted within 180 days. The bill also extends to 180 days (from 120) the length of time a hospital may be granted an extension of the cost-reporting deadline.

The bill eliminates obsolete references to the Medicaid Oversight Fund, which was used to pay the expenses of the no longer existent Legislative Committee on Medicaid Oversight.

Disability Assistance reports

(Section 63.03)

The bill requires the Department of Human Services to retain data about the Disability Assistance Program and report monthly to the Legislative Budget Office (LBO) and the Office of Budget and Management (OBM). The reports must provide demographic information about recipients and recipient utilization of medical assistance organized by recipients' county of residence. The information provided in reports is limited to information available to the Department that the Department, LBO, and OBM agree will be in the reports. Information about medical benefit utilization must include data on payments for recipients by category of service.

Department of Mental Health inpatient care

Care of children

(secs. 5119.02 and 5119.03; repealed sec. 5119.28; Section 205)

Current law requires the Department of Mental Health to maintain separate institutions for children. It also expressly authorizes the Department to receive minors for observation from any entity other than another state mental institution. The bill eliminates these provisions. The Department of Mental Health closed its last state hospital for children in June 1995. According to the Department's legislative liaison, the movement toward community care and the availability of inpatient care through the private sector have eliminated the need for the Department to maintain separate institutions for children. The liaison pointed out that if a case arises in which a child does not have access to inpatient care other than through the Department, the Department has the capability to accommodate the child in one of its other institutions.

The Department currently has authority to receive children from the Department of Youth Services (DYS) for observation, diagnosis, treatment, or placement. The bill eliminates the Department's authority to receive children from DYS who are under age 18. As for persons age 18 or older in DYS's custody, the Department retains the authority to receive them for psychiatric observation, diagnosis, or treatment, but not for placement. The bill requires the two departments to enter into a written agreement specifying the procedures necessary to implement this provision.

Receiving hospitals

(repealed sec. 5119.25; Section 205)

The bill eliminates the Department of Mental Health's statutory duty to develop, extend, and complete a statewide system of "receiving hospital service." "Receiving hospitals" were institutions established by the Department to be used as an adjunct to existing state hospitals, for the observation, care, and treatment of persons with mental illness, particularly those whose conditions were incipient, mild, or possibly of short duration (Ohio Attorney General Opinion 236 (1945)). According to the Department's legislative liaison, the Department no longer operates receiving hospitals. The care that was provided by receiving hospitals is now provided by the entities that contract with boards of alcohol, drug addiction, and mental health services.

Department of Mental Health reports on state employment agreements

(sec. 5119.47)

Current law provides that when a former state hospital mental health employee who has been deployed by the Department of Mental Health to provide mental health services in a community setting or location other than a public hospital leaves the position or retires, the position ceases to exist, unless the Department and the employer at the community setting or location agree to continue the position.

The bill requires that the Department annually submit to the committees of the House of Representatives and Senate that

work with issues of finance and appropriations a report that provides the following information about the previous year:

(1) The number of positions that ceased to exist pursuant to the current law;

(2) The number of times an employer requested that a position continue;

(3) The number of times the Department agreed to, and the number of times the Department refused, a request to continue a position.

Management controls for mental health, alcohol, and drug addiction services

(Section 78)

The bill requires that the Directors of Mental Health and Alcohol and Drug Addiction Services convene a workgroup to examine and make recommendations regarding the implementation of management controls and related standards for Medicaid-covered community mental health, alcohol, and other drug addiction services. The Directors must appoint the members of the workgroup and include as members representatives of boards of alcohol, drug addiction, and mental health services, boards of county commissioners, and other constituency groups the Directors identify.

The workgroup's recommendations must ensure that systems of providing alcohol, drug addiction, and mental health services are integrated, managed locally, and meet applicable standards for accessibility, quality, and cost-effectiveness. The workgroup is required to address (1) standards and procedures for selection of the best-qualified service providers, (2) methods and standards for setting and negotiating reimbursement rates, (3) methods and protocols for reviewing utilization, management, and external quality, (4) requirements and standards for consumer and family education, (5) standards for consumer and provider grievance and appeal process, (6) the entire range of service-purchasing options, including individual providers, provider networks, and integrated service delivery system contracting, and (7) methods for making the service procurement process more efficient, including regulatory requirements.

The workgroup must prepare a report of its recommendations for legislative, executive, and administrative initiatives and submit a copy to the Governor, Speaker of the House of Representatives, and President of the Senate not later than September 30, 1997. The bill provides that the workgroup ceases to exist when it submits the report.

Reimbursement of counties for costs related to hospitalization of mentally ill persons

(sec. 5122.43)

Under current law, after a county has paid the costs, fees, and expenses of proceedings concerning the hospitalization of mentally ill persons, they must be certified by the county auditor and submitted to the Department of Mental Health. The Department, after reviewing each request, must prepare a voucher to reimburse the county, unless the requests from all counties exceed the amount appropriated to the department for reimbursement. If the requests exceed the appropriation, the amount paid to each county is reduced proportionately so that each county is paid an equal percentage of its request.

The bill requires that the Department allocate an amount to each county yearly, based on past allocations, how the money has been used in the past, and any other factor the Department considers appropriate. The total of the allocations must equal the amount of the appropriation. Each county will be reimbursed the lesser of the amount requested or the amount allocated.

Any surplus remaining must be distributed to counties whose requests exceed their allocations. Such counties will receive the full amount of their requests, if the surplus is sufficient to reimburse all counties. If the surplus is not sufficient, counties whose requests exceed their allocations receive a percentage of the surplus. The percentage is to be determined by dividing the difference between that county's request and its allocation by the difference between the sum of the requests of all counties whose requests exceed their allocations and the total amount allocated to those counties.

Waiving support collection requirements for individuals in residential facilities preparing to move into an independent living arrangement

(secs. 5121.04, 5123.122, 5123.18, 5123.19, and 5123.194)

Under current law, residents of a Department of Mental Retardation and Developmental Disabilities (DMR/DD) institution, persons whose care or treatment is being paid for in a private facility or home under the control of DMR/DD, and liable relatives (parents of minor children and spouses), must pay support charges based on average per capita costs of providing care and treatment. The amount of support that the resident, person, or liable relative is charged depends on factors including income and number of dependents.

The bill establishes an exemption from the support collection requirement. DMR/DD is permitted to waive the support charge of an individual who resides in a residential facility, and the individual's liable relative, if the individual is preparing

to move into an independent living arrangement. A "residential facility" is a home or facility in which persons with mental retardation or a developmental disability reside, except the home of a relative or legal guardian, certified respite care home, county or district home, or a dwelling in which the only residents with mental retardation or a developmental disability are in an independent living arrangement or are being provided supported living. "Independent living arrangement" is an arrangement in which a person with mental retardation or a developmental disability resides in an individualized setting chosen by the person or the person's guardian, which is not dedicated principally to the provision of residential services for persons with mental retardation or a developmental disability, and for which no financial support is received for rendering the service from any government agency or a provider of residential services.

The bill states that the purpose of the waiver is to allow income or resources to be used to acquire items necessary for independent living. DMR/DD is given authority to adopt rules to implement the waiver, including rules that establish the method DMR/DD will use to determine when an individual is preparing to move into an independent living arrangement.

Abolition of two divisions in the Department of Mental Retardation and Developmental Disabilities

(secs. 5123.05 and 5123.34; repealed secs. 5123.06 and 5123.32; Section 205)

Current law establishes the Division of Administrative Services and the Division of Developmental Center Services in the Department of Mental Retardation and Developmental Disabilities. Current law also specifies certain powers and duties of the Division of Administrative Services, requires the Chief of the Division of Developmental Center Services to make an annual report of the Division's purposes and accomplishments, and requires the Chief of that Division to meet certain academic and training qualifications. The bill abolishes both of these divisions and removes all of the statutory provisions described above, but maintains a provision in current law that permits the Director of Mental Retardation and Developmental Disabilities to establish divisions in the Department and prescribe their powers and duties.

MR/DD board contracts for residential services

(secs. 5123.18 and 5126.356)

The bill permits the Department of Mental Retardation and Developmental Disabilities (DMR/DD) to delegate to county boards of mental retardation and developmental disabilities (MR/DD boards) its authority to enter into contracts or subcontracts for residential services. If it delegates its authority, DMR/DD must adopt rules under the Administrative Procedure Act for the boards' administration of the contracts or subcontracts. The bill provides that an MR/DD board is not subject to any of the requirements that DMR/DD is subject to when contracting for residential services under its Purchase of Service Program. Instead, the boards are subject to the rules adopted by DMR/DD and all applicable provisions of the laws that apply to MR/DD boards.

With regard to the performance of health care tasks in facilities under contract or subcontract with MR/DD boards, the bill extends existing law regarding the delegation and monitoring of the persons performing the tasks. Under existing law, an MR/DD board worker is permitted to give or apply prescribed medication and to perform "delegated health care tasks" if the worker has received written authorization from a health care professional, the worker performs the activity in accordance with instructions and training provided by the delegating health care professional, and the professional remains responsible for the care of the MR/DD board client. For delegation of health care tasks to occur in a facility that contracts or subcontracts with an MR/DD board under the bill, the MR/DD board must monitor the facility to ensure the quality of services provided and the facility must be licensed to provide services to no more than five residents.

MR/DD board membership

(sec. 5126.022)

Current law prohibits certain persons from serving as members of county boards of mental retardation and developmental disabilities, including the following: elected public officials, members of the immediate family of a board member, board employees and members of the immediate family of board employees, former board employees within one year after ending employment with the board, employees of agencies under contract with the board and the employee's immediate family members, and persons whose immediate family includes a county commissioner. Prior to Sub. H.B. 629 of the 121st General Assembly, the law expressly allowed the persons described above to be removed from the board. The bill restores the express authority to terminate the board membership of those persons.

State accreditation of MR/DD boards

(sec. 5126.081)

The bill requires the Department of Mental Retardation and Developmental Disabilities (DMR/DD) to establish a system of accreditation for county boards of mental retardation and developmental disabilities (MR/DD boards). The purpose of the system is to ensure that MR/DD boards are in compliance with federal and state statutes and rules. DMR/DD must

establish uniform standards for the accreditation system in rules adopted under the Administrative Procedure Act. The rules must include timelines for compliance when a board is found to be not in compliance and appropriate actions to be taken by MR/DD boards in complying with the accreditation standards.

On-site review

Prior to accrediting an MR/DD board, DMR/DD must conduct a comprehensive, on-site review of the board. During the review, DMR/DD must document the board's compliance with the standards for accreditation. After the review, DMR/DD must conduct an exit conference with the MR/DD board president and superintendent and any other officials the board asks to have present. DMR/DD must discuss its findings from the review with the board's representatives and provide a written report within 30 days.

Issuance of accreditation and renewal

If DMR/DD finds that an MR/DD board is in compliance with the standards for accreditation, it must issue evidence of accreditation to the board. Accreditation may be granted for periods of up to five years and may be renewed. Not less than once prior to the date a board's accreditation is scheduled to expire, DMR/DD must conduct a comprehensive, on-site review of the MR/DD board.

Other reviews and annual self-audits

Each MR/DD board is required to conduct an annual audit of itself to evaluate its compliance with the standards for accreditation. DMR/DD is authorized to conduct interim reviews of any new program or service initiated by an MR/DD board after its last comprehensive review. DMR/DD also is authorized to conduct other reviews and investigations as necessary to enforce the accreditation system.

Plans of correction

To avoid being denied accreditation, the MR/DD board superintendent must prepare a plan of correction to remediate the matters of noncompliance. The superintendent must submit the plan to the MR/DD board for review. If the board believes that the plan is sufficient, the board must approve the plan and submit it to DMR/DD for review. If DMR/DD approves, the board must commence action to implement the plan. DMR/DD must, as necessary, conduct follow-up reviews to determine whether the board is in compliance. If the plan is disapproved, DMR/DD must inform the board of the reasons and the board may submit a revised plan. A board is authorized to request technical assistance from DMR/DD, other MR/DD boards, or professional organizations in preparing plans of correction and implementing them.

Denial of accreditation

After giving an MR/DD board an opportunity to implement a plan of correction, if the board continues to be in noncompliance, DMR/DD must deny accreditation. The denial may apply to all or part of the programs or services offered by the board. DMR/DD must simultaneously notify all of the following officials in the county: the members of the board of county commissioners, the probate judge, the county auditor, and the president and superintendent of the MR/DD board. The notice must identify the programs and services that have been denied accreditation, the matters of noncompliance, and the responsibilities of the county officials to either contract to have the programs and services administered by another party or become subject to an administrative receivership.

Ineligibility for state or federal funds

The bill provides that an MR/DD board that has been denied accreditation is not eligible to receive state or federal funds above those that are received when DMR/DD determined that the board was not in compliance. The withholding of funds applies only to the programs or services that are the subject of the denial.

Contracting with other entities to administer programs and services

When an MR/DD board is denied accreditation, the bill requires that DMR/DD first give the board the option of contracting with an accredited MR/DD board or another "qualified entity" subject to DMR/DD's approval. The board may contract with more than one accredited MR/DD board. The board must give the contractor full administrative authority over the unaccredited programs and services.

Administrative receiverships

If an MR/DD board does not contract to have its unaccredited programs and services administered sooner than 30 days after DMR/DD denies accreditation, the bill requires that DMR/DD appoint an administrative receiver. The individuals appointed must be DMR/DD employees or management personnel from an accredited MR/DD board, unless there are no qualified DMR/DD employees or management personnel from boards available, in which case DMR/DD may appoint

individuals from other entities. DMR/DD may not appoint an individual who is employed by or affiliated with an entity that is under contract with the MR/DD board. The administrative receiver assumes full administrative responsibility for the unaccredited programs and services.

Control of MR/DD board funds

When an MR/DD board is under administrative receivership or under contract to have unaccredited programs or services administered by another entity, the board must transfer to the receiver or contractor control of the board's state and federal funds for the unaccredited programs and services in an amount necessary for the receiver or contractor to fulfill its duties. The transfer does not cause accredited programs and services to lose their accreditation. If an MR/DD board refuses to transfer control, DMR/DD may withhold funds from the board in the necessary amount. Any amount transferred or withheld must include reimbursements for the personnel of the contractor or receiver, including amounts for time worked, travel, and related expenses. The bill specifies that a contractor or administrative receiver has the same authority to authorize payment of bills as an MR/DD board has under existing law.

Plans of correction from contractors and administrative receivers

The contractor or administrative receiver responsible for administering an MR/DD board's unaccredited programs and services must develop a plan of correction to remediate the matters that caused DMR/DD to deny accreditation. The contractor or receiver must submit the plan to DMR/DD for review and approval. The contractor or receiver must report to DMR/DD any findings it can make pertaining to issues or circumstances that are beyond the control of the MR/DD board and result in the unlikelihood that compliance with the accreditation standards can be achieved unless the issues or circumstances are remediated.

Cases involving serious health and safety issues

When a DMR/DD review of an MR/DD board reveals serious health and safety issues within the programs and services offered by the board, the bill requires that DMR/DD order the board to correct the violations immediately or appoint an administrative receiver.

Reversal of orders denying accreditation; appeals by MR/DD boards

At any time an MR/DD board can demonstrate that it is capable of assuming its duties in compliance with the standards for accreditation, the bill requires that DMR/DD reverse its order denying accreditation and issue evidence of accreditation to the board. The bill permits an MR/DD board to appeal a denial or refusal to reverse accreditation only by filing a complaint in accordance with DMR/DD's process for resolving complaints administratively. If an MR/DD board can demonstrate in its appeal that it is capable of assuming its duties, DMR/DD must reverse its order denying accreditation and accredit the board.

Administrative provisions

The bill requires that all notices issued to an MR/DD board under this accreditation system be delivered to the board's president and superintendent. The bill authorizes an MR/DD board's president to designate another member of the board to be the individual responsible for fulfilling the president's duties with regard to the accreditation system.

Rules for MR/DD board programs and services

(sec. 5126.08)

The bill requires DMR/DD to adopt rules that establish standards to be followed by MR/DD boards in administering, providing, arranging, or operating programs and services. The rules must be adopted in accordance with the Administrative Procedure Act.

The bill repeals DMR/DD's duty to establish procedures in rules for all forms used in the MR/DD boards' operation of programs and services. The act clarifies provisions of existing law that require DMR/DD to adopt rules regarding eligibility for case management services.

MR/DD board promotion of "quality of life" standards

(sec. 5126.082)

The bill specifies that the rules DMR/DD must adopt under existing law for monitoring MR/DD boards according to standards for promoting and advancing the quality of life of individuals with mental retardation and developmental disabilities are in addition to DMR/DD's rules establishing standards for programs and services and the rules for the MR/DD board accreditation system. With regard to the quality of life standards, the bill makes the following changes: (1) provides that MR/DD boards are to establish residential services and supported living in accordance with the needs of the

individuals being served, (2) provides that any funds received by the boards, not just funds provided under state subsidies, may be used to achieve the quality of life goals, (3) eliminates the requirement that DMR/DD review the boards biennially and instead requires the quality review to be conducted at the same time DMR/DD conducts its reviews under the board accreditation system, and (4) permits, rather than requires, DMR/DD to accept accreditation from the Commission on Accreditation of Rehabilitation Facilities or other qualified accrediting agencies as evidence that the MR/DD board is in compliance with the quality of life standards.

Business managers for county boards of mental retardation and developmental disabilities

(sec. 5126.121)

The bill provides that each county board of mental retardation and developmental disabilities may be eligible to receive a subsidy from the Department of Mental Retardation and Developmental Disabilities for the employment of a business manager. The Department must adopt rules in accordance with the Administrative Procedure Act specifying standards for the employment of such a business manager. The rules must include the minimum education and experience requirements for the position of business manager and must specify requirements for courses in fiscal and business management that are annually sponsored or certified by the Department and that are applicable to the position and designed to teach effective business practices. Each county board that employs a business manager in accordance with the standards adopted under the bill may receive a subsidy from the Department.

Moratorium on new MR/DD residential facility beds

(Section 146)

During state fiscal years 1998-1999, the bill prohibits the Department of Mental Retardation and Developmental Disabilities from issuing development approval for or licensure to any new residential facility beds, except in an emergency. The Department must adopt rules under the Administrative Procedure Act to specify what constitutes an emergency. Neither of the following are considered new beds for purposes of the moratorium: (1) beds relocated from one facility to another and (2) beds to replace ones that no longer comply with Medicaid standards.

taxation

- Changes the computation of net worth for the purposes of the corporation franchise tax.
- Exempts certain holding companies from paying the franchise tax on the basis of net worth.
- Reduces the rate of the corporation franchise tax, whether computed on the basis of net worth or net income.
- Establishes a maximum net worth-basis corporation franchise tax of $150,000.
- Imposes taxes on partnerships, S corporations, limited liability companies, certain trusts, and other "pass-through" business entities having at least one nonresident investor or beneficiary.
- Grants a fully compensating tax credit to investors and beneficiaries on whose behalf such a pass-through entity tax is paid.
- Imposes an "exit" tax on corporations leaving Ohio based on the net income earned during the corporation's latest accounting period.
- Changes the method of apportioning income of multistate corporations by giving more weight to sales made in Ohio, and by eliminating one of the criteria for determining where certain kinds of sales occur.
- Prescribes allocation and apportionment methods specifically for the commercial airline industry.
- Requires corporations that are not financial institutions and that pay tax on the basis of net worth to use the new apportionment method.
- Further closes a "loophole" used by corporations to shift taxable income out of Ohio by selling accounts receivable to related passive investment companies at a loss.

• Otherwise strengthens and extends existing provisions designed to prevent similar income shifting by corporations.
• Requires the lower corporation franchise tax rate bracket to be divided among corporations related through common ownership or control, regardless of whether they file a combined tax report.
• Requires corporations and other business entities to include allocable or apportionable items received from a pass-through entity in their own allocation and apportionment computations.
• Allows the Tax Commissioner to adopt alternative apportionment rules for classes of noncorporate business entities or for noncorporate business entities in a particular industry sector for the purposes of determining the personal income tax of owners of those entities.
• Limits the number of personal income tax exemptions and credits a nonresident may claim if the nonresident is an investor in an Ohio pass-through entity and the entity files a return on the nonresident's behalf, and imposes the highest marginal tax rate on those nonresidents' incomes.
• Eliminates the 30-day "grace period" following the issuance of an assessment during which interest is not charged for late tax payments.
• Expands the minimum connection or presence ("nexus") standard required to trigger the state's power to tax corporate or personal income to the maximum prevailing standard allowed under the United States Constitution.
• Allows the Tax Commissioner to prescribe alternative taxable years for corporations under certain circumstances.
• Modifies the manner in which foreign and domestic insurance companies are taxed, provides for a phase-in of the new tax rate, increases the minimum tax, and provides a tax credit based on an insurer's gross premium sales in all states.
• Makes the Treasurer of State, rather than the Superintendent of Insurance, responsible for collecting the surplus lines insurance tax imposed under current law.
• Makes various changes in the law regulating surplus line brokers, which changes include authority to procure insurance from an unauthorized insurer, filing of account information, and bonding requirements.
• Makes substantial changes in the laws governing the taxation of financial institutions, including portions of the definitions in their primary Chapter--5725.; and of their inclusion under Chapter 5733.--Corporation Franchise Tax.
• Denies interest on refunds of tangible personal property taxes that are overpaid as a result of taxpayer error.
• Makes the law reducing personal income tax rates for 1996 and 1997 applicable to years beyond 1997 as well, modifies the formula for calculating the income tax reduction, and provides for a Budget Stabilization Fund equal to 5% of General Revenue Fund revenues of the preceding fiscal year.
• Limits the tax reduction for 1997 and devotes the excess surplus revenue to four education-related programs.
• Requires that tax returns indicate that such a tax reduction is reflected in how much tax is due from taxpayers.
• Authorizes the legislative authority of a municipal corporation to exempt from a

municipal income tax compensation arising from certain transfers of stock options.

- Requires that merchandise or agricultural products stored as inventory for shipment inside this state be assessed as tangible personal property at a rate of 25%, to be reduced by the Tax Commissioner by 5% each year under certain circumstances.
- Provides that under the sales tax, a business that makes sales of a taxable service is liable for payment of tax when it purchases tangible personal property that it uses in performing the service, unless the property is to be transferred to the consumer of the service as an integral part of the performance of the service.
- Modifies a direct-use exception under the sales tax, so that a sale is not subject to the tax if the purpose of the consumer is to use or consume the thing transferred directly in producing a product for sale by mining, farming, agriculture, horticulture, or floriculture.
- Adds the following services to those authorized to be sold under authority of a service vendor's license: building maintenance and janitorial service, employment service, employment placement service, and exterminating service.
- Specifies the location of the sale for several services under the sales tax law.
- Authorizes the Tax Commissioner to pay a sales tax refund directly to the consumer if the vendor has gone out of business or declared bankruptcy.
- Exempts from the sales and use tax sales of personal computers and related equipment to a licensed or certified teacher for use in preparation for teaching elementary or secondary school students.
- Exempts from the sales and use tax sales to professional racing teams of motor racing vehicles, repair services, and engines and certain other parts.
- Extends the extra 2¢ earmark of wine tax revenue to the Ohio Grape Industries Fund until July 1, 1999.
- Repeals the future transfer to the Rail Development Fund of 75% of the corporation franchise tax revenue paid into the General Revenue Fund by certain railroads so that the amount transferred to the Rail Development Fund remains at 50%.
- Extends the expiration date of the authority for counties and municipal corporations to enter into agreements granting tax abatements in enterprise zones from December 31, 1997, to December 31, 1998.
- Extends for two years the life of the corporation franchise tax credit available to a manufacturer that increases its investment in new machinery and equipment over its prior average levels of new investment.
- Makes a technical change in the law establishing the voluntary environmental cleanup tax credit program administered by the Department of Development.
- Prescribes uniform procedures for the Tax Commissioner to follow when dealing with a taxpayer who is entitled to a refund of a state tax but also is overdue in paying a state tax or fee--the Commissioner must retain the amount refundable to offset the amount owed.
- Beginning in taxable years after 1999, indexes the amount of the personal income tax exemption to increases in the gross domestic product deflator.
- In the case of a school district that stops levying an income tax, requires the Director of Budget and Management to adjust the payments made to the district for the last year's tax collections, in order to retain a sufficient amount to pay refunds.
- Permits counties currently levying a lodging tax for the purpose of a convention and

visitors bureau to increase the rate of the tax.

• Repeals the statutes that imposed an excise tax on carbonated beverages, which were invalidated by a constitutional amendment.

CONTENT AND OPERATION

Corporation franchise tax--modification of net worth base

(secs. 5733.03, 5733.04, 5733.05, and 5733.06)

Currently, corporations subject to the corporation franchise tax must compute the tax due by two different methods--on the basis of net income and on the basis of net worth--and pay the tax on the basis that results in the higher tax. The bill modifies the how the tax is computed on the basis of net worth, and effectively exempts certain holding companies from paying the tax on the basis of net worth. The bill also changes the manner in which the net worth of a corporation operating in more than one state is apportioned among those states. Corporations that are financial institutions will pay the corporation franchise tax solely on the basis of net worth, as modified by the bill.

Computation of net worth

(sec. 5733.05(C))

New computation method. Currently, a corporation's net worth for Ohio tax purposes equals the book value of its capital, earned and unearned surplus, undivided profits, and reserves, less several deductions for taxes, goodwill, appreciation, abandoned property, agricultural land, property used for certain kinds of research, the value of investments in public utilities and insurance companies in which the corporation holds 80% or more of the equity, the value of investments in financial institutions in which the corporation holds 25% or more of the equity, and certain kinds of reserves (those for account receivable, depreciation, depletion, and valuation reserves with respect to specific assets).

The bill replaces the current method of computing net worth with a simpler computation: a corporation's net worth would equal the net book value of its assets minus the net carrying value of its liabilities. The corporation's liabilities would have to include any reserves shown on the corporation's books other than those reserves that are appropriations of retained earnings under generally accepted accounting principles. A corporation would still have to compute its tax both on the basis of its net worth and on the basis of its net income, and pay tax on the basis that results in the higher amount of tax.

Apportioning net worth. Once a corporation's net worth is determined, it is apportioned on the basis of two factors--property and "business done" or sales. (Apportionment determines the portion of a corporation's net worth or net income that the state will tax. There are limits to how large that portion may be, since other states in which the corporation operates also may tax a portion of that income, as explained below.) The property factor is the proportion of the book value of the corporation's property used by it in Ohio as compared to everywhere, excluding property of the kind that is excluded for the purposes of computing net worth (public utility, insurance, financial institution property, agricultural land, etc., held by the corporation).

The "business done" factor is the proportion of the corporation's sales of tangible personal property made in Ohio as compared to everywhere, excluding receipts the corporation receives from public utilities, insurance companies, and financial institutions excluded from its net worth. The "business done" factor does not include sales for which commissions, fees, rents, royalties, dividends, or interest are paid to the corporation--those sales are not apportioned, but are allocated (i.e., assigned for tax purposes) to the state in which the sale occurs.

Each factor is weighted equally, meaning that a corporation's holding of property in Ohio and its sales in Ohio have equal influence on the amount of franchise tax imposed on the corporation if it pays on the basis of its net worth.

The bill replaces the current two-factor method of apportioning net worth with a three-factor method similar to the one proposed for apportioning a corporation's net income (see "***Change in net income apportionment***", below).

Adjustments for corporations related to certain holding companies. A corporation's net worth, so computed and apportioned, would be subject to certain adjustments if the corporation was part of a larger corporate "family" related through common ownership or control, and at least one of the "related members" of that family elected to be considered a qualifying holding company for the purpose of being exempted from being taxed on the basis of its net worth (as explained under "***Holding companies . . .***", below). A corporation related to a qualifying holding company would have to adjust its net worth by a "qualifying amount." The qualifying amount is an amount that, when added to or subtracted from the corporation's total value, and when added to or subtracted from the net carrying value of its liabilities (before adjustment for the qualifying amount), results in the corporation's debt-to-equity ratio being equal to the debt-to-equity ratio of the entire family of corporations of which the corporation and the qualifying holding company are members (the "qualifying controlled group"). For the purposes of computing the corporation's qualifying amount, its total value could not exceed the

net book value of its assets.

The qualifying amount could not exceed the net carrying value of any portion of the corporation's liabilities that may be owed (directly, or indirectly through a third party) to the corporation's related members, including any amount that, although not owed to the related member, is guaranteed or secured by a related member by a mortgage, pledge, hypothecation, or similar transaction.

The qualifying amount would have to be computed as of the last day of the taxable year immediately preceding the tax year for which the net worth computation is made, and would have to be made on a consolidated basis in accordance with generally accepted accounting principles. Whether a corporation is a related member of a qualifying holding company would be determined as of the last day of the corporation's taxable year preceding the tax year for which net worth is being determined; whether the other related corporation is a qualifying holding company is determined on the basis of whether it has elected to be a qualifying holding company for the tax year beginning immediately after the end of the first corporation's taxable year.

Reduction in the rate of tax on net worth-basis corporations; maximum tax

(sec. 5733.06(C) and (G))

Currently, the rate of the corporation franchise tax paid on the basis of net worth is 5.82 mills multiplied by a corporation's net worth (a mill is 1/10 of one cent, so the tax rate translates into 0.582% of net worth).

The bill reduces the net worth tax rate to 4 mills (0.4% of net worth).

The bill also would impose a maximum on the amount of tax that a corporation would have to pay if it pays the tax on the basis of its net worth. The amount of tax could not exceed $150,000 each year. Currently, there is no maximum tax.

Holding companies--exempted from tax computed on net worth basis

(secs. 5733.04(L) and 5733.06(C))

The bill effectively exempts corporations that qualify as holding companies from being taxed on the basis of net worth. To be considered a "qualifying holding company," a corporation would have to satisfy certain criteria and would have to make an election to be treated as a qualifying holding company for tax purposes.

Generally, to qualify as a qualifying holding company, a large portion of the corporation's assets and income must be attributable to holdings in other corporations or business organizations. Specifically, the corporation would have to satisfy the following conditions:

(1) ***90% intangible assets test:*** At least 90% of the corporation's assets (measured by net book value) are intangible assets (generally, equity and security interests, and other rights, titles, and interests, subject to special rules regarding interests in pass-through entities explained below);

(2) ***50% investment in related members test:*** At least 50% of the corporation's assets are investments (directly, or indirectly through third parties) in related members' equity, loans or advances to related members, or accounts receivable from related members (generally, related members are individuals, corporations, or other business organizations related to one another through common ownership or control, perhaps through other business entities).

(3) ***90% income from intangibles test:*** At least 90% of the corporation's gross income is attributable to the management, maintenance, acquisition, or disposition of the corporation's intangible assets, certain real property, or certain kinds of aircraft, and to the collection and distribution of income from those assets, real property, or aircraft (the real property and aircraft that would be considered for this purpose are described below);

(4) ***Corporation is not a financial institution:*** The corporation is not a financial institution as of the last day of the taxable year preceding the start of the tax year for which the tax is levied;

(5) ***Related members adjust their net worth:*** The corporation's related members make, in good faith, certain adjustments required under the bill to equalize the debt-to-equity ratio of each related member with the debt-to-equity ratio of the entire group of related members for the purpose of computing the related members' net worth (see "***Computation of net worth***," above).

Even if a corporation satisfies the foregoing criteria, it would not be required to elect to be treated as a qualifying holding company.

An election to be treated as a qualifying holding company would be in effect for only one tax year. A corporation could revoke its election once made.

Treatment of aircraft and real property under above tests. For the purposes of determining whether a corporation electing to be a qualifying holding company satisfies the 90% intangible assets and 90% income from intangibles test under (1) and (3), above, certain aircraft and certain real property would be excluded from the net book value of the corporation's total assets. Aircraft that is not subject to Federal Aviation Administration regulation as a commercial air carrier would be excluded (generally, these would be aircraft used by the corporation for travel by its officers or employees).

Also excluded would be real property serving generally as the corporation's headquarters. Specifically, the property would have to serve as the corporation's trade or business headquarters or as the place from which that trade or business is principally managed or directed; not more than 10% of the value of the property could be used, made available, or occupied for the purpose of providing, acquiring, transferring, selling, or disposing of tangible property or services in the normal course of business; and not more than 10% of the square footage of the real property could be used to provide, acquire, transfer, sell, or dispose of tangible property or services (e.g., using the real property as a retail store). (For the purpose of the foregoing 10% value and square footage tests, providing property or services in the normal course of business to the corporation's employees or their families, to related members, or to related members' employees or their families would not count toward the 10% use threshold.) To be excluded from the corporation's total assets for the purpose of the 90% intangible assets test and the 90% income from intangibles test, real property would have to satisfy the headquarters criteria throughout the corporation's taxable year that precedes the tax year for which the corporation elects to be considered a qualifying holding company.

Such aircraft and real property would be included among the net book value of the corporation's assets for the purpose of the 50% investment in related members test in (2), above.

Special rule under 90% intangible assets test for holdings in pass-through entities. For the purposes of determining whether a corporation electing to be a qualifying holding company satisfies the 90% intangible assets test in (1), above, special rules would govern whether the corporation's holdings in a "pass-through entity" are to be included in the corporation's intangible assets. (A pass-through entity is a form of business organization that generally is not taxed as such for federal income tax and most state income tax purposes; instead, the owners or investors of the organization are taxed on their respective shares of the organization's income. Examples include sole proprietorships, partnerships, limited liability companies, small business ("S") corporations, and certain trusts and estates.)

Generally, the special rule provides that if a corporation and its related members do not hold a majority of the pass-through entity, then the corporation's share will be considered an intangible asset for the purposes of the 90% intangible assets test and the 90% intangible income tests. However, if the corporation and the corporation's related members do hold a majority of the pass-through entity, then the corporation's share will not be considered an intangible asset for the purposes of those tests.

Specifically, if the corporation and the corporation's related members' combined interests in the capital or profits of a pass-through entity (whether held directly, or indirectly through third parties) do not exceed 50% at all times throughout the taxable year ending before the tax year for which the holding company election is made, then the corporation's direct interest in the pass-through entity is to be included as an intangible asset for the purpose of the 90% tests; the corporation's distributive share of the pass-through entity's income would have to be included in the corporation's income from an intangible asset for that taxable year. On the other hand, if at any time during the taxable year the corporation's and the corporation's related members' combined interests in the capital or profits of a pass-through entity (held directly or indirectly) do exceed 50%, then the corporation's direct interest in the entity will not be included as an intangible asset of the corporation for the purpose of the 90% tests; the corporation must include in its assets the proportionate share of the pass-through entity's assets, and would have to include in its gross income its distributive share of the pass-through entity's gross income.

If a corporation holds an interest in a pass-through entity, and that pass-through entity in turn holds interests (directly or indirectly) in a second pass-through entity, then the corporation's proportionate share of the first pass-through entity's assets must include the first pass-through entity's proportionate share (direct or indirect) of the second pass-through entity's assets. Similarly, the corporation's distributive share of the first pass-through entity's gross income must include the first pass-through entity's distributive share (direct or indirect) of the second pass-through entity's gross income.

Computation of corporation tax on net income basis

The bill reduces the rate of the corporation franchise tax computed on the basis of net income and changes the method of apportioning income of multistate corporations by giving more weight to sales made in Ohio. The bill also further closes a "loophole" used by corporations to shift taxable income out of Ohio; allows the Tax Commissioner to adopt industry-specific apportionment rules; and requires the lower tax rate bracket to be divided among members of certain corporate "families."

Rate reduction for net income-basis corporations

(sec. 5733.06(A) and (B))

The bill reduces the upper-bracket rate of the corporation franchise tax for corporations paying the tax on the basis of net income. The corporation franchise tax rate consists of two brackets: the rate imposed on the first $50,000 of a corporation's net income is 5.1% of the net income; on net income above $50,000, the rate currently is 8.9%.

The bill proposes to reduce the upper rate from 8.9% to 8.5%.

Change in net income apportionment

(sec. 5733.05(B))

The bill proposes several changes in the method of apportioning a corporation's net income for the purpose of determining the degree to which Ohio taxes the corporation's business activity in Ohio, and the relative weight to be accorded each of a corporation's various activities. As explained in more detail below, the bill increases the weight placed on a corporation's sales in Ohio; eliminates one of the factors used to determine whether certain kinds of a corporation's sales are deemed to occur inside Ohio for the purpose of computing the corporation's franchise tax; authorizes the Tax Commissioner to adopt rules specifying alternative apportionment and allocation methods; and requires corporations that own a share of a "pass-through entity" (partnerships, limited liability companies, and the like) to include in their apportionment and allocation computations their share of the pass-through entity's Ohio business activity. Corporations that are not financial institutions would have to apportion their net worth by the same method, instead of using the current two-factor method explained under "***Apportioning net worth***", above.

Apportionment and allocation--general principles. Apportionment and allocation are used by a state to determine what part of a corporation's business activities will be taxed by the state. *Apportionment* recognizes that a corporation operating in more than one state receives income (or incurs losses) from its activities everywhere, and attributes a portion of that income (or loss) to the state, for tax purposes, on the basis of factors that are presumably indicative of the corporation's activity in the state as compared to its activity everywhere. A state's apportionment method also reflects the relative degree to which it chooses to tax each of a corporation's activities--typically divided into the use of property, the employment of persons, and sales. A state's relative weighting of these factors will affect different corporations and industries differently, depending on how intensively the corporation or industry uses property, employs persons, and makes sales in the state. Each state may establish its own method of apportioning income, but the method is subject to restrictions imposed by the United States Constitution, federal law, and any of several agreements or conventions, all of which limit the extent to which a state may tax a corporation doing business in several states and attempt to prevent more than one state taxing the same income (or other base, such as net worth).

Allocation generally assigns certain business activities entirely to one state or another for tax purposes based on some criteria regarding the "situs," or location, of the activity, rather than dividing those activities proportionately among several states as is done under apportionment. The bill does not change the existing allocation rules other than to allow the Tax Commissioner to adopt alternative allocation rules under certain circumstances, as explained later in this analysis.

Increased weighting of corporation's sales in Ohio. Currently, the non-allocable portion of a corporation's net income is apportioned on the basis of three factors: (1) property used in Ohio, (2) payroll paid in Ohio, and (3) sales made in Ohio. Each of these factors is used as an indication, for tax purposes, of a corporation's business activity in Ohio as compared to its business activity everywhere. Currently, property used in Ohio and payroll paid in Ohio each account for 25% of a corporation's business activity in Ohio; sales made by the corporation in Ohio account for the remaining 50% of its activity. This double weighting of the sales factor allows the state to place a relatively greater share of the tax burden on corporations making a significant share of their sales in Ohio, even if the corporation has little physical presence in Ohio in the form of property or employees.

The bill places even greater weight on the sales factor by increasing its weight from 50% to 60%; the property and payroll factors are reduced proportionately, with each accounting for 20%.

Elimination of the "solicitation" criterion for apportioning certain sales. Currently, a corporation that makes sales in Ohio must include in its sales factor any sales it makes in Ohio. (Certain sales are exempted from the factor, such as sales of capital assets, sales made by a public utility or insurance company largely owned by the corporation, or sales made by a financial institution at least one-fourth of which is owned by the corporation.)

There are two separate rules for determining whether to apportion a sale to Ohio--one for sales of tangible personal property (physical things), and one for sales of anything else that is not tangible personal property (primarily services). In the case of sales of tangible personal property, the sale is considered to be an Ohio sale if the property is received in Ohio by the purchaser. In the case of sales of services or anything else that is not tangible personal property, the sale is considered to be an Ohio sale if the "income-producing activity" (i.e., a service) is performed in Ohio, or if the "greater proportion" of the activity is performed in Ohio as compared to elsewhere. Whether the greater proportion of the activity

is performed in Ohio or elsewhere is determined on the basis of where the "costs of performance" are greatest, unless the activity involves a solicitation by the corporation. If the sale involves a solicitation, the sale is considered to be in Ohio only if the sale is "principally solicited" by the corporation from an office located in Ohio.

The bill eliminates the location where a sale is solicited as a factor in determining whether the sale is attributed to Ohio and, thus, whether such a sale is part of the corporation's Ohio taxable base. Under the bill, sales of services would be allocated to Ohio if the service is performed solely in this state, or, for sales occurring in Ohio and elsewhere, if the greater proportion of the service, as measured by cost of performance, occurs in Ohio.

Allocation and apportionment methods for airlines

(sec. 5733.058)

The bill prescribes methods for allocating and apportioning income specifically for the commercial airline industry. The methods prescribed by the bill are based largely (but not entirely) on a current administrative rule for allocating or apportioning airlines' income (Ohio Admin. Code sec. 5703-5-09). The airline allocation and apportionment rules would apply to any airline deriving revenue from carrying passengers or freight both within and outside Ohio. An airline would include any corporation that leases, rents, subleases, or subrents aircraft to others. The corporation franchise tax would be levied on the sum of an airline's allocable and apportionable income, determined as described below.

Airline income would be allocated under the allocation rules applicable to other corporations (sec. 5733.051), except for rent received by airlines for leasing (or subleasing) aircraft to others. Rent from each aircraft would be allocated to Ohio, with 60% of the rent being based on the fraction of the airmiles the aircraft was used in revenue service in Ohio as compared to everywhere, and 40% being based on the relative number of the aircraft's arrivals and departures in Ohio as compared to everywhere. Under current law applicable to other corporations, rents from tangible personal property are allocated on the basis of "the extent such property is utilized" in Ohio.

Generally, any income of an airline that is not allocable would be apportioned to Ohio on the basis of the extent of the airline's presence in Ohio, as measured by the proportion of the airline's property, personnel, and sales located in Ohio as compared to everywhere. Sales would receive twice the weighting of each of the other two factors, as is the case with the three factor apportionment for other corporations.

The property factor would consist of two components--the average value of "fixed-base property" (generally, real and tangible personal property used by the airline in Ohio) and of "aircraft ready for flight" (aircraft owned or rented and used by the airline). The value of aircraft ready for flight would be weighted according to the number of airmiles flown in Ohio as compared to everywhere and the number of arrivals and departures in Ohio as compared to everywhere, with 60% weight given to airmiles and 40% weight given to arrivals and departures. (Only airmiles of revenue service flight would be considered.)

The payroll factor would consist of two components--the payroll of flight personnel and "fixed-base payroll" (personnel other than flight personnel). The payroll of flight personnel for each type of aircraft would be weighted in a manner identical to the value of aircraft ready for flight (i.e., on the basis of airmiles and arrivals and departures, with 60% accorded to airmiles and 40% to arrivals and departures).

The sales factor also would consist of two components--gross receipts in Ohio from passenger or freight revenue, and gross receipts in Ohio from other sales. Gross receipts from passenger and freight revenue for each type of aircraft would be weighted on the basis of airmiles (60%) and arrivals and departures (40%), unless actual records of passenger and freight revenue are not maintained, in which case the passenger and freight revenue component would be allocated on the basis of passenger ton-miles and freight ton-miles for each type of aircraft as compared to the total for all of the airline's aircraft of all types.

The airline allocation and apportionment provisions could not be construed to limit or alter existing provisions governing adjustments required to be made to a corporation's taxable income for the purposes of determining its Ohio corporation franchise tax.

The airline allocation and apportionment provisions would first apply to tax year 1998 (affecting airline income for the corporate fiscal years ending in 1997).

Corporations must apportion and allocate items received from pass-through entities. Under the bill, if a corporation is part of a pass-through entity, and the pass-through entity has items of income, losses, property, payroll, or sales that are allocable or apportionable for Ohio tax purposes, the corporation would have to include its share of those items in the corporation's allocation or apportionment computation. Similarly, if a corporation has an equity investment in a pass-through entity and that pass-through entity has an equity investment in a second pass-through entity (e.g., a corporation is a partner in Partnership P1, and Partnership P1 is a partner in Partnership P2), then the corporation must include in its allocation or apportionment computation its share of the first pass-through entity's (P1's) share of the second pass-through

entity's (P2's) allocable or apportionable items. Analogous rules would apply for even more indirect pass-through entity relationships involving three or more pass-through entities. Thus, a corporation's share of a pass-through entity's (P1's) share of a second pass-through entity's (P2's) allocable or apportionable items would have to be included even if the first pass-through entity's (P1's) share of the second pass-through entity's (P2's) allocable or apportionable items are passed through indirectly--that is, received through yet another entity (say, P3, a third partnership that is a partner in P2, and in which P1 is a partner).

Apportionable or allocable items passed through to a corporation from a pass-through entity, whether directly or indirectly, would have to be included as well in the corporation's computation of its allocable or apportionable income if it elects or is required to file a combined return with related corporations under existing law (sec. 5733.052), or if it is required to adjust its net income under an existing provision designed to prevent corporations from evading taxation by periodic reorganizations or asset transfers (sec. 5733.053).

Additional limits on related corporations' transfer of taxable income out of Ohio

(sec. 5733.042; Sections 198, 203, and 204)

The bill extends and augments existing provisions designed to limit the degree to which corporations avoid Ohio taxes by shifting income to another state where there may be no tax or a lower tax on corporate income. A corporation operating in Ohio can shift income, in effect, to a related corporation in another state by a variety of transactions, including, for example, selling certain intangibles to the other corporation at a loss, or borrowing from the other corporation at "excessive" interest rates. These transactions reduce the amount of the corporation's income that is taxable by Ohio, and thereby reduce the corporation's Ohio tax liability.

Existing law limits the tax avoidance motive of such income-shifting by requiring a corporation to add to its taxable income the amount of certain interest and intangible expenses that the corporation pays to certain related companies. Interest expenses that must be added back include, at the least, any interest that a corporation may deduct for federal tax purposes. Intangible expenses include expenses for the use of intangible property to the extent the corporation may deduct them for federal income tax purposes, including royalties, patents, technical fees, copyright fees, and licensing fees.

To be subject to the addback requirement, the interest or intangible expenses must have been paid or accrued to certain "related members" of the corporation that are known as "passive investment companies." Generally, a related member is a business entity (corporate or noncorporate) that substantially owns, or is substantially owned by, the corporation, either through direct ownership or through a chain of other business entities. Specifically, a related member is any of the following: (1) an individual owning at least 50% of the corporation's stock (alone or together with his or her family members), (2) an individual's corporation, partnership, trust, or estate that, considered as a group, own at least 50% of the corporation's stock, (3) a second corporation owning at least 50% of the corporation's stock, including any third entity related to the second corporation in such a way that federal law would attribute ownership of the second corporation to that entity, or vice-versa, if federal law were modified to require a 20% rather than 5% share ownership threshold, (4) a second corporation related to the corporation through the common ownership or control of each corporation's stock through one or more other corporations (with 80% stock ownership generally constituting ownership or control).

Corporations must add back only those interest and intangible expenses paid to related members that are passive investment companies. These related members include those whose primary business in any one state is maintaining and managing intangible investments; domestic and foreign (relative to the United States) personal holding companies; noncorporate entities that are owned by domestic or foreign personal holding companies; related members paying similar intangible or interest expenses to any of the foregoing kinds of related members; and related members charging the corporation "excess" interest rates.

Apply income-shifting limits to all corporations. The bill extends the intangible and interest expense addback requirements to all corporations beginning with tax year 1999 (i.e., affected corporations would have to make the adjustments related to transactions made during the accounting period ending in 1998). Under current law, the addback requirements apply only to relatively large corporations, or corporations that are part of a relatively large family of companies: that is, those corporations or families having at least $50 million in annual gross sales, having total assets of at least $25 million, or having annual taxable income of at least $500,000.

Require addback of factoring losses. The bill augments the existing intangibles addback requirement by adding yet another adjustment for losses arising from "factoring" or "discounting" transactions. Typically, factoring or discounting is a financing mechanism whereby one firm (the "factor") purchases another company's accounts receivable, usually at a discount (e.g., a factor purchases a manufacturer's accounts receivable due from the manufacturer's customers). The company selling the accounts receivable receives cash up front from the factor, and the factor collects the accounts receivable directly from the customers. The company thus speeds its positive cash flow and avoids having to undertake collections directly. The factor typically receives a commission and possibly interest from the company; the factor also may either profit by collecting more than the discounted price it paid for the accounts receivable, or incur losses from

collecting less than the discounted price.

The bill requires a corporation to add back to its taxable income any losses relating to, or incurred in connection with, such factoring or discounting transactions if the transaction is undertaken with related members that are passive investment companies. Thus, if a corporation in Ohio sells accounts receivable at a loss to a related passive investment company located outside Ohio, the corporation would have to add the loss back to its Ohio taxable income; the corporation is thus prevented from shifting income to another state by claiming a loss on a business transaction that it undertakes with a closely related passive investment company.

Expansion of the kinds of transactions to which the intangibles addback applies. As explained above, a corporation must add back to its Ohio taxable income any expenses or costs paid or incurred to certain related members for the use of intangibles. The bill expands the kinds of intangibles transactions to which this addback requirement applies by requiring the addback not only for costs and expenses for the *use* of intangibles, but for costs and expenses for the *direct or indirect* use, the direct or indirect maintenance, direct or indirect ownership, direct or indirect sale, direct or indirect exchange, or any other direct or indirect disposition of the intangible.

The bill states that the term "indirect," for this purpose, applies to any transaction that results in a reduction or deferral of a corporation's franchise tax or an increase in its tax credits, and that also constitutes a sham, lacks economic reality, is a step transaction, or is of a form that does not reflect the substance of the transaction (these expressions are explained under "***Entities with individual investors***," elsewhere in this analysis). The bill states that specifying a definition for "indirect" is not intended to affirm or deny that the meaning of that term might or might not be extended to transactions undertaken before the effective date of section 5733.042, or to any case or controversy relating to such a transaction.

"Exit" tax on corporations ceasing to do business in Ohio

(sec. 5733.06(H))

The corporation franchise tax is imposed for the privilege of doing business in Ohio for a tax year (a tax year is concurrent with the January 1 to December 31 calendar year). The amount of tax that a corporation must pay, however, is computed on the basis of the net income it earned for its fiscal year that ended in the preceding year, or on the basis of its net worth on the last day of its fiscal year ending in the preceding year. Thus, for example, a corporation having a fiscal year that ended on September 30, 1996, and that continues to do business in Ohio into 1997, will pay the tax for 1997 on the basis of the corporation's net income for its fiscal year ending on September 30, 1996, or on the basis of its net worth on September 30, 1996. If that same corporation ceases to do business in Ohio before January 1, 1997, it does not have to pay the tax on the basis of its final fiscal year's net income or net worth.

The bill imposes a special tax on corporations ceasing to do business in Ohio. The tax is imposed on that part of the corporation's net income that was realized or recognized during the calendar year it ceased to do business in Ohio, but that was not previously reported to the state for franchise tax purposes. Exiting corporations required to pay the exit tax would have to pay the tax solely on the basis of net income; they would not pay the exit tax on the basis of net worth.

The exit tax would apply only to an exiting corporation that had "nexus" in or with Ohio at some time during the calendar year in which it exited, and that would have been subject to the franchise tax had it continued doing business in Ohio. ("Nexus" is the minimum degree of contact with, or presence in, a state necessary to establish that state's power to tax the corporation; nexus is described in more detail below under "***Expansion of nexus standard***.") However, the exit tax would not apply to any corporation that continues to be subject to the corporation franchise tax for the tax year following the end of its fiscal year; to financial institutions; or to corporations that are considered "transferors" whose successor corporation is required to pay the franchise tax under existing laws preventing corporations from avoiding taxation by periodic reorganizations or assets transfers.

An exiting corporation required to pay the exit tax would have to pay the tax, and file a report, by May 31 of the year after the year it ceases doing business in Ohio.

Divide lower net income tax rate among corporations eligible to combine incomes

(sec. 5733.06(F))

Currently, corporations related through majority stock ownership or control may be required to file a combined return if the Tax Commissioner determines that a combined return is necessary for the incomes of the corporations to be properly reflected--that is, to minimize distortions in net income that otherwise may be caused by transactions between the corporations (such as the income-shifting transactions described above). Corporations related through the ownership or control requirements also may elect to file a combined return with the Tax Commissioner's approval.

If a group of corporations is required or permitted to file a combined return, those corporations currently must divide among themselves the lower franchise tax rate applying to the first $50,000 in net income. Thus, each corporation pays

the lower tax rate on its share of the first $50,000 of the combined group's total net income, instead of each corporation paying the lower rate on its first $50,000. (If one of the corporations has negative net income, it does not share in the lower rate: if it did, its negative net income would offset the others' positive net incomes, thus allowing the group to pay the lower rate on a greater share of its combined income.) However, the corporations in a group that satisfy the ownership and control requirements for combined reporting, but that are not required or permitted to file combined returns, do not divide the lower tax rate among themselves--each of the corporations is allowed to claim pay the lower rate on its first $50,000 in net income. This generally will increase the amount of tax payable by the group.

The bill would require a group of corporations that is *eligible* for combined reporting (on the basis of the ownership and control requirements) to divide the lower rate among the first $50,000 of their combined net income, even if they are not required, or are not permitted, to file combined returns.

The ownership and control requirements for combined reporting are: one corporation owns or controls a majority of the voting stock of another corporation (directly, or indirectly through others); a majority of a corporation's voting stock is owned or controlled by another corporation (directly, or indirectly through others); or a majority of a corporation's voting stock is owned or controlled by related interests that own or control a majority of the voting stock of one or more other corporations. The ownership and control requirements are not affected by the bill.

Repeal of certain limits on combined reporting requirements

(Sections 198, 203, and 204)

The bill eliminates a provision of current law that expressly limits the authority of the Tax Commissioner to require corporations bearing certain relationships with one another to file combined reports, and professes to return the relevant law to its status before the provision was enacted. Under Am. Sub. H.B. 298 of the 119th General Assembly (effective in 1991), the limitations on corporate income-shifting (described above) were enacted. In connection with those transactions, the act prohibited the Tax Commissioner from using the mere existence of licensing, leasing, and credit relationships between corporations and their related members that are passive investment companies, as those relationships involved the use of intangibles or the incurring of indebtedness, to require those corporations and their related members to file combined reports. The bill states that the elimination of this prohibition is not intended to affirm or deny that the existence of any such relationships is sufficient grounds for the Tax Commissioner to require combined reporting.

Alternative taxable years

(secs. 5733.04(E) and 5733.031)

Currently, a corporation's taxable year is the year, or portion of a year, on the basis of which its tax liability is computed: it is the corporation's accounting period or fiscal year over which its net income is determined, or at the end of which its net worth is determined. A corporation's taxable year for Ohio corporation franchise tax purposes must be concurrent with its taxable year for federal income tax purposes, and changes in its federal taxable year require it to change its Ohio taxable year accordingly.

The bill provides for an Ohio taxable year to consist of more than one federal taxable year, and authorizes the Tax Commissioner to designate alternative taxable years under certain circumstances. The Tax Commissioner may adopt rules, or may determine on a case-by-case basis, an alternative taxable year for a corporation that has had a change in its federal taxable year, that has two or more short federal taxable years owing to a change in ownership, or for a corporation newly subject to the corporation franchise tax that otherwise would not have a taxable year. If the Tax Commissioner determines that a corporation should have an alternative taxable year, that determination may be reversed only if it is clearly unreasonable or unlawful.

Taxation of certain partnerships and other "pass-through" entities

(Chapters 5733. and 5747.)

Generally

The bill imposes taxes on certain business entities that generally are not subject to taxation as entities under existing law. Under existing law, the owners or investors of these entities generally are subject to taxation on the income distributed to them by the entity under either the corporation franchise tax (for corporate owners or investors) or the personal income tax (for individual owners or investors). These entities are referred to generally as "pass-through entities" because the net income of the entity "passes through" the entity untaxed, and into the hands of the owners or investors, which are taxed on that income as corporations or individuals. Generally, pass-through entities include partnerships, limited liability companies, small business ("S") corporations, estates, and may include other forms of business organizations (not all of these forms are necessarily subject to the new taxes). Beneficiaries of certain trusts also may be subject to the taxes.

To avoid taxing the same income twice (once at the entity level and again at the owner or investor level), the bill allows owners and investors to claim a credit for taxes paid by the pass-through entity; the credit may be claimed against the corporation franchise tax (for corporate owners or investors) or against the personal income tax (for individual owners or investors).

The declared purpose of imposing the taxes is to "complement and reinforce" the corporation franchise tax and personal income tax laws. It is evident from the nature of the entities that are subject to the taxes, from the nature of their investors, and from the fact that the investors may claim a credit to offset the new taxes, that the taxes are intended to enhance tax compliance by nonresident investors in Ohio pass-through entities by collecting taxes from the entities.

An entity could be subject to one or both of two taxes imposed under the bill: a tax applying to entities that have nonresident individual investors or beneficiaries, and a tax applying to entities that have investors or beneficiaries that are nonresident corporations, partnerships, limited liability companies, or other organizational forms. Any entity with both individual and nonindividual investors or beneficiaries may be subject, as to each class, to both taxes.

Entities with individual investors

(secs. 5747.40 and 5747.41)

A new tax would apply to nonresident individuals who invest in a "qualifying pass-through entity." Similarly, the tax would apply to nonresident individuals who are beneficiaries of "qualifying trusts." (Qualifying pass-through entities and qualifying trusts are referred to collectively as "qualifying entities.") The tax would not apply to the portion of the entity's profit credited to the entity's partners, shareholders, or members who are resident taxpayers of Ohio for the entity's entire taxable year for the purposes of the personal income tax law.

Since the status of an investor or a beneficiary as a qualifying investor or qualifying beneficiary determines whether a pass-through entity or trust is subject to the tax, "qualifying investor" and "qualifying beneficiary" are explained in detail below.

Qualifying investors in pass-through entities. A qualifying investor may be an individual or a business entity. (For the purposes of Ohio's tax laws, both individuals and entities are referred to generically as "persons.") In the case of individuals, a qualifying investor generally is an individual who is a partner, member, shareholder, or equity holder in a qualifying pass-through entity and who is not domiciled in Ohio for the entire calendar year that includes the end of the entity's taxable year. If an entity makes a "good faith" and "reasonable" effort to report and pay the personal income tax (including estimated taxes) for an individual who is not domiciled in Ohio for the entire calendar year, the individual would not be considered to be a qualified investor, and therefore the entity would not be subject to the tax. If an entity's investors consist exclusively of individuals or estates (or both) during the taxpayer's taxable year, the preceding year, and the following year, and the entity makes similar good faith and reasonable efforts to report and pay the investor's personal income taxes, then the entity would not be subject to the tax. The Tax Commissioner may adopt rules governing individuals who are domiciled in Ohio for only a part of a year.

In the case of other investors (i.e., corporations, partnerships, S corporations, and other organizational forms), a qualifying investor is any person other than those that are specifically excepted. The following classes of persons are excepted:

(1) Nonprofit organizations exempted from federal income taxation as 501(c) organizations;

(2) Public utilities;

(3) Regulated investment companies (i.e., mutual funds), real estate investment trusts (REITs), and real estate mortgage investment conduits (REMICs);

(4) Municipal corporations;

(5) A financial institution required to pay the corporation franchise tax on the basis of its net worth (as of the January 1 immediately following the end of the financial institution's year that includes the end of the pass-through entity's taxable year);

(6) A second qualifying pass-through entity that invests in the qualifying pass-through entity, but only if all of the investors in the second entity are individuals domiciled in Ohio for the entity's entire taxable year or members of the classes of investors who are excepted under paragraphs (1), (2), (3), (4), or (5), above;

(7) A second qualifying pass-through entity that invests in the qualifying pass-through entity, but only if the entity satisfies both of the following: (a) all of the entity's investors are individuals or estates for the entity's taxable year, the preceding year, and the following year, and (b) the entity makes good faith and reasonable efforts to report and pay the personal income tax (including estimated taxes) for an individual who is not domiciled in Ohio for the entire three-year period.

(8) A corporate investor that generally agrees that it is subject to, and complies with, Ohio's corporation franchise tax laws for a specified period. Specifically, the investor would have to send a statement to the pass-through entity agreeing irrevocably (under penalty of perjury) that the investor has "nexus" with Ohio (thus indicating that they may be subject to Ohio's legal jurisdiction), and that the investor must pay Ohio's corporation franchise tax on the basis of its net income, for the two years following the end of the entity's taxable year. The entity would have to retain the statement for seven years and produce it upon request of the Tax Commissioner. The investor also would have to make good faith and reasonable efforts to report and pay Ohio's corporation franchise tax (including estimated taxes) for the two years following the end of the entity's taxable year. Finally, the investor and the pass-through entity could not have carried out any transaction (direct or indirect) with another entity or person related to either the investor or the entity (i.e., related through majority stock ownership or other controlling interest) that, alone or in combination with other transactions, results in a reduction or deferral in the amount of Ohio corporation franchise taxes and that constitute a sham, lack economic reality, are a "step transaction," or have a form that does not reflect the substance of the transaction. (Generally, a step transaction is a transaction that, considered alone, would not subject the parties to the transaction to taxation, but is just one step in a series of transactions that, as a whole, may result in a taxable event. The Internal Revenue Service may apply the doctrine of step transaction, as well as the other doctrines, in an attempt to uncover illegal tax avoidance practices, particularly with respect to corporate reorganizations.)

Qualifying beneficiaries of trusts. For an individual or other person to be a qualifying beneficiary of a trust, the individual or other person must be a beneficiary of a qualifying trust during the trust's taxable year. However, "qualifying beneficiary" excludes any individual who is domiciled in Ohio for the entire calendar year that includes the end of the trust's taxable year, and excludes municipal corporations, public utility corporations, nonprofit federally tax-exempt organizations ("501(c)" organizations), regulated investment companies (i.e., mutual funds), real estate investment trusts (REITs), and real estate mortgage investment conduits (REMICs).

Entities with nonindividual investors

(secs. 5733.40 and 5733.41)

A tax would be imposed on qualifying pass-through entities having at least one qualifying investor that is not an individual (i.e., on any qualifying pass-through entity that has corporate, partnership, S corporation, limited liability company, or other entity investors). The income tax also would be imposed on qualifying trusts having at least one qualifying beneficiary that is not an individual.

Exceptions for small entities and for entities without a substantial presence in Ohio. Even if a pass-through entity or trust, by virtue of the nature of its investors or beneficiaries, is a qualifying pass-through entity or qualifying trust, its investors or beneficiaries would not be subject to either of the new taxes for any taxable year in which the total profits credited to qualifying investors or qualifying beneficiaries (adjusted in the manner explained under "***Computation of tax***," below) is $1,000 or less.

The new taxes also would not apply to investors or beneficiaries of any qualifying pass-through entity or qualifying trust for any taxable years during which the entity or trust does not have "nexus" with Ohio as "nexus" may be construed under the United States Constitution either currently or in the future. (See "***Expansion of nexus standard***," elsewhere in this analysis for a discussion of nexus.)

Computation of tax

(secs. 5733.40, 5733.41, and 5747.41)

Entities with individual investors or beneficiaries. The tax on entities with individual investors or beneficiaries would be imposed at the rate of 5% on the total of the "adjusted qualifying amount" of the qualifying investors or qualifying beneficiaries. The tax would be applied to the adjusted qualifying amount after that share is apportioned among Ohio and any other states in a manner similar to the manner used to apportion net income or net worth under the corporation franchise tax law.

Entities with nonindividual investors or beneficiaries. The tax on entities with nonindividual investors would be imposed on the total of the adjusted qualifying amounts of qualifying investors that are not individuals (i.e., corporations, partnerships, limited liability companies, etc.) at the higher of the rates imposed under the corporation franchise tax as proposed by the bill (i.e., 8.5%, the rate imposed on a corporation's net income above $50,000; this is lower than the current 8.9% rate).

Adjusted qualifying amounts. The tax is computed on the total of the adjusted qualifying amounts of qualifying investors after the amount is apportioned to Ohio on the basis of the entity's presence in Ohio (as measured by its property, payroll, and sales, as explained below). A qualifying investor's adjusted qualifying amount generally is the net income or gain received by the investor from the qualifying pass-through entity for the taxable year, plus certain additions and minus a

deduction for any income or gain that cannot legally be taxed under the U.S. or Ohio Constitutions or under federal law. (For example, states are prohibited from taxing interest income from federal obligations, or from taxing the income of interstate businesses having minimal contact with the state.)

The adjusted qualifying amount of a qualifying beneficiary of a qualifying trust generally is the net profit from real and tangible personal property located in Ohio that is distributed to the beneficiary from the trust. Specifically, it includes the net recognized gain from acquisition, ownership, use, management, maintenance, or disposition of such property (whether direct or indirectly through others), and the net recognized income from such activities as those activities relate to such property.

The additions to a qualifying investor's income or gain are for the following amounts: (1) expenses that the entity paid or incurred with respect to direct or indirect transactions with other entities related through stock ownership or control (excluding cost of goods sold as determined under federal tax statutes and regulations), and (2) all recognized losses with respect to direct or indirect transactions with other entities related through stock ownership or control (excluding losses from the sales of cost of goods sold).

Apportionment of adjusted qualifying amounts. The total of a qualifying investor's or qualifying beneficiary's income or gains received from a qualifying entity (pass-through or trust), adjusted as explained above, is apportioned to Ohio before the tax rate is applied. The fraction used to apportion the adjusted qualifying amount represents the proportion of an entity's or trust's property located in Ohio, its payroll paid in Ohio, and its sales in Ohio, as compared to its total property, payroll, and sales, respectively, everywhere. Each of these factors is weighted to reflect the relative degree to which the state taxes the activities of using property, employing persons, and making sales within Ohio. The relative weights for apportioning distributive shares of qualifying pass-through entities and qualifying trusts are the same as the new weights proposed for corporations under the corporation franchise tax: 60% for sales made in Ohio, 20% for property used in Ohio, and 20% for payroll paid in Ohio. A qualifying pass-through entity also would have to include in its property, payroll, and sales factors its share of those factors in the hands of another pass-through entity in which the qualifying entity holds a share (e.g., a partnership that is a partner in another partnership).

If a qualifying pass-through entity is a financial institution, the total income and gain of qualifying investors is apportioned in the same manner as the apportionment method proposed for a corporate financial institution's tax base under the corporation franchise tax--i.e., 70% for the sales factor, 15% for the property factor, and 15% for the payroll factor. (Under the proposed apportionment method for corporate financial institutions, the sales, property, and payroll factors are computed in a different manner than for other corporations.)

Offsetting corporation franchise or personal income tax credits

(secs. 5733.04(I)(14), 5733.0611, 5733.12, 5747.01(A)(16), 5747.059, and 5747.11)

Credit granted. To the extent that a qualifying entity pays one of the new taxes on a qualifying investor's or qualifying beneficiary's adjusted distributive share, the qualifying investor or qualifying beneficiary may claim a credit under the corporation franchise tax (for corporate investors or beneficiaries) or under the personal income tax (for individual and estate investors or beneficiaries). The credit for corporations would be nonrefundable (i.e., it could not, by itself, result in a refund being issued for a tax overpayment), but it could be carried over to future tax years indefinitely. The credit for individuals and estates would be refundable.

For the purposes of determining the amount of the credit to which a qualifying investor or qualifying beneficiary is entitled, the investor or beneficiary would have to follow federal tax law principles governing the allocation of proportionate interests among partners of a partnership (Internal Revenue Code Subchapter K) and beneficiaries of a trust (I.R.C. Subchapter J).

Refunds based on credits--when they must be claimed. The bill shortens the period in which qualifying investors and qualifying beneficiaries may claim a refund resulting from the foregoing credits if the qualifying investor or a qualifying beneficiary challenges the federal or state constitutionality of the corporation franchise tax or personal income tax. Such a qualifying investor or qualifying beneficiary would have to apply for a refund within 90 days of the tax overpayment, instead of within the normal three-year period (for corporation franchise tax refunds) or four-year period (for personal income tax refunds).

The bill also allows qualifying investors and qualifying beneficiaries on whose behalf the new taxes have been paid to apply for refunds even after the normal refund period has expired. If a qualifying investor or qualifying beneficiary fails to claim one of the foregoing credits, if the qualifying pass-through entity or qualifying trust paid some amount of the tax for which the credit could have been claimed, and if the period in which a refund resulting from the credit could have been claimed has expired, the qualifying investor or qualifying beneficiary still could apply for such a refund within one year after the qualifying pass-through entity or qualifying trust paid the tax.

Addback of credits. The bill requires a qualifying investor or qualifying beneficiary receiving one of the foregoing credits to add the amount of the credit to its income (either for corporation franchise or personal income tax purposes) to the extent that the credit has been deducted in computing that income.

Purpose of the taxes; distribution of revenue

(secs. 5733.41 and 5747.41)

Both of the taxes would be levied for the same purposes for which the personal income tax is levied--to provide revenue for the support of schools and local governments, provide property tax relief, provide revenue for the state General Revenue Fund, and to pay the expenses of administering the taxes. Revenue from the taxes would be distributed in the same manner as the corporation franchise tax: 95.2% to the General Revenue Fund, 4.2% to the Local Government Fund, and 0.6% to the Local Government Revenue Assistance Fund.

Reporting requirements; quarterly payment of estimated taxes

(secs. 5747.42, 5747.43, and 5747.44)

Annual return. Each qualifying entity (pass-through or trust) must file an annual return by the 15th day of the fourth month following the end of its taxable year. At the same time, the qualifying entity would have to remit the balance of the tax due (after estimated tax payments--see below). The tax payment would have to be made in the form required by the Tax Commissioner, including electronically if the amount due exceeds a specified threshold. The Tax Commissioner would have to provide copies of the return form, upon request, to qualifying entities.

The return would have to contain all of the information, computations, and attachments necessary to determine the amount of tax, and would have to include the following information: the name, address, social security number, and taxpayer identification number of each qualifying investor or qualifying beneficiary; the amount of tax imposed and the amount of tax paid; and the amount of withholding tax and income tax attributable to each qualifying investor or qualifying beneficiary. (Any of this information may be submitted on magnetic tape or electronically in lieu of with the paper return.)

The return would have to be signed by the entity's trustee or other fiduciary, or its president, vice-president, secretary, general manager, general partner, superintendent, or managing agent located in Ohio.

The Tax Commissioner could grant filing and payment extensions for good cause, and may adopt rules for that purpose. If the Tax Commissioner grants an extension, interest would accrue at the statutory rate applying to unpaid taxes from the day the payment was due (without regard to the extension) until the day the tax is paid.

A domestic (i.e., Ohio-based) qualifying entity would be prohibited from dissolving without filing the required return and paying the required taxes for the year in which it dissolves. Similarly, a foreign (based outside Ohio) qualifying entity could not withdraw from business in Ohio without filing the returns and paying the taxes for the year in which it withdraws.

Quarterly estimated tax payments. Each qualifying entity subject to one of the taxes would have to make estimated tax payments for each quarter of the entity's taxable year. The amount of each estimated tax payment would be computed in a manner similar to estimated tax payments required of individuals under the personal income tax: a qualifying entity would have to have paid 22-1/2% of the entity's estimated annual tax liability by the fifteenth day after the end of the first quarter; 45% by the fifteenth day after the end of the second quarter; 67-1/2% by the 15th day after the end of the third quarter; and 90% by the fifteenth day after the end of the fourth quarter.

If a qualifying entity did not pay the entire amount of estimated taxes when due, a penalty generally would be charged for the deficiency. If a qualifying entity failed to make an estimated tax payment in full and on time, and it makes a subsequent estimated payment, the subsequent payment would be applied toward the previous deficiency only to the extent the subsequent payment exceeds the amount due for that quarter. The penalty would be computed as interest, at the statutory rate for delinquent taxes, from the due date to the date the payment actually is made.

The penalty would not be charged if the Tax Commissioner determined that reasonable cause existed for a late or deficient payment. Late or deficient payments would be considered to be for reasonable cause if the qualifying entity has paid at least 90% of its estimated liability (both income and withholding) for the year on an annualized basis; if the qualifying entity has paid at least 90% of the amount of its estimated liability (both income and withholding) for the year; or if the qualifying entity has paid at least 100% of its liability (both income and withholding) for the preceding year (but only if that year was a 12-month year and the entity filed an annual return for that year).

The Tax Commissioner is authorized to waive the estimated tax payment requirements for any class of taxpayers if the Commissioner considers it reasonable on the basis of administrative costs or "other factors."

Electronic payment of taxes. As with other major state taxes, the taxes imposed on qualifying entities would have to be paid electronically if previous periodic liabilities exceed a specified dollar threshold. In the case of the income and withholding taxes on qualifying entities, the threshold is $180,000 for the next to most recent taxable year. Qualifying entities would be notified of their obligation to pay electronically, may apply to be excused from that obligation, and would be subject to the same sanctions as apply to corporations and other taxpayers required to pay taxes electronically. Administration of the electronic payment system would generally be the same as for other taxes, but additional rules may be adopted by the Treasurer of State (who administers electronic payments) governing the format of payments by qualifying entities.

Administration and enforcement of taxes

(secs. 5747.45, 5747.451, 5747.452, 5747.453, and various sections throughout Chapters 5733. and 5747.)

Generally, the taxes imposed on qualifying pass-through entities and qualifying trusts would be administered and enforced in substantially the same manner as the corporation franchise and personal income taxes are administered and enforced, and the Tax Commissioner would be granted the same authority as the Commissioner possesses under those tax laws, including the power to adopt administrative rules, appoint personnel, and prescribe necessary forms.

Effective date

(Sections 193 and 194)

The new taxes on pass-through entities and trusts would take effect immediately, but would first apply to tax year 1999 for corporate investors and beneficiaries, and to taxable years beginning on or after January 1, 1998 for noncorporate investors and beneficiaries.

Expansion of "nexus" standard

(secs. 5733.01(A) and (B) and 5747.01)

The bill generally broadens the statutory criteria for determining which interstate corporations may be subject to the corporation franchise tax, and which individuals and estates may be subject to the personal income tax. Currently, the corporation franchise tax applies to corporations organized under Ohio law (domestic corporations), and applies as well to "foreign" corporations organized in another state or nation that do business in Ohio, own or use capital or property in Ohio, or hold a certificate of compliance authorizing it to do business in Ohio (issued by the Secretary of State). The personal income tax applies to individuals and estates residing in Ohio, and to individuals and estates that earn or receive income in Ohio (including Ohio lottery prizes) even if they do not reside in Ohio.

Under the bill, corporations, individuals, and estates having any degree of Ohio "nexus" (i.e., connection with, or presence in, Ohio) under the United States Constitution would be subject to Ohio's corporation franchise tax or personal income tax laws. Thus, the taxes would apply to corporations, individuals, and estates with more than a minimal connection with, or presence in, Ohio, as the standards for minimal connection or minimal presence may be construed by courts currently and in the future. This expands the scope of the taxes to the maximum degree permissible under prevailing judicial interpretations of a state's authority to tax interstate business or nonresident individuals and estates under the Commerce and Due Process Clauses of the United States Constitution. The degree to which the bill actually would increase the current number of foreign corporations or nonresident individuals or estates subject to either tax is not clear.

Effective date

(Section 203)

The expansion of the nexus standard takes effect on the 91st day after the act is filed with the Secretary of State.

Taxation of nonresident pass-through investors

(sec. 5747.08)

The bill generally imposes a greater tax liability on certain nonresident individuals who own shares in a pass-through entity (e.g., a partnership, limited liability company, or S corporation) having nexus with Ohio, by eliminating multiple personal exemptions and credits, taxing their income from the entity at the highest marginal tax rate, and limiting the amount of business tax credits they may claim. These proposals apply solely to nonresident investors in a pass-through entity that elects to file a single Ohio return on behalf of the nonresidents (this is permitted under existing law only if the nonresidents have no other sources of income taxable by Ohio). The bill also imposes additional restrictions and liabilities on pass-through entities filing a return on behalf of nonresident investors.

Limit on nonresident personal exemptions and credits. Currently, each nonresident individual who owns a share in an

Ohio pass-through entity is entitled to claim an exemption and a $20 credit for himself or herself, his or her spouse, and each of his or her dependents. Under the bill, such a nonresident could not claim any of those exemptions or credits if the pass-through entity files a single return on behalf of the nonresident and one or more other nonresident owners of the entity. The bill does not affect a nonresident's claim of exemptions and credits if the nonresident files an individual return on his or her own behalf.

Highest tax rate imposed on nonresidents. Under the bill, nonresident pass-through entity investors on whose behalf the entity files a return would be taxed at the highest marginal tax rate (currently 7.5%, and imposed on taxable income in excess of $200,000), regardless of the amount of income the nonresident receives through the pass-through entity. The rate would be imposed on the nonresident's income before the deduction of any business credits to which the nonresident is entitled through the entity (business credits are described under the following heading).

Limit on nonresident business credits. Nonresident investors in an Ohio pass-through entity would be entitled to claim only their respective distributive share of various business credits. Although this is currently required for some of the credits, it is not required for all of them. "Business credit" would mean job creation tax credit, the credit for property taxes paid on manufacturing property, both of the credits for investments in manufacturing property, the credit for grape production property, the credit for investments in start-up technology companies, the export sales credit, the credit for environmental cleanup and development, the enterprise zone credits for paying employee training or child day care expenses and for hiring employees who received Aid to Dependent Children assistance, and the credit for political campaign contributions.

Further restrictions on pass-through entities with nonresident investors. Under the bill, a pass-through entity's election to file a single return on behalf of one or more of its nonresident investors would apply only to the taxable year for which the election is made. The election would be binding and irrevocable for that year, unless the Tax Commissioner determines otherwise. A pass-through entity making that election would be liable for any taxes, interest, or penalties if the Tax Commissioner determines that the return does not reflect the correct amount of tax due. The entity's liability under the bill would not limit or alter the liability of any nonresident investor in the entity. The entity would not be liable, however, for any part of a nonresident investor's tax liability arising from other sources of income taxable by Ohio.

Allocation, apportionment of personal income

(secs. 5747.20, 5747.21, 5747.22, and 5747.23)

Generally, the bill specifies how the apportionment and allocation provisions under the personal income tax must be applied; permits the Tax Commissioner to specify alternative methods of computing business and nonbusiness income; and requires taxpayers to include in those computations any distributive shares received from a pass-through entity.

Application of allocation, apportionment rules. Current law specifies how various items of business and nonbusiness income earned by a pass-through entity are to be allocated or apportioned to Ohio for the purpose of determining the nonresident credit. (Business income is any income from the conduct of a trade or business; nonbusiness income is any other income.) Generally, business income is apportioned to Ohio on the basis of three factors--property used in business in Ohio, payroll paid in Ohio, and sales made in Ohio. The income is apportioned to Ohio in proportion to the relative presence of those factors in Ohio as compared to everywhere. Each of the factors is weighted equally (unlike corporation's apportionment weighting, which emphasizes sales over property and payroll). In the case of business income received by a pass-through entity, the income is first apportioned to the entity on the basis of its three factors, and then apportioned to each investor in the entity in proportion to the investor's share of the entity's income.

Nonbusiness income generally is allocated to Ohio on the basis of where the property or activity giving rise to the income is located. In the case of nonbusiness income received by a pass-through entity, the income is first allocated to the various investors in the entity in proportion to their respective shares in the entity, and then those respective shares are allocated to Ohio in the hands of the individual investors in the same manner as any other individual's nonbusiness income is allocated.

The bill expressly states that the foregoing apportionment rules apply only for the purpose of computing the nonresident credit, determining the portion of a nonresident investor's income from a pass-through entity that is taxable by Ohio, and determining the amount of the export sales credit. The bill also specifies that the foregoing allocation rules apply only for the purpose of computing the nonresident credit and the export sales credit.

Alternative methods of computing business and nonbusiness income. The bill permits the Tax Commissioner to adopt rules providing for alternative methods of computing business and nonbusiness income either for all taxpayers and pass-through entities, for classes of taxpayers and pass-through entities, or for taxpayers and pass-through entities in a particular industry. The rules would have to be adopted under the existing procedure requiring rules of the Tax Commissioner to be submitted to the Joint Committee on Agency Rule Review (JCARR), the Secretary of State, and the Legislative Service Commission, and be open to public inspection and appeal.

Taxpayers must include items received from pass-through entities. Under the bill, if a taxpayer invests in and receives a distributive share from a pass-through entity, and the pass-through entity has items of income, losses, property, payroll, or sales that are allocable or apportionable items of business or nonbusiness income for Ohio tax purposes, the taxpayer would have to include its share of those items in the taxpayer's business or nonbusiness income computation. Similarly, if a taxpayer invests in and receives a distributive share from a pass-through entity, and that pass-through entity is part of a second pass-through entity (e.g., a taxpayer is a partner in Partnership P1, and Partnership P1 is a partner in Partnership P2), then the taxpayer must include in his or her business or nonbusiness income his or her share of the first pass-through entity's (P1's) share of the second pass-through entity's (P2's) items of business or nonbusiness income. Analogous rules would apply for even more indirect pass-through entity relationships involving three or more pass-through entities. Thus, a taxpayer's share of a pass-through entity's (P1's) share of a second pass-through entity's (P2's) business or nonbusiness income would have to be included even if the first pass-through entity's (P1's) share of the second pass-through entity's (P2's) business or nonbusiness income are passed through indirectly--that is, received through yet another entity (say, P3, a third partnership that is a partner in P2, and in which P1 is a partner).

Effective date

(Section 194)

Most of the changes in the personal income tax law proposed by the bill apply to taxable years beginning on or after January 1, 1998.

Term during which interest for late tax payments runs

(secs. 3734.904, 3734.907, 3769.088, 4305.13, 4305.131, 5728.10, 5733.11, 5733.26, 5735.11, 5735.12, 5735.121, 5739.13, 5739.132, 5739.133, 5739.15, 5741.10, 5741.14, 5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.08, 5747.13, 5749.06, 5749.07, and 5749.10; Section 196)

Under many of the various taxes imposed by the state, interest is charged for tax payments that are not received when due. The annual rate at which interest is charged is determined each year by the Tax Commissioner according to a formula specified by statute: the average yield on short-term United States government obligations (having a maturity of three years or less), plus three per cent.

Generally, interest is charged at this rate from the day a payment is due until the payment is made. If the payment is not made for an extended period fixed by statute (but not beyond the statute of limitations), the Tax Commissioner may issue an assessment against the taxpayer or other responsible person. (Assessments formally fix the amount due and initiate administrative and possibly judicial proceedings for the collection of the tax.) Once an assessment is issued, interest generally is not charged for the 30-day period in which the taxpayer may appeal the assessment.

For certain taxes, the bill would charge interest during the 30-day period following an assessment if any part of the assessment is not paid within the 30-day period; interest would accrue only on the unpaid portion if part of the assessment is paid in that period. The taxes affected are the taxes on alcoholic beverages, cigarettes and other tobacco products, the motor vehicle fuel tax (including the compensatory fuel use tax), the personal income tax, the corporation franchise tax, the severance tax, the horseracing tax, and the tire disposal fee. These changes would apply to interest accruing with respect to assessments issued on or after January 1, 1998.

A special provision applies to the sales and use taxes, since under current law interest normally does not accrue unless an assessment is issued. If an assessment is issued, however, "preassessment" interest currently may be charged for a portion of the period between the day the tax was due and the day the assessment is issued. Under the bill, interest would begin to run continuously from the day the tax is due until it is paid, or until an assessment is issued and "postassessment" interest begins to accrue, whichever occurs first. This change would apply only to taxes that are required to be paid on or after January 1, 1998.

Because pre-assessment interest would begin accruing earlier on unpaid sales and use taxes, interest would be paid on refunds of overpaid taxes, even if no assessment has been issued.

Taxation of foreign and domestic insurance companies

Current law

(secs. 5725.18 and 5729.03)

The annual franchise tax currently imposed on domestic insurance companies equals the lesser of (1) 0.6% of the value of the capital and surplus of the company, or (2) 2.5% of the gross premiums received by the company from policies covering risks within Ohio during the preceding calendar year. The tax must be at least $25.

For foreign insurance companies, the Superintendent of Insurance is required to charge an amount of 2.5% of the gross premiums received by the company from policies covering risks within Ohio during the preceding calendar year, less return premiums paid for cancellations and considerations received for reinsurance.

The bill

Tax rate for domestic and foreign insurers (secs. 5725.18, 5725.181, and 5729.03; Sections 3 and 178(A) to (C)). Under the bill, both domestic and foreign insurance companies will be taxed, beginning in the year 2003, at a rate of 1.5% of gross premiums. The minimum tax that must be paid will be $250. The bill provides for a phase-in of the new tax rate beginning with tax year 1999, as follows:

--The tax imposed on the gross premiums of *foreign insurance companies* is computed as follows:

For Tax Year	Percentage of premiums
1999	2.3%
2000	2.1%
2001	1.9%
2002	1.7%

--The tax imposed on *domestic insurance companies* is equal to the sum of (1) and (2) below:

(1) The tax computed according to the current method (0.6% of capital and surplus or 2.5% of gross premiums, whichever is less), multiplied by 80% in 1999, 60% in 2000, 40% in 2001, and 20% in 2002.

(2) The tax computed using the method prescribed by the bill (1.5% of gross premiums), multiplied by 20% in 1999, 40% in 2000, 60% in 2001, and 80% in 2002.

--The *minimum tax* on both domestic and foreign insurance companies is as follows:

For Tax Year	Minimum tax
1999	$50
2000	$100
2001	$150
2002	$200

Tax credit (sec. 5729.031; Section 178(D)). The bill provides a tax credit for a foreign or domestic insurance company or insurance company group. "Insurance company group" is defined as two or more insurance companies that are owned by a common owner or two or more insurance companies among which one company owns the other company or companies.

An insurance company group can compute one credit for the group as a whole, and one or more companies in the group may claim all or a portion of that credit until it is exhausted. The bill authorizes the Superintendent of Insurance to adopt rules for the apportionment of the credit among the members of an insurance company group.

The amount of the credit is computed as follows:

(1) Subtract the total dollar amount of all premiums sold in all states by the company, in the case of an individual company, or by the group, in the case of an insurance company group, from $50 million. (If the difference is less than or equal to zero, the credit allowed is zero.)

(2) Divide the result obtained in (1) by 50 million;

(3) Multiply the quotient obtained in (2) by 200,000.

The product obtained in (3) is the credit amount. The credit, however, cannot reduce the tax liability of any individual company or of any company within an insurance company group below the minimum tax required.

After July 1, 1999, the 50 million figure used in the computations described in (1) and (2) above is increased to 75 million.

Prior to tax year 2003, only a portion of the credit amount computed in (3) above is available, as follows:

For Tax Year	Percentage of credit allowed
1999	20%

2000	40%
2001	60%
2002	80%

The bill expressly provides that a reduction in the taxes of a foreign insurance company to the extent obtained through a claim for credit under the bill does not increase the retaliatory tax liability otherwise charged against the company.

Exemption for premiums of small employer health care alliances (sec. 1731.07). As in current law, the premiums received by an insurer from or on behalf of an enrolled small employer and eligible employees under a health benefit plan provided by the insurer pursuant to a qualified alliance program are not considered "premiums received" for purposes of computing the tax imposed on domestic and foreign insurers.

Administration of surplus lines insurance tax

(secs. 3901.17(G), 3905.35, 3905.36, 3905.37, and 3960.03)

Under current law, the Superintendent of Insurance is required to collect a tax on the premiums, fees, and other considerations paid for insurance on property or persons in Ohio that is procured from an insurer not authorized to transact business within this state. The tax is collected from surplus line brokers, risk retention groups doing business in Ohio that are licensed in other states, foreign or alien insurers not authorized to transact business in Ohio, and certain other persons.

The bill makes the Treasurer of State responsible for collecting the surplus lines tax. It also requires that the tax be calculated on a form prescribed by the Treasurer of State, and specifies that payment is considered made when it is received by the Treasurer of State, irrespective of any U.S. Postal Service marking or other stamp or mark indicating the date on which the payment may have been mailed.

Regulation of surplus line brokers

(secs. 3905.30, 3905.33, 3905.34, 3905.35, and 3905.36)

Under current law, a person licensed as a surplus line broker is permitted to negotiate for and obtain insurance, other than life insurance, on property or persons in Ohio with insurers not authorized to transact business in this state. The bill modifies the law regulating surplus line brokers, as follows:

--Existing law requires a surplus line broker to file with the Superintendent of Insurance, within 15 days after issuing or delivering insurance, the broker's own affidavit that the insurance cannot, after due diligence, be procured from an insurer authorized to do business in Ohio. The Superintendent has 15 days within which to terminate the transaction if it is found to be in violation of current law.

The bill repeals these provisions, and instead generally prohibits any surplus line broker from issuing or delivering a policy with any insurer that is "not eligible" to write insurance on a surplus line basis in Ohio. To establish the eligibility of an unauthorized insurer, the Superintendent may request copies of the insurer's most recent financial statements; instruments such as domestic trust agreements, powers of attorney, and investment management contracts; biographies of the owners and managers of the insurer; and any other information the Superintendent believes may be helpful in determining an insurer's suitability.

The bill also prohibits any insurance agent or surplus line broker from procuring any insurance with an unauthorized insurer without complying with the "due diligence" requirements of the bill. Under those requirements, an agent or surplus line broker must contact at least five of the authorized insurers the agent or broker represents, which insurers customarily write the kind of insurance required by the insured. Due diligence is presumed if declinations are received from each insurer contacted. An agent or broker is exempt from these due diligence requirements if the agent or broker is procuring insurance from a risk purchasing group or risk retention group.

An insurance agent who procures insurance through a surplus line broker must obtain an affidavit from the insured acknowledging that the insurance policy is to be placed with an insurer not authorized to do business in Ohio and that, in the event of the insolvency of the insurer, the insured is not entitled to any benefits from the Ohio Insurance Guaranty Association.

--Existing law requires a surplus line broker, upon issuing any policy, to file with the Superintendent a certified copy of that particular account showing, among other things, the amount of the insurance, the name of the insured and of the insurer, and the premium charged. Under the bill, that information must instead be filed within 30 days after the end of each quarter.

--Existing law requires a person licensed as a surplus line broker to deliver to the Superintendent a $25,000 bond payable to the state "with at least two sureties." The bill instead requires that the bond be issued by an insurance company authorized to transact surety business in Ohio and be on a form prescribed by the Superintendent.

--The bill authorizes the Superintendent to adopt rules to carry out the purposes of the Surplus Line Brokers Law.

Taxation of financial institutions

(secs. 5701.01, 5701.05, 5725.01, 5733.056, and 5733.06)

The bill makes substantial changes in the laws governing taxation of financial institutions, including portions of the definitions in their primary Chapter--5725.; and of their inclusion under Chapter 5733.--Corporation Franchise Tax.

The rationale for these measures is to remove the effects that are adverse to Ohio because the laws were enacted in an era when banks generally did business in only one state. For example, when a bank from another state issues a credit card to an Ohio resident the issuer is required to pay no tax to this state on the interest it earns on that card. This is because the Ohio definition of a financial institution for their taxation is only one that maintains an office and receives deposits in this state. Thus, Ohio financial institutions are taxed more heavily on their lending activities than are out-of-state lenders.

By contrast, when an Ohio bank makes a loan to a resident of another state, secured by property in that state, Ohio taxes its own bank on that loan's interest. It may well be that the other state will also tax the same income.

A similar problem arises due to a 1994 federal act (Riegle-Neal) which makes interstate branching easier. A bank organized under Ohio law with branches in other states will have the income from all of its branches taxed by Ohio. Again, the states in which the branches are located may tax the same income.

The proposed definition of "financial institution" would include any regulated financial institution (except a credit union) that conducts business in the state, even if it does not have an office or receive deposits here.

Another reform involves the method of apportioning of the net worth of a financial institution among states in which it does business. Currently Ohio accomplishes this by using the basic net worth method with two equally weighted factors--property and business done. This proposal would multiply the value of a financial institution's issued and outstanding shares by the property factor multiplied by 15%, the payroll factor multiplied by 15%, and the sales factor multiplied by 70%. Through tax year 1998, the resulting figure would continue to be multiplied by 15 mills; but in tax year 1999, by 14 mills; and in tax years 2000 and beyond, by 13 mills. The dominance of the sales factor will result in a tax based primarily on where the customers are located, not with that of the main office. This will remove any disincentive to locating the main office in Ohio.

Another aspect of the reform would permit a bank making interstate acquisitions to use an alternate apportionment formula during tax years 1998 through 2001. This would involve a single deposits factor for apportionment and provide further incentive for location of main offices in Ohio.

Tangible personal property taxes--no interest on refunds arising from taxpayer error

(sec. 5711.32; Section ___)

Currently, if a person overpays property taxes on tangible personal property, the person is entitled to a refund of the overpayment. Interest generally must be paid on the amount of the refund for each full month from the time the tax was overpaid until the refund is issued. The only condition under which interest does not have to be paid is if the taxpayer lists the property in the wrong taxing district. Refunds and interest on refunds are paid from the public funds that received the overpaid taxes (i.e., the funds of school districts, counties, townships, municipal corporations, and other taxing districts).

The bill denies the payment of interest on refunds of overpaid taxes resulting from any taxpayer error. The denial of such interest applies to refunds made after the bill's effective date pursuant to an assessment, order, or agreement, and regardless of the time the claim for the refund is made.

Modifications in the state income tax reduction mechanism

(secs. 131.44 and 5747.08; Section 191)

Am. Sub. S.B. 310 of the 121st General Assembly established a mechanism for reducing personal income tax rates in 1996 and 1997 by the amount of "surplus revenue" at the end of the previous fiscal year. The bill makes the mechanism permanent, so that it will apply to tax rates for years beyond 1997 as well.

The Governor vetoed parts of the law, including the associated definitions. The definitions were vetoed because, he wrote, the mechanism did not "accurately accommodate the intent of" the General Assembly. Subsequently the Director

of Budget and Management adopted a modified set of definitions by rule. The bill enacts these definitions, with further changes, into statutory law and makes other provisions relating to the tax reduction.

Under existing law, the amount of the tax rate reduction is based on the amount of "surplus revenue" that is available--that is, the amount by which the "total fund balance" exceeds the "required year-end balance." The total fund balance consists of the unencumbered balance in the General Revenue Fund on the last day of the preceding fiscal year, plus the balance in the Budget Stabilization Fund (the state's "rainy day" fund). The required year-end balance consists of the sum of the following:

(1) 5.0% of the General Revenue Fund revenues for the preceding fiscal year;

(2) 0.5% of General Revenue Fund revenue for the preceding fiscal year (the so-called "ending fund balance");

(3) The amount by which the most recent estimate of GRF revenue for the second fiscal year of the biennium available to the Director of Budget and Management is exceeded by (a) GRF appropriations for and transfers to that fiscal year that are made in acts of the General Assembly that have been signed by the Governor but that are not yet effective, and (b) transfers of appropriation from the first fiscal year to the second fiscal year of the biennium that have been approved by the Controlling Board;

(4) The amount of GRF capital appropriations made for the current biennium that the OBM has determined will be encumbered or disbursed--a new element in the formula;

(5) The amount of the reduction projected by OBM in income tax revenue in the current fiscal year that is attributable to the previous reduction in the income tax rate--another new element in the formula.

Under existing law, the Director of Budget and Management is required to transfer, to the extent of the unobligated, unencumbered balance in the General Revenue Fund on the preceding June 30, the "surplus revenue" from the GRF to the Income Tax Reduction Fund. Under the bill, the Director is required to transfer from the GRF, to the extent of the unobligated, unencumbered balance on the preceding June 30 in excess of 0.5% of the GRF revenues in the preceding fiscal year (the "ending fund balance"), both of the following:

(1) To the Budget Stabilization Fund, any amount necessary for the balance of the Budget Stabilization Fund to equal 5.0% of the GRF revenues of the preceding fiscal year. (Sec. 131.43, not in the bill, states that it is the intent of the General Assembly to maintain in the Budget Stabilization Fund approximately 5.0% of the General Revenue Fund revenues for the preceding fiscal year and requires the Governor to include, in the biennial executive budget, proposals for transfers from the General Revenue Fund and the Budget Stabilization Fund for the ensuing fiscal biennium.)

(2) To the Income Tax Reduction Fund, an amount equal to the surplus revenue.

Also under existing law, a tax reduction does not take place unless the amount involved equals at least 0.35% of the revenue that the Legislative Budget Office estimates will be received from the personal income tax in the current fiscal year without regard to the tax reduction. The bill bases the computation on the amount that the Director of Budget and Management, instead, estimates will be received from the tax.

For years in which there is a reduction in taxes, tax returns would have to include a statement indicating that the tax due with the return is being reduced. Specifically, tax returns would have to include the following statement: "The tax on this line reflects a .....% reduction under legislation enacted by the General Assembly requiring the return of excess state revenue to taxpayers." The statement would have to appear in boldface type in a prominent location on the return near where the amount of tax due is entered (before any special credits or credits for amounts withheld).

A one-time limit on the amount refunded to taxpayers from the Income Tax Reduction Fund would apply for surplus balances at the end of fiscal year 1997 (affecting taxes paid in 1998 for 1997). The amount transferred to the Income Tax Reduction Fund in 1997 would be limited to $285.7 million. The surplus revenue in excess of $285.7 million would be distributed among four education-related funds in the following order: $94.4 million to SchoolNet Plus to supplement money provided elsewhere in the bill; $25 million to the Instructional Materials Education Fund (created by the bill) to pay for textbooks and other instructional materials; $9.2 million to the Distance Learning Fund (created by the bill) to be used for distance learning; any remaining surplus revenue would be used for school building assistance.

Municipal income tax exemption for stock options

(sec. 718.01)

Existing law provides that a municipal corporation may levy a tax on income, but the municipal corporation cannot exempt from the tax compensation for personal services of individuals over 18 years of age. The bill permits the legislative authority of a municipal corporation to exempt from a municipal income tax any compensation arising from the grant, sale,

exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. (A stock option is a right to purchase stock in a corporation on or before a specified date and at a given price. A corporation may grant its executives stock options to give the executive a personal incentive to increase the corporation's earnings.)

Personal property tax assessment on warehoused goods shipped inside the state

(secs. 5711.22, 5727.111, and 5727.12; Section 199)

The bill provides that merchandise or an agricultural product owned by a qualified out-of-state person shipped from outside this state and held in this state in a public warehouse without further manufacturing or processing and for temporary storage only and for shipment inside this state, but that is taxable because it does not qualify for a tax exemption as property not used in business in this state, must be listed as tangible personal property and assessed at a rate of 25% of its true value in money until it is reduced in accordance with a schedule established by the bill. "Qualified out-of-state person" is defined as a person that does not own, lease, or use property, other than merchandise or an agricultural product, in this state, and does not have employees, agents, or representatives in this state. A "public warehouse" means a warehouse in this state that is not subject to the control of or under the supervision of the owner of the merchandise or agricultural product stored in it, or staffed by the owner's employees, and from which the property is to be shipped inside this state.

The bill requires that the assessment rate be reduced by five percentage points, subtracted from the rate at which the property was required to be listed and assessed in the preceding year, if the total statewide collection of all real and tangible personal property taxes for the second preceding year exceeded the total statewide collection of all real and tangible personal property taxes for the third preceding year by more than the greater of 4% or the rate of increase from the third to the second preceding years in the average consumer price index. If no reduction is made for a year, the assessment rate for the stored property stays the same as for the preceding year.

Each year until the assessment rate equals zero, the Tax Commissioner is required to perform the calculation to determine the assessment rate for the stored property and notify all county auditors of that rate. The Tax Commissioner must first determine if a reduction in the rate is required for returns required to be filed in 1998. If the reduction is required, the assessment rate in 1998 will be 20%.

The bill also provides that during and after the year for which the assessment rate equals zero, such stored property is property not used in business in Ohio for property tax purposes, and thus is not subject to the tax.

Sales tax provisions

Liability for taxes on property used in performing a service

(sec. 5739.01(D) and (E))

Current law subjects the retail sale of a number of services to the sales tax, including the repair or installation of property, car washing, landscaping, exterminating, employment placement service, and janitorial service. The bill provides that a business that makes sales of a taxable service is liable for payment of sales tax when it purchases tangible personal property that it uses in performing the service. However, if the property is to be transferred to the consumer of the service as an integral part of the performance of the service, the purchase of the property by the business is not subject to the tax.

Direct use exception

(sec. 5739.01(E))

Current law provides that a sale is not subject to the sales tax if the purpose of the consumer is to use or consume the thing transferred directly in mining, farming, agriculture, horticulture, or floriculture. The bill modifies this exception, so that a sale is not subject to the tax if the purpose of the consumer is to use or consume the thing transferred directly in *producing a product for sale* by mining, farming, agriculture, horticulture, or floriculture.

Service vendor's license

(sec. 5739.17)

Normally under current law, a business that makes sales that are subject to the sales tax must obtain a vendor's license from the county auditor. However, if the business engages in the sale of the following services, it also must obtain a service vendor's license from the Tax Commissioner: automatic data processing, computer, and electronic information services used in business; telecommunications service; lawn care and landscaping service; private investigation and security service; and the provision of information or tangible personal property by means of a "900" telephone call. If the

business sells only these services, it is not required to obtain any license other than the service vendor's license. A service vendor's license authorizes the business to sell these services anywhere in the state.

The bill adds the following services to those authorized to be sold under authority of a service vendor's license: building maintenance and janitorial service; employment service; employment placement service; and exterminating service.

Situs of sales of services

(sec. 5739.033)

Current law specifies the location where a sale is consummated for the various kinds of sales that are subject to the sales tax. The location is important, as it determines which local-option county or transit authority sales tax applies to the sale. Existing law omits several services in the provisions governing the determination of the location of sales. The bill corrects this omission.

Under the bill, if a vendor provides physical fitness facility or recreation and sports club service, the sale is consummated at the vendor's place of business where the service is performed or the contract or agreement for the service was made or the purchase order was received. If a vendor provides building maintenance and janitorial service, employment service, employment placement service, or exterminating service, the sale is consummated at the location of the consumer where the service is performed or received.

Payment of refunds to consumers

(sec. 5739.07)

If a refund of sales taxes must be made because the taxes were paid illegally or erroneously, the Tax Commissioner is required under existing law to pay the refund to the vendor if the vendor has not reimbursed itself from the consumer. The bill provides that the Commissioner may make the refund to the consumer under any of the following circumstances:

--The consumer is unable to receive a refund from the vendor because the vendor has ceased business.

--The vendor is unable to issue a refund because of bankruptcy or similar financial condition.

--The consumer receives a refund of the full purchase price from a manufacturer or other person, other than the vendor, as a settlement for a complaint by the consumer about the property or service.

Sales and use tax exemption for personal computers used by teachers

(sec. 5739.02)

The bill creates an exemption from the state sales and use tax for sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to a licensed or certified teacher in an elementary or secondary school in Ohio for use in preparation for teaching elementary or secondary school students.

Sales and use tax exemption for professional racing teams

(secs. 5739.01(TT) and 5739.02(B)(41))
The bill creates a sales and use tax exemption for sales of certain goods and services to professional racing teams. The exemption applies to sales of the following:

--Motor racing vehicles, defined to mean vehicles for which the chassis, engine, and parts are designed exclusively for motor racing. (The exemption does not apply to sales of stock or production model vehicles that may be modified for use in racing.)

--Repair services for motor racing vehicles.

--Items that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles. However, the exemption does not apply to sales of tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to a vehicle to collect and transmit data by means of telemetry and other forms of communication.

To qualify for the exemption, an organization must employ at least 20 full-time employees for the purpose of conducting a motor vehicle racing business for profit. The business must be conducted with the purpose of racing one or more motor racing vehicles in at least ten competitive professional racing events each year that comprise all or part of a motor racing series sanctioned by one or more motor racing sanctioning organizations. Each of the racing events must award aggregate cash prizes of more than $800,000 to the competitors, and must also be sanctioned by one or more motor racing

sanctioning organizations.

Extension of extra 2¢ earmark to Ohio Grape Industries Fund

(sec. 4301.43)

Current law imposes a tax on the sale or distribution of wine, vermouth, sparkling and carbonated wine, and champagne at rates ranging from 32¢ per gallon to $1.50 per gallon. Of this amount, 5¢ is credited to the Ohio Grape Industries Fund, for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund is scheduled to drop to 3¢ on July 1, 1997. The bill extends the 5¢ earmarking until July 1, 1999.

Repeal in the increase of funds transferred from the General Revenue Fund to the Rail Development Fund

(sec. 4981.09; Section 171)

Under existing law, twice each year, the Director of Budget and Management transfers from the General Revenue Fund (GRF) to the Rail Development Fund a portion of the corporation franchise tax revenue paid into the GRF by certain railroads over the preceding months. The portion was 50% in 1995, 1996, and part of 1997, and increases to 75% thereafter. The Director makes the transfers by March 31 for the immediately preceding June through December, and by August 31 for the immediately preceding January through May.

Existing uncodified law provides that by March 31, 1998, the Director must transfer to the Rail Development Fund 75% of the identified amounts paid into the GRF during July 1997 through December 1997, plus 50% of the identified amounts paid into the GRF for June 1997. In other words, under uncodified law, the increase to 75% does not take effect until July 1997 and thereafter.

The bill reduces the percentage back to 50% in statute and repeals the uncodified law that required the increase to 75% after July 1997. The effect of this is that the increase to 75% never occurs, and the portion of the GRF transferred to the Rail Development Fund remains at 50%.

Extension of enterprise zone authority

(secs. 5709.62, 5709.63, and 5709.632)

The authority for counties and municipal corporations to enter into agreements granting tax abatements and other incentives to businesses that locate in enterprise zones is set to expire December 31, 1997. The bill extends the expiration date until December 31, 1998.

Extension of manufacturer's investment tax credit

(sec. 5733.33)

Under current law, a corporation franchise or state income tax credit is available to a business that purchases new manufacturing machinery and equipment that it installs in Ohio. To be eligible for the credit, the cost of the new machinery and equipment purchased during a calendar year for use in a county must exceed the business's average new manufacturing machinery and equipment investment for that county during a 1992-1994 baseline period. In addition, the new machinery and equipment must be purchased no later than December 31, 1998, and must be installed in Ohio no later than December 31, 1999.

The bill extends the life of the credit for two years, so that purchases made by December 31, 2000, are eligible for the credit, as long as the machinery or equipment is installed in Ohio by December 31, 2001. For purchases made during the extension period, the bill changes the baseline years used to determine the business's average baseline investment in a county. Specifically, for determining the eligibility of purchases made in 1999, the business must compare the purchases to its average investment in the county during 1993-1995. For determining the eligibility of purchases made in 2000, the business must compare the purchases to its average investment in the county during 1994-1996.

Technical change in law establishing voluntary environmental cleanup tax credits

(secs. 122.19 (renumbered 122.16), 3746.121, 5733.34, and 5747.32; Sections 187 and 188)

In 1995, the 121st General Assembly enacted four acts constituting the Governor's "Jobs III Package." Two of these acts (Sub. H.B. 441 and Sub. H.B. 442) used different terms to refer to the areas that are eligible for, respectively, the voluntary environmental cleanup tax credit program and the urban and rural initiative grant program, both administered by the Department of Development. Sub. H.B. 441 defined "economically disadvantaged area" to mean a "distressed area," "labor surplus area," "inner city area," or "situational distress area." Sub. H.B. 442 used the term "eligible area" to mean

those same four areas. The bill uses "eligible area" rather than "economically disadvantaged area" to refer to the areas that are eligible to participate in both of the programs described above. It also makes related technical changes in laws dealing with the voluntary action program, the corporate franchise tax, and the state income tax.

Uniform refund offset procedures for state taxes

(secs. 5733.121, 5735.143, 5739.072, 5741.101, and 5747.12)

The bill prescribes uniform procedures for the Tax Commissioner to follow when dealing with a taxpayer that is entitled to a refund of a state tax but that at the same time is overdue in paying any state tax or fee administered by the Commissioner. The bill authorizes the Commissioner to retain the amount refundable as payment for the amount owed (including any charge, penalty, or interest that has accrued on the amount owed). If the amount refundable is less than the amount owed, the bill requires that it be applied toward the debt. If the amount refundable is greater than the amount owed, the refund remaining after payment of the debt must be paid to the taxpayer. If the taxpayer has more than one debt of overdue taxes, the bill prioritizes the payment of debts arising from provisions of the sales and income tax laws that assign personal liability to the responsible employees or officers of a business that fails to pay sales or withholding taxes to the state.

The uniform procedures apply to refunds under the corporation franchise, motor fuel, sales and use, and state income taxes. With regard to the sales tax, the bill eliminates a provision of current law that allows the state to use a person's county to transit authority sales tax refund to satisfy any amount of those taxes that the person owes the county or transit authority.

Indexing of the personal income tax exemption

(sec. 5747.025)

Under existing law, the personal income tax exemption for a taxpayer and the taxpayer's spouse is $850 each for 1997, $950 each for 1998, and $1,050 each for 1999 and taxable years thereafter. The personal income tax exemption for each dependent is $1,050 for 1997 and taxable years thereafter.

The bill requires that, for taxable years beginning after 1999, these personal income tax exemptions be indexed to increases in the gross domestic product deflator prepared by the Bureau of Economic Analysis of the United States Department of Commerce. Each year beginning in 2000, the Tax Commissioner must determine the percentage increase in the gross domestic product deflator from July 1 of the preceding year to June 30 of the current year, and adjust the personal exemption amount by multiplying that amount by the percentage increase in the gross domestic product deflator for that period; adding the resulting product to the personal exemption amount; and rounding the resulting sum upward to the nearest multiple of $50. The Tax Commissioner cannot make this adjustment in any year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment from the preceding year.

School district income tax refund procedures

(sec. 5747.03)

School district income taxes are collected by the Tax Commissioner, and paid out to the districts on a quarterly basis by the Director of Budget and Management. The bill prescribes procedures for the Director to follow in the case of a school district that ceases to levy an income tax. The procedures require the Director to adjust the payments made to the district for tax collections that are received by the state the year after the last year the tax is levied. (Returns for a particular year are due April 15 of the next year, just like for the federal and state income taxes.) The adjustments are made in order to retain sufficient money in the district's account to pay refunds.

Specifically under the bill, for the quarters ending in March and December of the calendar year following the last year the tax is levied, the Director must pay the school district the entire balance in the district's account. For the quarter ending in June following the last year the tax is levied, the Director must pay the district 90% of the balance in the district's account, and must retain 10% for refunds. For the quarter ending in September following the last year the tax is levied, the Director makes no payment to the district, retaining the entire balance for refunds. In the second and succeeding years following the last year the tax is levied, the Director must make one payment each year, in an amount equal to the entire balance in the district's account at the end of June. The payment must be made within 30 days after the end of June.

County lodging tax--authority to increase rate

(secs. 5739.02(C)(3) and 5739.024)

Currently, boards of county commissioners may levy a tax on lodging at hotels in the county for a variety of purposes, including contributing to a convention and visitors bureau in the county. Contributions to a convention and visitors bureau

may be pledged to repaying debt issued to construct a convention center pursuant to an agreement between the board of county commissioners and the convention and visitors bureau.

If a board of county commissioners levies a lodging tax for the purpose of contributing to a convention and visitors bureau, the board must give a portion of the tax to each municipal corporation and township in the county that does not levy a lodging tax. The amount paid to a municipal corporation or township must be proportionate to the amount of the tax collected in the municipal corporation or township (in the case of townships, the township's unincorporated territory). The percentage of the revenue paid to each municipal corporation and township must be the same percentage, but cannot exceed 33-1/3%. Boards of county commissioners are prohibited from levying a lodging tax in any part of the county in which a township or municipal corporation levies its own lodging tax.

Currently, the rate of a county lodging tax levied for the purpose of a convention and visitors bureau cannot exceed 3%.

The bill permits certain boards of county commissioners to increase the rate of a lodging tax levied for a convention and visitors bureau up to 5%. In order to be authorized to increase the tax rate, a board must be levying a lodging tax at the maximum 3% rate on the bill's effective date, and must have pledged that tax to repaying debt issued to construct a convention center pursuant to an agreement between the board and the bureau.

The board could increase the rate of the tax by amending the existing resolution that imposes the tax. The additional revenue arising from the increased tax rate would have to be used solely to make contributions to the convention and visitors bureau for use by the bureau in promoting, advertising, and marketing of the region where the county is located. The increase in the rate must remain in effect for as long as the agreement with the convention and visitors bureau remains in effect. The board would not have to pay any part of the additional revenue to municipal corporations or townships in the county.

Repeal of soft drink tax statutes

(Section 5)

Effective January 1, 1999, the bill repeals Chapter 5753., which levied an excise tax on carbonated beverages, also known as the soft drink tax. The tax was invalidated when voters approved a constitutional amendment by referendum for that purpose, effective December 8, 1994.

The amendment, Article XII, Section 13 of the Ohio Constitution, provides that no sales or other excise taxes may be levied or collected (1) on any wholesale sale or wholesale purchase of food for human consumption, its ingredients, or its packaging (2) on any sale or purchase of such items sold to or purchased by a manufacturer, processor, packager, distributor, or reseller of food for human consumption, or its ingredients, for use in its trade or business, or (3) in any retail transaction, on any packaging that contains food for human consumption on or off the premises where sold. As used in the constitutional amendment, food for human consumption includes non-alcoholic beverages.

The Department of Taxation wants the law not to be affected so that it could not collect the taxes imposed before the adoption of the constitutional amendment.

HISTORY

ACTION DATE JOURNAL ENTRY

Introduced 02-12-97 pp. 231-232
Reported, H. Finance
& Appropriations 03-20-97 pp. 421-422
Passed House (89-9) 03-21-97 pp. 425-495
Reported, S. Finance &
Financial Institutions --- ---

Top of Page

State of Ohio